

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 536 OF 2015

1. Chandrakant Nanuram Thole,
Age: 71 years, occu. Agri & Business,
2. Sau. Shobadevi Chandrakant Thole,
Age: 66 years, Occu: Agri & Household,
3. Amit Chandrakant Thole, (deceased)
- 3-A) Deepa Amit Thole,
Age: 43 years, Occupation :Service,
- 3-B) Parva Amit Thole,
Age:21 Years, Occupation : Education,
- 3-C) Rashi Amit Thole,
Age:17 years, Occupation : Education,
4. Anand Chandrakant Thole,
Age: 40 years, Occupation : Agri & Business,
All Above R/o Godam Galli, Kopargaon,
Taluka Kopargaon, Dist. Ahmednagar.

...PETITIONERS
(Ori. Plaintiffs)

versus

1. Ramrao Revaji Dumbare,
Age: 62 years, Occupation Agriculture,
2. Sahebrao Sukhdeo Dumbare,
Age: 57 years, Occupation : Agriculture,
Both R/o Yesgaon Taluka Kopargaon,
District Ahmednagar.

...RESPONDENTS
(Ori. Defendants)

.....
Mr. Sanket S. Kulkarni, Advocate for Petitioners
Mr. R.N. Bhapkar, Advocate for respondents.
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 26th JUNE, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.

2. This petition has been moved by petitioners-original plaintiffs, aggrieved by order dated 17-12-2013 on Exhibit-20 in Regular Civil Suit No. 228 of 2011 passed by Civil Judge, Junior Division, Kopargaon, whereunder their request for taking measurement map on record has been turned down.

3. Learned counsel for the petitioners submits that petitioners have instituted suit against respondents seeking removal of encroachment. He points out that, in fact, pleadings in respect of removal of encroachment are incorporated in paragraph No. 4 of the plaint, however, inadvertently the document i.e. measurement map was missed out from being presented along with plaint. Upon realization of the same, Exhibit-20 had been moved, and as such, proper view ought to have been taken in the matter and latitude should have been given for reasons contained in exhibit-20.

4. It is being submitted on behalf of the petitioners that veracity of reasons to produce measurement map is not doubted by respondents. The objection to production of the document is on technical ground which is indicative of that defendants have no particular objection to production of document, subject to payment of costs.

5. Leaned counsel for respondents submits that taking into account Order VII, rule 14, sub-rule 4 of the Code of Civil Procedure, application be considered accordingly.

6. Having regard to the submissions on behalf of respective parties, the position emerges that reasons underlying application Exhibit-20

are not being seriously disputed. The suit is filed in the year 2011 for removal of encroachment.

7. Matter concerns removal of the discrepancies occurring in procedural requirements. Although learned counsel for respondents refers to Order VII, rule 14, sub-rule 4 of the Code of Civil Procedure, the same does not preclude opportunity/possibility to submit such a document.

8. Taking into account overall situation and that procedural requirements shall not intercept normal course of seeking justice on technicalities, I deem it appropriate to allow writ petition.

9. Writ petition stands allowed in terms of prayer clauses "B" and "C" subject to payment of costs of Rs. 2500/- to be paid by the petitioners-original plaintiffs to the respondents - original defendants. Costs to be deposited in the trial court, within a period of four weeks from the date of receipt of writ of this order. In case of failure to deposit the amount of costs within stipulated period, proper orders would be passed by the trial court. Accordingly, impugned order dated 17-12-2013 on Exhibit-20 in Regular Civil Suit No. 228 of 2011 passed by Civil Judge, Junior Division, Kopergaon stands set aside, and application Exhibit-20 stands allowed subject to compliance as aforesaid.

10. Rule is made absolute in aforesaid terms.

Sd/-

(SUNIL P. DESHMUKH, J.)