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

WRIT PETITION NO.9696 OF 2014

Yeshwanta Deoba @ Yeduba Karwande.

Since deceased, through L.Rs.

Khirnabai and others.

..Petitioners

-Versus-

Damu Mathaji Palhal. (Deleted)

Namdeo Mathaji Palhal and others.

..Respondents

.....

Mr.D.K.Kulkarni, Advocate for the Petitioners.

Mr.A.B.Kale, Advocate for the Respondent Nos.2, 4, 5A to 5F

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd March, 2015

Per Court:

1 I have heard Mr.Kulkarni, learned Advocate for the Petitioners
and Mr.A.B.Kale, learned Advocate appearing for the contesting
Respondents.

2 The issue is as regards the portion of the land handed over to
the Petitioners to the satisfaction of the decree.

3 Having heard the learned Advocates for quite sometime, I am
not adverting to their entire submissions in the light of the controversy

and in view of the order that I intend to pass.

4 The Petitioners have placed on record the Pursis at page 41-A of the petition paper book which is dated 19.12.2007. The Petitioners/ Decree Holders have declared before the Executing Court in Regular Darkhast No.29/2002 by their Pursis at Exhibit-43 that the decree passed by the Trial Court has been satisfied. As per the order of the Executing Court, the Decree Holders have received possession and are satisfied of the same.

5 The Respondents/ Judgment Debtors have filed an application before the Executing Court through their Objection Petition dated 21.01.2008 contending that the Decree Holders have been handed over excess possession to the extent of 71 R land beyond the area of land as was decreed by the Trial Court. As such, the grievance of the Judgment Debtors was that 71 R land in excess was handed over to the Petitioners/ Decree Holders.

6 By an order dated 01.09.2014, the Executing Court has allowed the application filed by the Judgment Debtors dated 26.08.2014 below Exhibit-59 in RD No.29/2002 praying for appointment of a Court Commissioner in order to measure the land so as to find out, whether, any

excess land was handed over to the Petitioners by inadvertence. The operative part of the impugned order dated 01.09.2014 reads as under:-

- “1. *Application is allowed.*
2. *Taluka Inspector, Land Record Office, Aurangabad is appointed as Court Commissioner.*
3. *Accordingly writ be issued to make investigation and report thereof pertaining to the fact that how much area was handed over by the bailiff to decree holder according to the order in decree, more particularly measurement map dated 23.01.2001 in the process of execution, while doing investigation when he requires to measure the land Gut Nos.36 and 34 he has to keep base document i.e. measurement report dated 23.01.2001 which is part and parcel of decree in question.*
4. *Judgment Debtor to deposit necessary charges for investigation or measurement in the Taluka Land Record Office, Aurangabad.*
5. *Judgment Debtor to supply copy of decree and certified copy of measurement map dated 23.01.2001 which is part and parcel of decree to the commissioner.”*

7 I have considered the submissions of the Petitioners in assailing the impugned order and the submissions of the Respondents in support of the same.

8 The litigating parties in the execution proceedings have been engaged in a legal battle for the last about 13 years. The suit from which the litigation commenced is RCS No.471/1990. Needless to state, the parties are litigating for last about 22 years.

9 In the light of the above, I am not inclined to interfere with the impugned order, so as to ensure that the TILR as is directed by the Executing Court shall carry out appropriate investigation and shall indicate through his report along with a measurement map as to whether, the land handed over to the Decree Holders is commensurate to the land portion set out in the Decree or whether, some excess land has been handed over to them. This would infact put to rest any controversy between the parties inasmuch as, it would assist the Executing Court to pass necessary final orders based on such report.

10 As such, this Writ Petition is disposed of with a direction to the Executing Court that the TILR be directed to carry out the exercise as per the impugned order dated 01.09.2014 as expeditiously as possible and preferably within a period of TWO MONTHS from today. He shall, accordingly, submit his report within the time frame with the measurement map. Needless to state, the TILR shall enter into the said exercise by following due procedure of law, with due notice to the litigating sides and on the basis of the record made available to him for his assistance. After the receipt of the report, the Executing Court shall decide RD No.29/2002 within a period of FOUR MONTHS.

11 The litigating parties have assured cooperation to the

Executing Court by making a statement to that effect to this Court. In the event, either of the litigating sides seek unnecessary or unreasonable adjournment, the Executing Court shall be at liberty to reject such request.

(RAVINDRA V. GHUGE, J.)