

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

78 WRIT PETITION NO. 3207 OF 2016

MUKUND NARAYAN MORE
VERSUS
VYANKAT VITHOBA MORE AND OTHERS

Shri. M.K. Bhosle, Advocate, holding for Shri. Parag V. Barde, Advocate, for petitioner.

Shri. A.P. Yenegure, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned 2nd Joint Civil Judge Junior Division Omerga on Exhibit 63 of Regular Civil Suit No.242/2004. Both the sides are heard.

2) The application was filed by the present petitioner, defendant from the suit, to take objection to the record produced by the Court Commissioner, Taluka Inspector of Land Records. It is the contention of the defendant that the Taluka Inspector of Land Record did

not measure the land but he asked his subordinate who was probably a Clerk, to make measurement and he only signed on the record created by his subordinate officer. Such contention cannot be considered in the application like Exhibit 63 filed for taking objection to the record. For proving the encroachment it will be necessary to examine the surveyor who measured the land. Then it will be possible for the Court to decide as to whether the man who made measurement was authorised to do this work and then the Court will be required to give decision on this point.

3) It appears that in the present matter, appeal filed by the defendant in District Court to challenge the decree of removal of encroachment was allowed and opportunity was given to the defendants to take fresh measurement to have redressal of his grievance. In such a case it will be necessary for the trial Court to give finding on the authority of the person who measured the land and if the Court finds that the man who made measurement had no authority then the Court may not be in a position to accept that measurement. However, the record also

shows that the map prepared is signed by the Taluka Inspector of Land Record, Surveyor of the Survey Department. The trial Court has also observed that if the defendant is able to show that the man who made the measurement had no authority, this circumstance will help the defendant and that will be considered in favour of the defendant. In view of the observations made by the trial Court, this Court holds that there is no need to interfere in the order made by the trial Court of rejection of the application. This fact will be considered after recording evidence of Surveyor. So, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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