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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3638 OF 2016

Babu s/o Gopal Gaware
Age – 80 yeas, Occ – Nil
R/o Kelgaon, Taluka – Nilanga,
District – Latur

PETITIONER

Through his Power of Attorney Holder,
Govind s/o Babu Gaware,
Age – 50 years, Occ – Agriculture
R/o Kelgaon, Taluka – Nilanga
District - Latur

VERSUS

Shesherao s/o Ganpati Gaware
Age – 66 years, Occ – Agriculture
R/o Kelgaon, Taluka – Nilanga
District – Latur

RESPONDENT

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Mr. Tukaram M. Venjane, Advocate for the petitioner
Mr. S. B. Gastgar, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 9th AUGUST, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Learned advocate for the petitioner purports to contend that as a matter of fact, the decreed land has already been put

in possession of the respondent-plaintiff and under the garb of execution of decree, the plaintiff-respondent would be placed in the area of land more than due to him under the decree.

3. It would be worthwhile to refer to the decree as has been passed by the trial court, which reads as under:

1. *Suit is decreed with costs, as under.*
2. *Defendant do handover possession of encroached area of land admeasuring 30 R. of survey No.63/C, whose boundaries are – east – Shiv of Mouje Zari, west – land of Balaji Ramchandra Gaware and Babu Gaware, south – remaining land of plaintiff, north – land of defendant, after one month of the date of the order.*
3. *Measurement map Exh.72 be part and parcel of the decree.*
4. *Decree be drawn accordingly.”*

4. It will have to be borne in mind that the decree as has been passed directs that the measurement map Exhibit-72 to be part and parcel of the decree. It is as such, evident that the plaintiff-respondent is supposed to take possession of the land in respect of which decree has been passed. The decree appears to be in respect of land Gut No.63/c, specifically described in the plaint and as referred to in Exhibit-72. As such, it emerges that the respondent-plaintiff would be entitled to take possession of

the land so decreed in his favour.

5. Learned advocate though contends that since the order dated 10th December, 2015 refers to appointment of court commissioner and yet it is considered under the impugned order that there is no need to appoint commissioner again, since the decree is amply clear and executing court is precluded from going behind the decree.

6. It appears that during the course execution, the executing court had issued possession warrant under order dated 10th February, 2015 and had directed the Taluka Inspector of Land Records to be court commissioner in order to show the boundaries of 30 Are land of survey No. 63/Kha (in fact 63/C) as per measurement map annexed to the decree. Intention underlying order primarily is to assist giving of possession as per decree. He is not supposed to measure the land again in the face of decree. Observation regarding measurement appears to be unintentional and under oversight. Observations regarding payment of fees and measurement amounts in said order appear to be redundant.

7. In the circumstances, the impugned order passed may not be exactly faulted with, however, the Taluka Inspector of Land

Records may facilitate and aid taking over of possession pursuant to the decree passed. In such a case, if the petitioner pays up the charges of the Taluka Inspector of Land Records in assisting giving of delivery of possession to the plaintiff, it is open for the petitioner to deposit charges immediately and the Taluka Inspector of Land Records may assist in giving of possession pursuant to the decree. Taluka Inspector of Land Records, however, is not supposed to carry out measurement and will have to go as per decree.

8. Impugned order in the circumstances is not disturbed. Writ petition stands disposed of. Rule stands discharged. As such, Civil Application No.8873 of 2016 stands disposed of.

[SUNIL P. DESHMUKH, J.]