

related. They had agreed that the properties in question will be distributed as agreed. To this compromise, map was annexed which was signed by all parties. When the decree was put for execution, a Surveyor who was appointed, submitted a map below Exh.95. An objection was taken by the Petitioner that this application below Exh.95 is not in consonance with the decree as well as while preparing the map, the procedure has not been followed. A Surveyor was examined. The learned Civil Judge while dismissing the application filed by the Petitioner, came to the conclusion that the map which is annexed to the compromise was incorrect and the map below Exh.95, prepared by the Surveyor, as not consonance with the compromise, eventhough it did not mention well on the eastern side adjacent to the stream. The learned Judge observed that the map below Exh.95 being more in consonance with the compromise, cannot be defeated with reference to the map annexed to the compromise. Accordingly, by the impugned order the dated 7 November 2015, the learned Civil Judge rejected the application of the Petitioner.

4 The parties have arrived at the compromise and to the compromise they have annexed map / sketch which has been signed by all concerned. Generally a decree should be in consonance with the compromise as well as the sketch / map annexed. It is not impermissible for the Court to give effect to the measurement of the surveyor appointed to execute decree even though the Court finds that there is variance between the sketch and the compromise and that there is a measurement of the surveyor, is more in consonance with

the decree. However, while deviating from what is agreed between the parties, refusal in form of a detailed scrutiny is required on the part of the Court. This screening is completely lacking in the impugned order. Furthermore, the measurement must be as per the rule, if it is to override a document which is signed by all the parties.

5 Learned counsel for the Petitioner has pointed out various admissions from the cross-examination of the Surveyor. In the cross-examination, the Surveyor had admitted that no documentary evidence regarding issuing of notices to the co-sharers has been produced. Firstly, he had submitted that it is not necessary to show the details such as trees, electricity pole, well etc. and when confronted with the rules, he has accepted that it is necessary and it is not so mentioned. He has also admitted that he had not taken survey notebook at the time of commission. He had not produced the said notebook and other details. Considering these various admissions, it cannot be said that the survey done by the Surveyor and the consequent map below Exh.95 is in consonance with the rules and that it shows without doubt to override the sketch annexed to the compromise which is signed by all the parties. In these circumstances it will be necessary that the learned Civil Judge appoints a Surveyor, preferably some other surveyor than one already appointed, to carry out the measurement as per rules/ guidelines framed under the Maharashtra Land Revenue Code.

6 The Writ Petition is accordingly disposed of by quashing and setting aside the order passed by the learned Civil Judge dated 7

November 2015, and the application filed by the Petitioner below Exh. 74 is allowed. Learned Civil Judge will direct the Surveyor to carry out the survey within a period of two months from the date of the writ reaches to it.

7 The order is passed on 21 December 2015 after hearing both sides that the possession of the Petitioner will not be disturbed. Learned counsel for the Respondent submits that the decree which is sought to be executed does not contemplate handing over of the possession as it is to be executed as is where is basis. In any case the order passed on 21 December 2015 is in operation till today and the same is continued till further orders to be passed by the learned Civil Judge after carrying out the exercise as indicated above. It is clarified that the impugned order is not set aside on merits but that before giving effect to the map Exh.95 the procedure ought to have been followed in view of the consequences that may ensure. Once a fresh exercise is carried out, it is open to the learned Civil Judge to take a view as may be permissible in law. The Writ Petition is accordingly disposed of.

(*N.M.JAMDAR J.*)