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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 374 OF 2016

Arjun s/o Vishnu Choudhari
Age – 68 years, Occ – Agriculture
R/o Nandurkhi (Bk), Taluka – Rahata
District – Ahmednagar

PETITIONER

VERSUS

1. Sahebrao s/o Gajaba Choudhari,
Age – 70 years, Occ – Agriculture
R/o Nandurkhi Bk, Taluka – Rahata
District – Ahmednagar

RESPONDENTS

2. Deelip s/o Kisan Wakchaure
Age – 42 years, Occ – Agriculture

3. Jalindar s/o Kisan Wakchaure,
Age – 44 years, Occ – Agriculture

4. Shankar Dada Dabhade
Deceased through his LRs

4A. Dattatraya s/o Shankar Dabhade
Age – Major, Occ – Agriculture

4B. Vithal s/o Shankar Dabhade
Age – Major, Occ – Agriculture

4C. Namdeo s/o Shankar Dabhade
Age – Major, Occ – Agriculture

4D. Jalindar s/o Shankar Dabhade
Age – Major, Occ – Agriculture

5. Parvatabai Shankar Dabhade
Age – Major, Occ – Household & Agriculture

Respondents No. 2 to 5 all
R/o Nandurkhi Bk, Taluka – Rahata
District – Ahmednagar

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Mr. V. C. Patil, Advocate for the petitioner
Mr. Rahul R. Karpe, Advocate for respondent No.1
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 8th AUGUST, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally with consent.
2. Petitioner is defendant No. 5 in Regular Civil Suit No. 158 of 2008 filed by present respondent No. 1 for removal of encroachment initially claiming the same to be 10 *are*, now after amendment the demand has been reduced to 7 *are*.
3. After hearing learned advocates it transpires that the petitioner is a purchaser of property from defendant No. 3 during pendency of suit. Before he had been made a party to the suit, there had been an order for appointment of court commissioner in 2010 and the commissioner accordingly had carried out measurement of blocks No. 445/2, 441, 445/1 and adjacent land holders.
4. There has been no challenge to said measurement by any

of the then parties to the suit. It is now sought to be contended that petitioner had not been party to the suit while measurement was carried out.

5. Perusal of the impugned order shows that the court has categorically observed that while measurement through court commissioner was taking place all the defendants were present and have given statements before the surveyor.

6. In the circumstances, it does not appear that there is any fault which can be found with the impugned order. The court has appropriately considered that application Exhibit-137 by added defendant No. 5 in the circumstances has no substance and the same appears to have been rejected. Said order does not deserve to be meddled with at this stage.

7. Writ petition, as such, stands rejected. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]