

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

WRIT PETITION NO. 1199 OF 2019

POSHETTI GIRMAJI MUTTEPOD
VERSUS

GIRMAJI NARSAPPA MUTTEPOD DIED THROUGH IS
LEGAL HEIRSSAILU GIRMAJI MUTTEPOD AND OTHERS

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Advocate for the Petitioner : Shri B. R. Kedar
Advocate for Respondent Nos. 1 to 3 : Shri S. B.
Ghatol Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 12th DECEMBER, 2019

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PER COURT :

1. The Petitioner / Judgment Debtor is aggrieved by the order dated 01/12/2018, by which, the Trial Court has rejected Exhibit 44 in Regular Darkhast No. 32/2016. The J.D. had prayed for appointing a Land Record Officer to measure the land of all the purchasers and carve out the area of 2 Hectors 2 R. belonging to the J.D.

2. I have considered the submissions of the learned Advocates extensively. I have gone through the judgment delivered by this Court on 24/02/2017 in Writ

Petition No. 2599/2017 filed by Poshetti s/o Girmaji Muttepod Vs. Girmaji s/o Narsappa Muttepod (died) through L.Rs. I have also gone through the judgment delivered by this Court on 08/03/2016 in Second Appeal No. 163/2015 filed by Poshetti Girmaji Muttepod Vs. Girmaji Narsappa Muttepod and others.

3. There is no dispute that the Petitioner Poshetti Girmaji. was held to have encroached upon 90 R. land belonging to the decree holder (D.H.). The D.H. is entitled for 6 Acres and 12 Gunthas. The J.D. claims to own 2 Hectors 2 R. The learned Advocate for the J.D. submits that his clients do not want an inch of land more than what is granted as per the decree that has crystalized till the Honourable Apex Court, beyond 6 Acres and 12 Gunthas. The encroached portion of 90 R. by the J. D., will have to be returned to the D.H. and such return of 90 R. will complete the total share of the D.H. to the extent of 6 Acres 12 Gunthas.

4. In view of the above, it is expected that the learned executing Court would not permit any of the

litigating sides to acquire land more than what belongs to them. In short, if the D.H. owns 6 Acres and 12 Gunthas, the executing Court would ensure that he gets that portion of the land and at the same time would ensure that beyond the 90 R. encroached portion, the J.D. will not be deprived of any land which belongs to him. The learned executing Court shall take this precaution while deciding R.D. No. 32/2016 and ensure that the decree is satisfied in the light of the above.

5. This petition is therefore disposed off with the above observations.

(RAVINDRA V. GHUGE, J.)

shp/-