


MHAH080023622022 	<b><u>COMMON ORDER BELOW EXH-33 and 35 IN REG. DKST. NO. 149 OF 2022.</u></b> (Karbhari Gopala Pawbake <b>Vs.</b> Uttam Murlidhar Pawbake)
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**(Passed on 02/02/2026)**

This is an execution proceeding filed by DH for execution of decree passed in RCS No. 101/2006. There are directions vide the decree to defendant No. 1 to 5 to remove the 'ota' and 'grill' constructed by them in the open space of 20 meter on western side. During pendency of execution proceeding, the defendants contended that, as per panchnama in Rasta Case No. 54/2021, all obstacles in road like ota, grill etc have been removed on 16/06/2022 and since then the plaintiff is in continues unobstructed use of said road. However, plaintiff refused that and prayed for removal ota and grill as per decree. Though there is copy of panchnama conducted in rasta case, on record, the plaintiff filed photographs showing existence of 'ota' and 'grill' on the spot.

**02.** The plaintiff moved application at Exh.25 and prayed for appointment of Court Commissioner for land inspection to show existence of all the obstacles existing in the space of 20 meter on western side. Accordingly, order was passed below the application of plaintiff/DH at Exh.25 and TILR was appointed with directions to have land inspection and to show all the obstacles presently exist in

the space of 20 meter of western side of stream and the road.

**03.** Accordingly, TILR filed his report along with map at Exh.31. The report was admitted by DH but JD put objection by stating that, the measurement and map is not as per survey manual and all directions from Court are not followed while carrying out the measurement.

**04.** Plaintiff/DH moved this application with submission to appoint bailiff for compliance of decree by removing the obstacles in 20 meter space from north side. He also prayed for appointment of TILR to show the boundary for removal of impugned construction of 'ota' and 'grill' and also prayed for police aid.

**05.** JD filed say over this application objecting the manner of measurement, non compliance of provision in survey manual etc. He further submitted that, the report and map submitted by the surveyor cannot directly accepted in evidence but as per Order 26 Rule 10 of the CPC, it is necessary to examine the surveyor to prove the map and report filed by him. Therefore, he prayed for appropriate order as per Order 26 Rule 10(2)(3) of the CPC. JD relied upon the authority of **Hon'ble Supreme Court** in case of **Ram Lal and Ors Vs. Salig Ram and Ors.** reported in **2020(1)Mh.L.J**, **Hon'ble Bombay High Court** in case of **Kashinath Chindhuji Shastri Vs. Haribhau Nathuji Bawanthade** reported in **2004(2) ALL MR 40** and **Hon'ble**

**Kerala High Court** in case of **Parambath Balan and Anr. Vs. Vellangattu Kousu and Ors** reported in **AIR 1983 NOC 196 (KER)**.

06. During pendency of this application, the JD has also filed separate application at Exh.35 with prayer to examine the TILR as he has objections with respect to measurement carried out by the TILR. DH has filed say over this application at Exh.36. This application Exh.33 and application Exh.35 are having similar facts to be considered. Hence, both applications are taken into consideration altogether.

07. Heard both sides. Perused the record. It is an execution proceeding of the decree passed in RCS No. 101/2006. Wherein it was already adjudicated that, on north side adjacent to the disputed road, in his open space the defendant has constructed the 'ota' and 'grills' of about 20 meter breadth and accordingly, the plaintiff was granted the relief of mandatory injunction against defendant No. 1 to 5 to remove said construction of 'ota' and 'grill' constructed by them in the open space of 20 meter on western side of stream and north side of the road. In application plaintiff/DH has used the word north side cannot be interpreted as wrong, because the impugned construction of 'ota' and 'grill' is towards north side of road in the open space of defendant and towards western side of stream.

08. Perused the authorities relied upon by JD. The **Hon'ble Bombay High Court**, in case of **Sukhdev Bhugul (Supra)** it was the appeal against the judgment and decree in suit for encroachment. In that suit the trial Court found that, as per measurement map there was encroachment by defendant over 7 Ares as shown in red colour. However, the defendant put defence that he has perfected title over that 7 Are land by virtue of adverse possession. However, it is concluded by Hon'ble High Court in Para No. 18 that, "map prepared by surveyor would not be admissible in evidence to show that, there was an accuracy in taking measurement of the entire field." Similarly, **Hon'ble Kerala High Court** in case of **Paranbath Balan (Supra)** held that, "if Court is not satisfied with commissioner's report, it can set aside the report and issue fresh commission for local investigation." Similar are the directions of **Hon'ble High Court** in the case of **Kirpashankar Sahu (Supra)** and **Ramlal and Ors (Supra)**.

09. As per guidelines of Hon'ble Bombay High Court and Hon'ble Supreme Court, the report, if it is ambiguous and not clear then it cannot be straightway used in evidence. But in such circumstances the Court may direct further inquiry to be made as it thinks fit. All the authorities relied upon by JD are about adjudication of existence of encroachment or adjudication of existence or non existence of facts alleged by respective parties therein. However, the present proceeding is an execution proceeding for execution of decree passed after adjudication of existence of

encroachment.

**10.** Perusal of all case laws relied upon by JD shows that, there are directions about evidentiary value of map and measurement report by surveyor and it is directed that, the report of commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record; but the Court may examine the commissioner in open Court with respect to report or the manner in which he has made the investigation.

**11.** The present proceeding is for execution of decree which has already passed after adjudication that there is encroachment over the disputed road by defendants by way of construction of 'ota' and 'grills' thereon within space of 20 meter on western side from stream. The fact of encroachment is already adjudicated. The objection by JD during execution, was that, road of 20 meter breadth was already made open and plaintiff is in use thereof. Therefore, TILR was appointed for land inspection to report whether the impugned construction of 'ota' and 'grill' is removed or is still in existence. This fact could have been identified by any person just by observing with open eyes as to whether that construction is removed or not. Because that, construction is already adjudicated to be constructed by committing encroachment, it was not necessary to have examination about existence of encroachment but only requirement was to examine whether that construction of ota and grill is already removed. However, only to avoid

technicalities, TILR was appointed for land inspection.

**12.** The map and TILR report Exh.25 clearly shows that, in the road 20 meter breadth, there are tin shed and construction adjacent to stream towards western side within the boundaries of road shown by plaintiff and defendant. Whereas, the temple and collapsed house are outside the boundary of road shown by plaintiffs and defendant. The report specifically shows that, the construction shown with orange colour is within the space of 20 meters. Though word construction is used and the word 'Ota' and 'grill' is not used, it has to be interpreted as the construction mentioned in the decree.

**13.** The report and map are clear and have served the purpose to remove the ambiguity of existence of said construction (Ota and grill) on spot i.e. within road of 20 meter breadth. As per wording of Order 26 Rule 10(2) the report of commissioner and evidence taken by him means panchnama, statement etc. along with report shall be evidence and shall form part of the record. Unless the Court finds necessary to examine the commissioner, it is not always necessary to examine commissioner to accept the map and report as evidence on record.

**14.** In present case the report and map are clear. There is no ambiguity. This proceeding is execution proceeding and nothing is to be adjudicated but only to be executed in this proceeding. The purpose of map is only to

clear the ambiguity created due to defence of JD that, the encroachment is already removed. However, the map has shown that the encroachment created by way of said construction is not removed and it is still in existence. Therefore, it is not necessary to adjudicate accuracy of map. Because the fact of encroachment is already adjudicated in the suit. In such circumstances, directing the plaintiff again to prove encroachment would amount to repeated exercise of leading evidence to prove the fact which is already proved in RCS No. 101/2006.

**15.** All the case laws relied upon by the JD are on the point of the adjudication of disputed facts in proceeding on the basis of commission report. In present case the disputed fact is already adjudicated. The only question was whether the constructions which were directed to be removed by way of mandatory injunction are already removed or not. The commission report has made it clear that, the construction of 'ota' and 'grills' are still in existence, they are not been already removed. Hence, there is no need to further examine the surveyor and to require proof of report and map. Therefore, it is apparent from record that, the defendant failed to follow the direction issued to them by way of mandatory injunction. Hence, plaintiff / DH is entitled to get removed the construction of 'ota' and 'grills' constructed by defendants and get access of road as per decree, at the costs of defendants. Hence, application 33 deserves to be allowed, whereas, application

Exh.35 deserves to be rejected. Hence, I proceed to pass following order:

<b>:: ORDER ::</b>	
<b>1.</b>	Application Exh. 33 is allowed and application Exh.35 is rejected.
<b>2.</b>	Bailiff be appointed for execution of decree in RCS No. 101/2006 by getting the construction of 'ota' and 'grill' removed, at the costs of JD, by taking help of TILR or surveyor to clarify the area of 20 meter breadth as per decree and police aid is granted on payment of <i>bhatta</i> by DH.

Place : Sangamner  
Date : 02/02/2026

**(Smt. S. B. Dhawale)**  
Jt. Civil Judge Jr. Division,  
Sangamner, Dist. Ahmednagar.