


<p>ORDER BELOW EXH.76 IN Reg. Dkt. No. 36/2012. (Premchand Sugandhrao Shirsat Vs. Annasaheb Punjaji Shinde)</p>	<p>MHAH140012062016</p> 
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This is an application on behalf of Decree Holder under Order 21 Rule 35 of Civil Procedure Code.

2. The Decree Holders prayed for possession warrant of encroached portion of land as shown in the map at Exh.74 as per the compromise decree passed in RCS No. 796/2011.

3. The Judgment debtors No. 1 to 11 have failed to file their say to this application. Hence, application proceeded without say of Judgment debtor no. 1 to 11. The Judgment Debtor No. 12, 13 to 15 filed say to this application at Exh. 79. They objected this application on the ground that, some judgment Debtors were died but their legal heirs were not brought on record. The map at Exh. 74 is not correct and TILR conducted measurement and shown encroachment as per the say of Decree Holders. They have objection to said measurement. They have also filed application for measurement of land on 22/12/2015 but, that application was rejected by the Court therefore, the real position is not brought on record. The suit property is Gat no. 66. Gat no. 66 has sub-divisions and some of sub-divisions were sold out to third parties but, Decree Holders have not served notices to these purchaser. In Gat no. 66 there are several houses of people, big trees if, possession warrant is issued there is possibility that the people will dispossess from their houses. Hence, prayed to reject the application.

4. Heard Ld. Advocate on behalf of Decree Holders. In spite of sufficient opportunity Judgment Debtors No. 12, 13 to 15 failed to advance their argument. Hence, application proceeded without argument on behalf of Judgment Debtor No. 12, 13 to 15.

5. Perused record. The Judgment Debtors No. 12, 13 to 15 stated that, some of the judgment debtors were died but their legal heirs are not brought on record by Decree Holders. However, judgment debtors have not clarified that out of

17 which judgment debtors were died. Also, as per record Decree Holder no. 1 was died and his heirs were already brought on record. Further, Judgment debtors have objected measurement conducted by TILR and map at Exh. 74. However, when TILR filed his report alongwith map Judgment debtors No. 12, 13 to 15 have not taken any objection to it. Thereafter, the TILR was examined at Exh. 62 at that time also, neither Judgment debtors nor their Advocate were present in the court and they failed to cross examine TILR. Thereafter also, they have not opted for setting aside no cross order. Ld. Advocate on behalf of Judgment debtor no. 1 to 11 present for cross examination but they denied to take cross examination.

6. Moreover, the decree in RCS No.796/2011 is compromise decree before Lok-adalat. But as per Decree holder judgment debtors denied to act as per compromise decree and therefore, they filed this execution petition. This petition was filed in the year 2012 and after filing of execution petition judgment debtors have opportunity to act as per compromise decree but they failed to do so. Thereafter, at the time of measurement, when TILR filed his measurement report alongwith map and when TILR was examined Judgment debtors have more than sufficient opportunity to contest this petition but, even though they have sufficient knowledge they have not taken any objection to execution petition. If judgment debtors have any objection to compromise decree then they have remedy to approach appropriate Court. The compromise decree was passed in the year 2011 and execution petition is pending since 2012 i.e for more than 10 years. However, during that period Judgment debtors no. 12, 13 to 15 have not taken any steps. Now they opposed present application by decree holder filed for possession warrant. This conduct of Judgment debtors no. 12, 13 to 15 itself shows that they are just trying to prolong the petition. The compromise decree was passed in 2011 and even after more than 14 years Decree holders are kept away from the fruits of decree. Also, record shows that there is no stay order to execution by any Appellate Court. Therefore, there seems to be no embargo to deliver the possession of encroached portion of land to Decree holders as per map at Exh. 74. As per map at

Exh. 74 Judgment debtor no. 1, 2, 12 to 17 have encroached on the land of Decree holders therefore, possession warrant issued against them only. Hence, I pass following order.

ORDER

1.	Issue possession warrant against judgment debtors no. 1, 2, 12 to 17 for recovery of possession of encroached portion of land by judgment debtors as per measurement map at Exh.74 prepared by TILR, Newasa.
2.	Decree holders Shall file affidavit stating that no stay proceeding is pending in any Court against the decree passed in RCS No. 796/2011.
3.	The bailiff is directed to deliver the possession of encroached portion of land by removing all the obstacles and objections.
4.	The TILR, Newasa shall assist in determining the encroached portion of land as per the measurement map at Exh.74.
5.	Issue letter to TILR. Newasa.
6.	The bailiff executing warrant, if finds that, the encroached portion of land is occupied by the male and female members, he shall give reasonable warning and facility to them, particularly to the women not appearing in public according to the customs to withdraw themselves from the encroached portion of land.
7.	The bailiff executing warrant shall determine the value of standing crops in the encroached portion of land with panchanama to that effect and Decree holders shall pay said amount to the Judgment debtors and if they refuse for the same deposit same in the court.
8.	Special Bailiff and Police aid granted on payment of requisite fees if prayed.
9.	Police Inspector of concerned Police Station is hereby directed to provide efficient and sufficient police force for execution of possession warrant in

	this matter, on payment of necessary charges by Decree holder.
10.	Decree holders shall pay the necessary charges, as per rules and procedure of the Police Department, within 15 days from today.
11.	Police Inspector of concerned Police Station shall ensure that the police team must have one Lady Constable and one Armed Constable.
12.	Letter be issued to the concerned Police Station.
13.	Decree holders are directed to furnish necessary documents to facilitate the execution and accompanied bailiff.

Place: Newasa.

Date: 17/01/2026.

(Smt.Sandhya Y. Sul)

2nd Jt. Civil Judge, Junior Division,
Newasa, Dist. Ahmednagar.