

**Order below Exh. 41 in Reg. Darkhast No. 50/2003**

(CNR No. MHAH20-000192-2003)

( Malanbai Vs. Shamrao )

This is an application made by the third party applicant complaining dispossession at the hands of DH under Order 21 Rule 99 of the Code of Civil Procedure.

2. The present application is filed by the applicant Chandrakala Babasaheb Kachare after issuance of possession warrant by this court. The applicant has claimed that the land in survey no. 90/3B situated at mauje Padali, Tal. Pathardi ad-measuring 1H 2R is belongs to her. She is exclusive owner in possession of the property. The land of JD no. 2 Shaluman Sampat Kambale is acquired by the government prior to 25 years. Hence the plaintiff was never in possession of the suit property in RCS no. 214/01. Basically possession of the suit property to the extent of 11 R (suit property in RCS no. 214/01) was never tendered to the plaintiff. As per DH she has purchased suit property from JD no. 2 Shaluman. However the alleged property was already acquired by the government for irrigation. The sale deed in favour of the plaintiff was illegal, without possession. Though by misleading the court the plaintiff has obtained decree. In fact the present applicant Chandrakala is in possession of the suit property. The decree in favour of DH is not executable. The entire land in the name of Shaluman Sampat Kambale including the 11R described in present execution is acquired. The applicant cultivating the suit property. She is lawful owner in possession of a suit property. Hence this application.

3. DH has raised strong objection by filing say vide Exh. 54. She specifically denied the contents in present application. She has

denied the ownership of third party applicant over the suit property. As per DH the suit property and property in the name of applicant are different. The present applicant has no concern with suit property as both the properties are different in nature. The applicant has purchased the property on 04-12-2002. As per DH the applicant intentionally obstructing to execute the decree. The applicant has no right to cause obstruction for obtaining possession. She has no concern with the suit property. Hence lastly DH has prayed to reject the application.

4. Perused the application, say thereon and documents on record. Heard both the parties. Considering same following points arise for my determination. They are answered alongwith my finding thereon as follows :-

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1)	Whether applicant has right and interest in the suit property ?	<b>... In affirmative</b>
2)	Does the applicant prove that the decree in question is not binding on her right ?	<b>... In affirmative</b>
3)	Is applicant entitled for the relief of cancellation of possession warrant as prayed ?	<b>... In affirmative</b>
4)	Is applicant entitled for the relief of possession if dispossessed by the DH ?	<b>... In affirmative</b>
5)	Is applicant entitled for the relief of restraining DH from taking possession of the suit property ?	<b>... In affirmative</b>
6)	What order ?	<b>As per final order.</b>

### **REASONS**

5. In support of their contention both the parties have filed the documents. The same shall be discussed hereinafter as and when

required.

**As to point no. 1 to 6 :-**

6. All the points are interlinked with each other. Hence discussed jointly.

7. Admittedly the decree for recovery of possession to the extent of 11R out of survey no. 90/3B is passed in favour of DH. It is also not disputed that the government has acquired land for canal purpose out of survey no. 90/3B. In such circumstances it is necessary to see that whether after acquisition any land out of suit property in RCS no. 214/2001 is remained or not.

8. In the backdrop of above discussion it is material to note that DH was present before the court. On oral inquiry she has specifically admitted that entire land to the extent of 11R out of survey no. 90/3B is acquired by the government. Furthermore the court has sumoto call all record which is acquired by the government out of survey no. 90/3B. The specific directions were given to the Tahasildar to submit detail report about the suit property. Accordingly detailed report is filed vide Exh. 68. The entire record in respect of acquisition including copy of award no. NAQ/SR/3/78 and other relevant documents along with mutation extract and map are filed on record. Mutation no. 55/90 specifically shows that the land to the extent of 0.3650 was belong to JD no. 2 Shaluman Kambale. However, as per extract it is seen that the entire land to the extent of 0.3650 is acquired by the government. Accordingly mutation entry is done. Considering crystal clear record it is seen that no land of JD no. 2 was remain in survey no. 90/3B is entire land was acquired by the government. In spite that the sale deed in favour of DH was

executed.

9. The Ld. advocate of DH has argued that DH is the owner of suit property. The decree is passed in her favour. Even her name is seen in revenue record till filing application for measurement. Accordingly possession warrant was issued. The third party applicant has no concern with the suit property. There is no specific map to show that the suit property is not remained after acquisition. The name of DH is intentionally remove. Hence she is entitled for the possession in view of decree in her favour. However mere entry in the revenue record is not sufficient to obtained the claimed relief. In fact the record filed by Tahasildar (Exh. 64) clearly shows that there is no suit land is remained after acquisition. Basically the entire land in the name of vendor of DH i.e. JD no. 2 Shaluman is acquired by government for irrigation purpose. It is important to note that DH also has every knowledge about the fact. Though she is insisting to execute the decree.

10. The applicant has filed sale deed, 7/12 extracts on record it is seen that she is the owner of land out of survey no. 90/3B to the extent of 1H 2R. As discussed above it is clear that there is no land as described in execution proceeding is remained in possession of JD no. 2 Shaluman. He is the vendor of DH. As the possession of JD no. 2 is not seen on the suit property. It cannot be tendered to the DH as per decree in RCS no. 214/2001. On the contrary it is seen that the applicant has 1H 2R land in alleged survey no. 90/3B. She is registered owner. Hence she has every interest. Furthermore she was not party to the suit filed by DH.

11. Possession warrant was issued in present execution.

However the bailiff has filed detailed report along with panchnama. On its perusal it is seen that the suit property in RCS no. 214/2002 is not exactly ascertained. The third party applicant Chandrakala is in possession of the land shown by DH. The applicant Chandrakala has produced sale deed to show her ownership and possession. Considering the factual position it is clear that the land which DH intends to recover through this execution is not remained. Furthermore the alleged land is not ascertained. On the contrary it becomes clear that entire land is acquired from JD no. 2 by the government.

12. The applicant is in possession of the property. Ultimately she will be sufferer if dispossessed without following due procedure of law. She was not party to the suit. She has material prima facie record to show her ownership and possession of the land which DH intends to recover through possession warrant. Hence hardship would be cause to the applicant if she dispossessed illegally. Therefore she is entitled to the DH from taking possession and also entitled to be put in possession if dispossessed.

13. On perusal of record, relevant documents and report filed by Tahasildar (Exh. 64) it is clearly seen that no land is remained with JD no. 2 Shaluman. Furthermore unless and until the land is ascertained applicant cannot be dispossessed. The decree in RCS no. 214/2001 is not against the applicant. Panchnama along with bailiff report clearly shown the factual position. If the applicant dispossessed without lawful procedure the loss could not be compensated by any means or money. Hence in view of above discussion I answered point no. 1 to 5 in affirmative. In answer to point no. 6 following order is passed :

**ORDER**

- 1) Application is partly allowed.
- 2) Applicant shall not be dispossessed at the hands of DH without following due procedure of law.

Date : 19/04/2018

Place : Pathardi

( J. P. Sarpate )

Jt. Civil Judge, J.D., Pathardi