



**COMMON ORDER BELOW EXH.NO.79 AND 87.**

**(Passed on:18/12/2025)**

1. The present application is filed by the decree holder for appointment of court commissioner measurement of 11R land and for handing over possession.
2. The third party appeared and filed her say to application Exh.17. She contended that, at the time of purchase by the decree holder the actual possession was not of the vendor of decree holder and his land was acquired by irrigation. The vendor of decree holder by taking advantage of his name on the 7/12 extract executed the bogus sale deed. She further contended that, she was not party to RCS No. 214/2001. She further contended that, mutation entry No. 5590 shows that, the 11R land is acquired and hence the same is reduced from the total area. She lastly contended that, the application is not maintainable as there was no prayer in the suit itself for measurement through TILR. She prayed to reject the application.
3. Heard learned advocate Shri S. K. Andhale submitted that, unless the measurement is carried out the decree cannot be executed as the third party is saying that there is no remaining land in the survey No.90/3B. He further submitted that, mutation entry No. 5590 is already quashed and set aside by the learned Tahasildar. He prayed to allow the application.
4. None appeared for the third party to argue the application. Hence, the matter is taken up for order on the basis of say and on the basis of merit.
5. Perused the record and documents filed by the decree holder. My learned predecessor after careful perusal of Exh. No. 64, 7/12 Extract passed a detailed order below Exh. No. 41 on 19/04/2018 and issued directions

that the third party should not be dispossessed without following due process of law.

6. The present execution petition is filed on the basis of judgment and decree in RCS No.214/2001 dated 01.03.2003. The perusal of decree shows that, defendant No.2 in the suit i.e J.D No.2 was directed to handover the possession of 11R land out of survey No.90/3B to the plaintiffs. As already discussed in view of the objection of the third party and the order below Exh.41 the dispute regarding existance of area of 11R in survey No.90/3B has been raised. The execution petition is pending since year 2003 and the D.H is waiting for the fruits of decree since then. Moreover, the names of LR's of D.H have been taken on record by M.E No.6745 on 05.08.2024 the same is also reflected in the 7/12 extract of survey No.90/3B. So also, the learned S.D.O in RTS appeal No.28/2018 allowed the appeal of D.H and quashed M.E. No.5590 and directed learned Tahasildar to verify the compensation given and prepare the new mutation entry. Therefore, considering the dispute no prejudice would be caused to the third party if the entire survey No.90/3B is measured according to the record. Thus, it would be just and proper to appoint TILR Pathardi to carryout the measurement. However, the prayer of D.H to handover possession is required to be considered after the report of Court Commissioner. Therefore, with this discussion I proceed to pass following order:

**ORDER**

1. The application is partly allowed.
2. The TILR is appointed as a court commissioner to measure survey No.90/3/B and to clearly show whether there is 11R land of D.H of which possession could be handed over as per decree in

RCS No.214/2001 and prepare a detailed map and send the report to the court within 15 days of deposit of court fees.

3. The charges of the court commission to be paid by the D.H and he shall pay it directly in the office of TILR within next 7 working days, failing which the order stands vacated.
4. The DH and Third party are directed to assist the court commissioner with necessary help and documents.

**(Dictated directly on computer to the Stenographer, script checked, revised and pronounced in the open Court)**

**Date: 18/12/2025  
Pathardi.**

**(Shirishkumar D. Waghmare)  
Jt. Civil Judge Jr. Division, Pathardi**

*I affirm that the contents of this P.D.F file order/judgment are same word for word as per original judgment.*

*Name of Steno : Mrs. M. R. Sanap,*

*Name of Court : Shirishkumar D. Waghmare,*

*Jt. C.J.J.D.& J.M.F.C., Pathardi.*

*Judgment/order Date : 18/12/2025.*

*Judgment/order signed by Presiding Officer on : 18/12/2025.*

*Judgment/order uploaded on : 19/12/2025.*