

MHAU060000622004



Reg Dkst/600010/2004

**Vithabai Shankar Bhojane Vs. Goba Lalchand Pawar & Others**  
**ORDER BELOW EXH. 195**

1] This is an application filed by the J. D. nos. 1 and 2 for calling the TILR as witness.

2] The JD nos. 1 and 2 have submitted that, the Court Commissioner has submitted the report on 31.12.2024. This court was pleased to pass the order on 21.01.2025 and call the say / objections on the report of the Court Commissioner. The DH admitted the said report. The JD nos. 1 and 2 have denied the Court Commissioner report and submitted their say on 19.04.2025. The Court Commissioner has not mentioned the respective area in respect of the strips of portions shown in the measurement map. Even the area of land in possession of the JD's and others is also not shown. The area of land Gut no. 126 is also not mentioned in the map. The so called panchnama does not show the area of land Gut No. 126. In the measurement map, the land is shown in red colour as well as adjacent portion on Western side which is shown as barren. Since the JDs have denied the report of Court Commissioner and in the notes, it is mentioned that the JDs and others are in possession of the land Gut no. 126. The measurement map does not show the clear position in respect of respective portions of land in possession of particular persons. In view of this position and as per the provisions of Section 83 of the Evidence Act, the map is required to be proved by the person who prepared the said map. This court was pleased to appoint the Court Commissioner on earlier occasion and the Court Commissioner had

submitted the measurement map and report of Court Commissioner as per the measurement dated 27.10.2010. The said map is already on record. The earlier measurement map as well as the measurement dated 29.04.2024 also do not tally with each others. In view of this position, the measurement map is required to be proved as per law. As the DH has admitted the Court Commissioner report, JD' it is the duty of the DH to prove the measurement map carried out by the concerned officer.

**3]** Perused application and say. Heard Ld. Advocate for the DH and JD in detail. Perused the record. It appears that, vide order below Exh. 159, TILR Court Commissioner was appointed to measure the gut no. 126 as per the previous report of the Court Commissioner below Exh. 85 its panchnama and report. Accordingly, the Court Commissioner was appointed and he has submitted his report along with map vide Exh. 178. Through this application the JDs have challenged the Court Commissioner report and map. It is contended by the JD nos. 1 and 2 that, the Court Commissioner report is not proper. The measurement map does not show the clear picture in respect of the portion of land in possession of a particular person. Therefore, this map needs to be proved under section 83 of the Evidence Act. Therefore, through this application the JDs have prayed that, DH be directed to prove the measurement map dated 29.04.2024 as per the provisions of Survey Manual and particularly as per the section 83 of the Evidence Act.

**4]** On the contrary, the Ld. advocate of the DH has submitted that, previously measurement was carried out in respect of the same property. In that commissioner report, the names of the possessor of the suit properties have been prescribed. Therefore, there is no need to prove this measurement map. Hence, he prayed to reject the application.

5] Perused the record. On perusal of entire record it appears that, the suit bearing Regular Civil Suit no. 155/1999 was filed by the DH for declaration, possession and injunction and it came to be decreed on 2<sup>nd</sup> August 2003. The said decree was confirmed up to the Hon'ble Supreme Court also. Thereafter, the DH had filed the present darkhast in the year 2004. Accordingly the possession warrant was issued. But, at the time of handing over the possession, the bailiff has filed report that, it was difficult to find out the boundaries of the suit property, therefore, the Court Commissioner be appointed. In view of that report, my Ld. predecessor had appointed the Court Commissioner for the measurement of the suit land and for fixation of boundaries. Thereafter, again the possession warrant was issued, but as the report of bailiff, as the time had passed, it was difficult to ascertain the boundaries of the suit property and to hand over the possession to the DH. Therefore, by order below Exh. 159 my Ld. predecessor again appointed TILR as a Court Commissioner for conducting measurement, fixing boundaries and handing over the possession. The said order was challenged by the JD in Hon'ble High Court in Writ Petition No. 14944/2023. In that petition in the para number 17, Hon'ble High Court has observed that, *the decree of possession is sought to be executed in respect of land gut no. 126. The land gut no. 129 is belonging to the petitioner which is attached for recovery of costs only. The petitioners are misleading the executing court by showing boundaries of land gut no. 129 with the boundaries of gut no. 126. In fact there is not confusion.*

6] In para no. 19, it has been further observed that, *the writ petition no. 5338/2014, 3854/2014 and 5339/2014 which were filed by the petitioners means present JD against the rejection of their application.*

10, *'Needless to clarify that, the Ld. Civil Judge will ensure*

*that the decree is executed as per the description in the execution application.*

7] In para no. 20 it is further observed by the Hon'ble High Court that, *In the wake of the observations in earlier round of litigation especially in para no. 9 as stated above, I hold that, the applications of the petitioners are successive attempts to protract the execution of the decree under one pretext or the other. Their conduct is deprecated. There is absolutely no merit in the petition.*

8] In para no. 21 it has been observed that, *The learned executing court has taken abundant precaution by appointing the court commissioner to measure the land, to fix the boundaries and thereafter to hand over the possession. Considering the history and the conduct of the petitioners the impugned order is proper and reasonable. It is also observed that, the decree is executable and all rights of the petitioners have been adjudicated.*

9] As per the observation of the Hon'ble High Court and on perusal of record it is clear that, the JDs are continuously protracting the execution of decree on one or the other pretext. It has been specifically observed by the Hon'ble High Court that the decree is executable and all rights of the petitioners have been adjudicated. It means that, rights of the JDs have been finally adjudicated. The decree has reached to the level of the execution. My Ld. predecessor had appointed the Court Commissioner only for the purpose of fixing boundaries, for the measurement of land gut no. 126 and for handing over the possession of DH. The Court Commissioner has filed its report at Exh. 178. Accordingly, it can be safely inferred that, at this stage the Court Commissioner was not appointed for

collecting any kind of evidence, it was only appointed for the purpose of assisting the court in handing over the actual possession of the suit property to the DH. Therefore, I do not find any merit in the contention of the judgment debtors that the said commissioner has to be examined and its evidence is to be recorded by the court. Therefore, there is no need to take the evidence of the Court Commissioner. Considering the role of the Court Commissioner in the present decree, i.e. only to assist the court in handing over the possession of the suit property to DH, there is no need to take his evidence. Therefore, this application devoid of any merit needs to be rejected. Hence the order.

**ORDER**

Application is rejected with costs.

Date: 29/11/2025

(Smt. R. S. Tapadiya)  
2<sup>nd</sup> Jt. Civil Judge (J.D.)  
Kannad

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer : Rajesh M. Sonawane  
Name of the Court : Smt. R. S. Tapadiya  
2<sup>nd</sup> Jt. C.J.J.D. Kannad  
Date of the Order : 29.11.2025  
Order signed by the  
Presiding Officer on : 29.11.2025  
Order uploaded on : 29.11.2025