

MHAU060000622004



Reg Dkst/600010/2004

**Vithabai Shankar Bhojane Vs. Goba Lalchand Pawar & Others**  
**ORDER BELOW EXH. 197**

1] This is an application filed by the D.H. for possession warrant of the land in Survey No. 126, admeasuring 21 acre 17 R situated at Sitanaik Tanda, Tq, Kannad, Dist. Aurangabad,( Hereinafter referred as suit property) for police aid and for assistance of the T.I.L.R., Kannad in order to show the exact boundaries.

2] It is submitted that, previously possession warrant was issued against the J.D. However the JDs obstructed in the execution of the possession warrant. They assaulted the Decree holders. The concerned bailiff Bodkhe has also mentioned in the report about the said incident. Due to that incident, the case is filed in the court for offences punishable under sections 324, 504 and 506 against the JD nos. 1.1, 1.2 and other obstructors. There is no dispute regarding the four boundaries of the suit property and fees of the surveyor.

03] On the earlier occasion, possession warrant was issued against the JD. But the boundaries were old. Therefore, the property could not be identified properly and due to crops standing on the land, warrant could not be executed.

04] As per the Court Commissioner Report Exh. 85, the said land was found in the possession of Goba Lalchand Pawar, Govind Uma Pawar, Dhansing Bhagu Rathod, Vedanand Rathod, Jagan Ganesh Rathod,Vilas

Fakira Rathod, Anna Fakira Rathod, Papa Fakira Rathod, Nayu Ramchandra Rathod, Laxman Ramsing Rathod, Kisan Ramchandra Rathod, Dilip Shankar Rathod and Gobibai Magan Rathod. Thereafter, at the time of executing possession warrant as per order below Exh. 86, the unauthorized possessors of the land assaulted the DH and his son. Accordingly, the RCC No. 122/2014 is registered and it is pending before the court.

**05]** Thereafter, as per the order below Exh. 106, again the possession warrant was issued. But the JD approached before the Hon'ble High Court vide writ petition no. 14944/2023. The Hon'ble High Court dismissed the writ petition. Hon'ble Supreme Court has also dismissed the Second Appeal No. 406/2011 and confirmed the judgment of this court. However, in spite of that, the JDs are filing false application before the court and prolonging the execution of Darkhast. There is no merit in the contentions of the JDs. Therefore, through this application the D.H. have prayed to pass the possession warrant in respect of the land survey no. 126, admeasuring 20 Acre 17 R situated at Sitanaik Tanda, Tq. Kannad. They have also prayed for police aid and appointment of the T.I.L.R. to assist in the execution of the decree.

**06]** In spite of sufficient opportunities the JDs have failed to file the say to this application. Thereafter, the subsequent application for setting aside 'no say' order preferred by the JDs came to be rejected. Hence, application proceeded without say of the J.D.s.

**07]** Heard Ld. Advocate for the DH Shri. B. J. Chavan and Ld. Advocate for JD Shri. Shingare in detail. Perused the application, affidavit and documents filed along with it. Perused the entire record.

**08]** On careful perusal of record it appears that, the decree passed in RCS No. 155/1999 is confirmed up to the Hon'ble Supreme Court. Previously, on various occasions the possession warrants were issued against the JDs, but they could not be executed for the various reasons. On the last occasion, when the possession warrant was issued, it was returned on the ground that, the boundaries were not found as per the record. Therefore, the Court Commissioner was appointed by this court vide order below Exh. 159 for identification of property along-with the map. The Court Commissioner has filed its report vide Exh. 178. Accordingly, the position of the said land is brought on the record. the Ld. Advocate of the JDs have objected the Court Commissioner's Report and sought to take the evidence of the Court Commissioner. However, it was rejected on the grounds mentioned in the order below Exh 195. Thereafter, decree-holders have moved present application.

**09]** The Ld. Advocate for the JDs have submitted that the suit property is not in possession of the present JDs, but other occupants are there in possession of the suit property. However, these occupants have not been made parties to the present proceeding. Therefore, the possession warrant cannot be issued against them. It is to be noted that, the fresh Court Commissioner Report is on record vide Exh. 178. There is no dispute about the identification of the property. As far as the contention of the Ld. Advocate of the J. D. is concerned, it is to be noted that, the other persons shown in the possession of the suit property are the unauthorized occupants. Therefore, at this stage it is not required to hear them. They were not parties to the suit or any other proceeding which were filed before the court. At no point of time they have objected the proceeding. Execution proceeding is pending since 2004 and more

than sufficient opportunities are already given to the JDs On this point it will also be apt to refer the observation of the Hon'ble High Court in respect of the present execution proceeding.

10] The Hon'ble High Court in Writ Petition No.14944/2023 has observed that, *17. 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.*

11] 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.*

12] 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.*

13] 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.*

14] Considering this aspect and documents filed on record there appears reasonable grounds for issuing possession warrant in favour of the DH. At the same time considering previous acts of the JDs and unauthorized occupants at the relevant time which are corroborated by the documents on record, it is necessary to give police aid to the DH. At the same time for fixing the boundaries and giving exact area in the possession of D.H. there is a need of assistance of the TILR, Kannad for the execution of the decree. Hence, the order.

#### **ORDER**

1. Application is allowed.
2. Issue possession warrant to the D.H. against the J.D.s on payment of P F
3. Issue letter to the T.I.L.R. , Kannad for assisting in execution of the possession warrant on payment of necessary charges.
4. The police aid is granted in terms of prayer clause of the application (Exh. 197) in respect of the suit property.
5. Issue letter to the P. I. Kannad Rural Police Station for providing the police aid. Decree-holder is directed to pay necessary charges in police station Kannad Rural for the police aid. Communicate this order to concerned police station officer.

Date: 19/01/2026

(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 : 19.01.2026  
Order signed by the  
Presiding Officer on : 19.01.2026  
Order uploaded on : 19.01.2026