

MHBI140010142014



Reg Dkst/1500010/2014
Gorakh Trimbak Gite
Vs.
Shridhar Mahaling Shirke

Order Below Exh.36

Present execution petition is filed for execution and satisfaction of decree passed in R.C.S.No.510/2008. The present application is moved by decree holder for passing order as per Order 21 Rule 35(3) of Code of Civil Procedure. By way of this application D.H. submitted that, J.D. are causing obstruction to his easmentary right of way over suit road by putting stone. J.D. have intention to encroach over suit road. Therefore, it is necessary to remove obstruction caused by J.D. over the suit road. D.H. prayed to allow the application as per Order 21 Rule 35(3) of Code of Civil Procedure.

2. The J.D. filed their say and strongly opposed the application of D.H. J.D. have submitted that, the application is not tenable as per Order 21 Rule 35(3) of Code of Civil Procedure. The application may kindly be rejected.

3. Learned advocate for D.H. submit that, the J.D. are causing obstruction to the easmentary right of way of D.H. by putting stones on road. The execution of decree passed in R.C.S.No. 510/2008 is necessary. The documents already produced on record. The map produced on record clearly shows the road over the property. Considering this aspect appropriate order under Order 21 Rule 35(3) of Code of Civil Procedure is necessary. The application

may kindly be allowed.

4. Per contra learned advocate for J.D. submit that, the J.D. have not caused any obstruction to the D.H. The Order 21 Rule 35(3) of Code of Civil Procedure provides the provision for possession of specific immovable property. In such a situation the said rule is not attracted here. The application is not tenable in the eyes of law and liable to be rejected with costs.

5. I have given thoughtful consideration to the argument adduced by learned counsels for respective parties. On perusal of record it reveals that, decree holder has filed this petition for execution of decree passed in R.C.S.No.510/2008. The said decree is about the easmentary right of plaintiff over Ashti to Mirajgaon road. The present application is filed which is in respect of immovable property. The road shown in the decree is Ashti to Mirajgaon Road is a public road. Therefore, in such a situation the possession warrant of that road can not be issued in favour of any party to the proceeding. The decree holder is at liberty to take appropriate steps to proceed with the execution petition as per Order 21 of the C.P.C. or any other special legislation. The application is not tenable for execution of decree passed in easement right of plaintiff. Hence, application deserves to be rejected. I proceed to pass the following order

<u>ORDER</u>
The application is rejected.

Date : 06/11/2025

(K. K. Khomane)
Civil Judge (J.D.), Ashti.

CERTIFICATE

"I affirm that the contents of this PDF file are word to word as per original Judgment / order"

Dictated on : 06/11/2025

Transcribed on : 06/11/2025

Checked & signed on : 06/11/2025

Sd/-

Jalindar B. Pokale,
(Stenographer Grade-III)