

MHGO060002782015



**ORDER BELOW EXH.45**

(Passed on 20/12/2023)

This is an application filed by the decree holder for giving direction to the court commissioner i.e. TILR Arjuni/Morgaon to remain present along with bailiff on suit property and to hand over the possession of encroached portion of land which is shown in measurement map below Exh. 87 shown in chartreuse colour (पोपटी रंग) in land Gat No. 190 situated at Arjuni/Morgaon to the decree holder as per decree passed in RCS No. 82/2007. The learned advocate for the decree holder submitted that the order for the appointment of court commissioner has passed below Exh. 40 and accordingly, TILR Arjuni/Morgaon is appointed as court commissioner but the court commissioner had not issued prior notice to the concern parties and in the absence of party made measurement of suit property and filed map on record. The court commissioner has not hand over the possession of suit property to the decree holder as per the order passed below Exh. 40.

2. The learned advocate for the Judgment Debtor is strongly opposed the application and submitted that the decree holder failed to mention the details of property and its description for direction which is sought in instant application. Moreover, on a spot and also on suit property there is other people possession and also construction of house is completed. Hence, present application need to be rejected with heavy cost.

3. Heard Shri. G. D. Awchate learned Advocate for the decree

holder and Shri H. B. Tulshikar learned Advocate for the judgment debtor. Perused the records.

4. After perusing the record, it is seen that the decree in Regular Civil Suit 82/2007 attempts finality. Further, the matter is not stayed by any court. In order to enjoy fruits of decree, I am of the opinion that, no prejudice would be cause to the judgment debtor if commissioner hand over possession of suit property to the decree holder. Considering, the facts and the circumstances and nature of execution, I am proceed to pass the following order.

**ORDER**

1. The application is allowed.
2. Court Commissioner i.e. TILR, Arjuni/Morgaon is hereby directed to remain present along with bailiff on suit property and as per the order passed below Exh. 40 shall make inquiry if any, and after the inquiry if any, shall hand over the possession of encroached portion of land which is shown in measurement map below Exh. 87 shown in chartreuse colour (पोपटी रंग) in land Gat No. 190 situated at Arjuni/Morgaon to the decree holder as per decree passed in RCS No. 82/2007.
3. The Commissioner shall then prepare a report and submit the report to this court.
4. The Court Commissioner is directed to issue seven days prior notice to the concerned parties.
5. Issue letter accordingly.

Sd/-

( N. V. Sahu )  
Civil Judge J. D.  
Arjuni/Morgaon

Dated- 20/12/2023