

ORDER BELOW EXH. 9 IN R.D. No. 04/2018
(Dinkar Vs. Ashok and others)

(CNR NO. MHLA13-000578-2018)

The present execution proceeding is filed by the DH to execute the decree passed in R.C.S. No. 263/2008 (Old RCS No. 401/2007). By filing present execution proceeding it is prayed by the DH that the JD. No. 2 & 3 may be directed to make open nala area by removing the obstacle made therein adjacent to the land of the DH from northern side and make the surplus water flow through said nala as to avoid direction of surplus water through the land of the DH.

2. By filing present application it is prayed by the DH that before filing the present execution proceeding the DH has filed R.D. No. 9/2010, wherein there was compromise took place between DH and JD's and it was admitted by the JD's that within one month they will make open the nala by removing the obstacles, but till today, they have not removed the same. Therefore, the JD no.s 2/1 to 2/4 may be directed to remove the same. Alternatively the DH has prayed that if the JD no. 2 /1 to 2/4 fails to make open the said nala, then permission may be granted to the DH to make open the same and permission may be given to the DH to recover the costs of the same.

3. The ld. advocate for the JD nos. 2 /1 to 2/4 filed their say and submitted that they have already removed the obstacles from the said nala and therefore the application given by the DH is not tenable.

4. In order to show that the JD have not removed the obstacles from the said nala, the DH has filed on record certificate given by the President, Mahatma Gandhi Gav Tanta Mukti Samitee, Shera at Exh. 14/2, which shows that the JD nos. 2/1 to 2/4 have not removed

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the obstacles from the nala. On the other hand the JD have not brought on record any documents to show that they have already removed the obstacles from the nala. Therefore, it is necessary to direct the JD Nos. 2/1 to 2/4 to remove the obstacles from the nala as per decree passed in R.C.S. No. 263/2008 (Old RCS No. 401/2007) and it will be just to allow the DH to remove the obstacles if the JD Nos. 2/1 to 2/4 fails to remove the obstacles from the nala and permit the DH to recover the costs of the same. Hence, I pass the following order:

ORDER

1. The JD Nos. 2/1 to 2/4 are hereby directed to make open nala area by removing the obstacle made therein adjacent to the land of the DH from northern side and make the surplus water flow through said nala as to avoid direction of surplus water through the land of the DH within one month from this order.
2. If the JD Nos. 2/1 to 2/4 fails to remove the obstacles from the said nala then the DH is entitled to remove the same and recover the amount of expenses of the same from the JD Nos. 2/1 to 2/4.

Dated 15/02/2020

**(O. M. Mali)
Civil Judge J.D. Renapur.**