

MHLA140016552022



Order Below Exh. No.43

Regular Darkhast No. 04 / 2022

Shobha Vs. Babruwan & others

1. Decree holder has filed the present application for possession warrant under Order 21 Rule 35 of Code of Civil Procedure.
2. The J.D. has file his say vide Exh. 57 and resisted the application on the ground that, T.I. L.R. has filed the map vide Exh 39 which shows the encroached area 21 R. However, D.H. has prayed for the possession of 27 R. Hence, D. H. is not entitled for the possession warrant. It further contended that, they have preferred the appeal before the Hon'ble High Court against the decree passed in Regular Civil Appeal 09/2010 and said appeal is sub-judice. Hence, prayed for rejection of application.
3. Heard the advocate of both the parties. Perused the record.
4. On the perusal of record, it appears that present application is filed for the possession of encroached area i.e. 27 R out of the suit property as specifically mentioned in the decree of R.C.S. No. 60/2005. I have gone through the decree and map vide Exh no 117 annexed with it. On the perusal of decree it transpire that, defendant was directed to handover the vacant possession of encroached area of 27 R to the plaintiff as shown in the map at the Exh no. 117 within the period of 2 months from the date of decree. Further, operative part of the decree reflects that, the map which is at the Exh no 117 shall form the part of decree. Therefore, as per the decree and map vide Exh no. 117 encroached area is 27 R.

According to J.D. the map vide Exh 39 shows that, encroached area is 21 R. Thus D.H. is not entitled for the possession warrant of the 27 R. During the pendency of execution petition, on the application of D.H. my learned predecessor has passed order below Exh.no. 15 and directed the T.I.L.R to fix the boundaries of 27 R land as shown in map at the Exh no. 117 of the decree passed in R.C.S. No. 60/2005. Accordingly, the map and panchnama is filed at the Exh no. 39 wherein encroached area collectively shown as a 25 R. In the present case the core issue revolves around discrepancies in the encroached area. Moreover, after the full fledged trial Court held that, defendants encroached upon the suit property to extent of 27 R. Further more it is a settled position of the law that, executing Court can not go beyond the decree. Therefore, it would be just and proper to issue possession warrant as per the decree passed in R.C.S. No. 60/2005.

5. As per Order 21 Rule 35 (1), where the decree is for delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such a person as he may appoint to receive the delivery on his behalf and if necessary by removing any person bound by the decree who refuse to vacate the property. Moreover, there is nothing on record which reveals that said execution proceeding is stayed by Hon'ble Higher Court. Further, the D.H. has filed the affidavit vide Exh.49 stating that, the Hon'ble High Court has not passed stay order in the appeal preferred by J.D. Therefore, considering nature of application, relevant provision and to enable decree holder to enjoy fruits of decree, the present application deserves to be allowed. In result, I pass the following order -

ORDER

1.	Application is allowed under Order 21 Rule (1) of Civil Procedure Code.
2.	Issue possession warrant as per decree passed in R.C.S. No. 60 /2005 as prayed on due process.
3.	Dy. S. L. R. AUSA and Bailiff are hereby directed to give the possession of encroached area as per decree passed in R.C.S. No. 60/2005 and map vide Exh.117 annexed with the said decree to Decree Holders by preparing the detailed panchnama and Kabje pavati.
4.	It is directed to decree holder to provide the certified copy of decree, along with map at Exh. No. 117 and documents in respect of the suit property to Dy. S.L.R., AUSA or Bailiff at the time of execution and for proper identification.
5.	It is a directed to decree holder to deposit requisite fee of Dy. S.L.R., AUSA in land record office, AUSA.
6.	Decree holder is directed to furnish necessary documents to facilitate the execution and accompanied bailiff.
7.	Execution be carried out strictly in compliance with the relevant provisions of the Code of Civil Procedure.
8.	Decree holder is hereby directed to pay all necessary fees within 15 days from the date of said order.

Date: 28-04-2026

AUSA

(Shubhangi H. Nalawade)

3rd Jt. C.J.J.D , AUSA

