



IN THE COURT OF CIVIL JUDGE (J.D.)
Regular Darkhast No. 40/2019
ORDER BELOW EXH. 23

The Decree Holder has filed present application for praying delivery of possession of the encroached portions through the office of the TILR and the bailiff of the Court. The said application is opposed by Judgment Debtor No.1 by filing say at Exhibit 33. It is contended by Judgment Debtor No.1 that the decree is vague, particularly with respect to the size of the pathway and water course. It is further contended that as per Paragraph No.345 of the Civil Manual, evidence is required to be recorded before issuing a warrant for possession, and therefore, no possession warrant should be issued at this stage.

02. I have carefully considered the submissions of both sides and perused the decree, Judgment, map at Exhibit 60 and the entire record of the execution proceedings.

03. The present execution proceeding arises out of the decree passed in Regular Civil Suit No. 46/2009 dated 13.02.2019. The said suit was filed by the Decree Holder for removal of encroachment and for perpetual injunction. After full trial, the suit came to be decreed. As per the operative part of the decree, Defendant No.1 was directed to hand over possession of encroached land admeasuring 07 Are and Defendant No.2 was directed to hand over possession of encroached land admeasuring 03 Are. The encroached portions are shown in green and red

colour respectively in the map at Exhibit 60. It was further directed that Defendant No.1 shall leave land from Gat No.18 for pathway and water course.

04. The record shows that the decree specifically directs delivery of possession of encroached land admeasuring 07 Are and 03 Are, which is clearly identified in the map at Exhibit 60. Therefore, there is no ambiguity regarding the identity or location of the encroached portions.

05. Thereafter, the plaintiff had filed Regular Civil Appeal No. 46/2009. The copy of the said Judgment is filed on record. Upon perusal of the same, it appears that, the plaintiff/ DH had filed the said appeal only against the finding on Issue No.5 relating to perpetual injunction. The Hon'ble District Court Sangli set aside the said finding and granted permanent injunction in favour of the plaintiff, thereby restraining the defendants from interfering with the plaintiff's possession. Except this modification, the decree passed by this Court has been confirmed in the appeal. The cross-objections filed by the defendants in the said appeal were also dismissed. Thus, the decree for removal of encroachment, delivery of possession, and the direction to leave land for pathway and water course has attained finality.

06. Recording of evidence is required only when there is a genuine dispute regarding the identity of the property or when the decree is incapable of execution without further clarification. In the present case, the decree is supported by a clear map and the

assistance of the TILR is sought only for proper demarcation on the spot for effective execution. No fresh adjudication or determination of rights is required at the stage of execution. Further, the executing Court cannot go behind the decree. Hence, the contention of Judgment Debtor No.1 that evidence is required to be recorded under Paragraph No.345 of the Civil Manual cannot be accepted.

07. In view of the above facts and the finality of the decree, the objections raised by Judgment Debtor No.1 are not sustainable. Hence, in view of above discussion present application deserves to be allowed.

ORDER

1. Application Exhibit 23 is hereby allowed.
2. Warrant for delivery of possession of the encroached land admeasuring 07 Are and 03 Are, as shown in green and red colour respectively in the map at Exhibit 60, shall be issued.
3. Possession shall be delivered through the office of the TILR with the assistance of the Court bailiff, strictly in accordance with the decree passed in RCS No. 46/2009 dated 13.02.2019.

Date :- 13/01/2026

Place :- Kavathe Mahankal

(M.A.Kulkarni)

Jt. Civil Judge Junior Division.

Kavathe Mahankal

Certificate

I affirm that the contents of this P.D.F. file judgment are same, word to word, as per the original order / judgment.

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| Name of the Stenographer | : Mrs. J. A. Salunkhe. (Stenographar grade - III) |
| Court | : Jt. C.J.J.D. and J.M.F.C., Kavathe Mahankal. |
| Date | : 13.01.2026 |
| Order /judgment signed by P.O. on | : 13.01.2026 |
| Order /judgment uploaded on | : 16.01.2026 |