

**ORDER BELOW EXHIBIT-65**

The Judgment Debtor prayed for giving him the permission to lead oral as well as documentary evidence in respect of the value of the standing crops lying in his agricultural land. He submitted that when the possession warrant of suit property was issued, the bailiff went on the suit property and he found that the crops are standing in the suit property. The value of the said standing crops is to the tune of ₹ 13,000/-. However, the bailiff has not given the proper value of the standing crops. The Judgment Debtor has developed the agricultural land. The sugarcane crop is standing in the suit property. He can fetch the sugarcane up to 160 tons. The price of sugarcane is ₹ 3,300/- per ton. So said amount can be come to ₹ 5,28,000/-. He has developed the said land by making expenditures of ₹ 6 lakhs. However, the bailiff has not properly valued the suit property. It comes up to ₹ 20 Lakhs. For this, inquiry is required. Hence, he prayed accordingly.

02. On the other hand, the learned counsel for Decree Holder strongly opposed the application. She submitted that the Judgment Debtor has moved this application only for prolonging the trial. Hence, prayed for rejection of the application.

03. Heard both parties. As per bailiff report, the

sugarcane crop is standing in the agricultural land whose possession warrant is issued vide Exh.60. The Decree Holder is ready to pay that amount as per bailiff report.

04. Now question is whether alleged permission required to be given to Judgment Debtor. In the application, the Judgment Debtor has mentioned that prior to three years, he laid sludge(गाल) in the suit property for developing its fertility. He also laid down PVC pipeline for fetching water from Javalgaon project. He also sown the sugarcane in the alleged land. Now said crops are ready for harvesting. But by the execution of possession warrant, he will loose his possession of suit property as well as loose the development which carried out by him.

05. Order XXI Rule 35 of CPC provides for decree for immovable property which reads as under;

“(1) where a decree is for the delivery of any immovable property, the possession there shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary by removing any person bound by the decree who refused to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being

bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”

06. This provision provides for issuance of possession warrant for handing over the possession of immovable property to Decree Holder. This provision also provides for removing, opening any lock or bolt or break open any door or do any other act necessary for putting the Decree Holder in possession. While doing so, Court may pass any order against the Judgment Debtor who is bound by decree for execution of decree for possession of immovable property.

07. The original suit was for possession of suit property which was dismissed on 30/01/1986. Later the Hon'ble District Court, Solapur in RCA No.204/1986, passed the decree for possession of the suit property against Judgment Debtor. This decree passed on 25/09/1990. Since passing of the decree, the Decree Holder has not tested fruits of decree. The decree is more than 30 years old. The Judgment Debtor on one or other reasons trying to prolong the execution of decree. He also tried to pull the legs of the Decree Holder by moving various applications.

08. The Judgment Debtor is bound by decree. When he knowing that he is bound by the decree, despite this, he developed the suit property, he installed the tin sheds in it, he

also sown the crops in it. When he is bound by decree, he has to bear the consequences of decree.

09. The Hon'ble Supreme Court in ***B. Gangadhar Vs. D.G. Rajalingam, AIR 1996 SC 780*** held that;

“Rule 35(3) of Order XXI, it self manifests that when a decree for possession of immovable property was granted and delivery of possession directed to be done, the Court executing the decree is entitled to pass such incidental, ancillary or other necessary orders for effective enforcement of the decree for possession. That power also includes the power to remove any obstruction or superstructure made pendente lite. The exercise of incidental, ancillary or inherent power is consequential to deliver the possession of the property in execution of decree.”

10. This means the executing Court has inherent power to pass any order for enforcement of the decree for possession. When Judgment Debtor is bound by decree, he cannot say that he developed the suit property. In such situation, it is not proper to grant permission to Judgment Debtor for tendering the oral and documentary evidence in respect of showing the exact value of the standing crops and other superstructure standing on the suit property. This application is filed only to prolong the execution of decree. Hence, application deserves to be rejected. So, application Exh.65 is rejected.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Shri.S.R. Barangule
(b)	Court	:	Shri.S.B. Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order declared on	:	14/10/2024
(d)	Judgment /Order signed by P.O. on	:	14/10/2024
(e)	Judgment /Order uploaded on	:	14/10/2024