

R.D. No. 2/2009
(CNR No. MHST13-000192-2009)

Order Below Exh. 53

01. This is an application filed by the decree holder to issue possession warrant against judgment debtors.

02. It is the contention of the decree holder that, the original suit R.C.S. No. 25/2000 was compromised between the decree holder and judgment debtors. The terms of compromise were settled as per pursis below Exh. 51 therein R.C.S. No. 25/2000. However, the judgment debtors have not observed the terms and conditions of the compromise and hence the decree holders are obliged to file the present execution proceeding. The Court Commission to suggest arrangement, partition and separate possession of non agricultural property i.e. suit properties schedule B was appointed. The Court Commissioner learned advocate Shri. S.S. Desai conducted and completed the Court Commission on 10.06.2018 in presence of the decree holders and the judgment debtors and their respective advocates without any resistance from the judgment debtors, yet, the judgment debtors have delayed the possession and hence, the possession warrant is prayed to be issued by the decree holders.

03. The judgment debtor No. 1 has filed his say overleaf of the application and resisted the application on the ground that, as per compromise terms the approach way of the width of 3 feet running North to South towards Eastern side of his Grampanchayat property No. 185 was agreed to be left open. However, it has not been left open and therefore, the application is liable to be rejected.

04. Heard both the sides and perused the record. Perusal of the original decree show that, the parties have been agreed on terms and conditions of pursis below Exh. 51 in R.C.S. 25/2000. It also shows the decree holders have agreed to keep open the space of width of 3 feet as claimed by judgment debtor No. 1. However, it is also clear from the record that, the Court Commissioner has in his report at Exh. 52 and the

sketch map annexed to it as Schedule A has clearly shown that, instead of 3 feet wide road there is open space running from North to South of width 9.6 feet i.e. more than 3 times agreed to be left open. Further, the property described by the letters E, F, G, H is suggested to be allotted the share of decree holders. The sketch map clearly shows that, the property of judgment debtor No. 1 (G.P.No. 185) and the property E, F, G, H are separated by open space of more than 9.6 feet width. Further, the Court Commission intimation (Exh.54) filed by the Court Commissioner for the intimation of the Court shows at the time of Court Commission judgment debtor No. 1 and his advocate were present on the date of Court Commission i.e. 10.06.2018. Further, the Court Commission report was filed before the Court on 22.06.2018 on which objection of the both the parties were called. However, neither judgment debtor No. 1 nor his advocate raised any objection. Thus, their conduct shows that, the actual Court Commission was approved by them. However, in order to delay the actual separate possession judgment debtor No. 1 has taken frivolous objection. The application deserves to be allowed. Hence, the order.

ORDER

1. The application (Exh. 53) is allowed with the costs.
2. Issue possession warrant against the judgment debtors directing them to hand over the possession of suit property to the extent of E, F, G, H as shown in Schedule A of Court Commission report below Exh. 52 to the decree holders with immediate effect.

Date : 29.11.2018.

(P.S.Patil)
Jt. Civil Judge, J.D.,
Patan