



ORDER PASSED BELOW EXH.18 IN R.D. NO.9/2019
(CNR No. MHWS02-000201-2019)
(Shakuntalabai Jain Vs Uttam Ghatmal & Ors.)

1. The decree holder has filed this application under Order 21 Rule 35 of the Civil Procedure Code, 1908 (for short 'C.P.C.') for issuance of the possession warrant in respect of an encroachment admeasuring 5 ft. x 4 ft. (which consists of tin shed) over plot No.19 out of Survey No.84/2 (Block No.454) situated within the jurisdiction of village Ansing, Taluka & District Washim (for short 'encroached portion').

2. **Contents of this application, in nutshell, are as *infra* :-**

The decree holder had filed R.C.S. No.76/2009 against judgment debtors for recovery of the possession of encroached portion. It was dismissed on merit on dated 30.07.2011. Being aggrieved & dissatisfied, the decree holder had filed R.C.A. No.96/2011. It was allowed on dated 16.07.2016. per the judgment & order passed in R.C.A. No.96/2011, judgment debtor No.1 was directed to vacate possession of encroached portion. It is contention of the decree holder that judgment debtors have not yet obeyed the direction given in the judgment & order passed in R.C.A. No.96/2011. With this, the decree holder has prayed that possession warrant in respect of encroached portion be issued against judgment debtor No.1, and however, judgment debtor

Nos.2 to 5 (who are public officers) be directed to assist in delivering possession of encroached portion to the decree holder.

3. As judgment debtors have not appeared in this execution proceeding, there is no say to this application on their behalf.

4. I have heard Ld. Advocate Mr.Dhagdiya for the decree holder at considerable length, and have gone through record.

5. Ld. Advocate Mr. Dhagdiya for the decree holder has submitted that there is no stay order of the Hon'ble Appellate Court & therefore, the possession warrant as prayed by the decree holder be issued.

6. The record shows that the possession warrant in respect of encroached portion was issued vide order passed below Exh.11, but it has not yet been executed. Here, I would like to mention that the decree holder has sought possession warrant against judgment debtor No.1 in respect of encroached portion. He has, however, prayed that judgment debtor Nos.2 to 5 be directed to assist Bailiff of the Court in delivering possession of encroached portion to the decree holder. So far as execution of possession warrant against judgment debtor No.1 is concerned, I would like to mention that judgment debtor Nos.2 to 5 cannot help the Bailiff in delivering possession of encroached portion to the decree holder as they are not police personnel. Therefore, I am of the considered view that

judgment debtor Nos.2 to 5 cannot be directed to assist the Bailiff in delivering possession of encroached portion to the decree holder.

7. Thus, in the light of contents of this application & the submission made by Ld. Advocate Mr.Dhagdiya for the decree holder, I have no hesitation to hold that this application deserves to be partly allowed. With this, I proceed to pass the following order -

ORDER

1. Application Exh.18 is partly allowed.
2. Issue possession warrant under Order 21 Rule 35 of the C.P.C. in respect of encroached portion & accordingly, the Bailiff is directed to vacate the possession of judgment debtor No.1 over encroached portion.
3. The cost of removal of encroachment shall be paid by judgment debtor No.1 to the decree holder.

Washim.
Date – 20.12.2022.

(S.S.Ubale),
3rd Jt. Civil Judge,S.D.,
Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file are same word to word as per original Judgment.

Name of Stenographer : Pravin P. Sonune, Jr. Clerk
Court & Judge Name : **S.S.Ubale**
3rdJt. Civil Judge (S.D.), Washim.
Date of order : 20.12.2022.
signed by the
Presiding Officer on : 20.12.2022.
uploaded on : 20.12.2022.