

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9479 OF 2021

1. Gorakh s/o Dharma Patil
Age : 56 years, Occ: Agri.,
2. Ravindra Kedarsing Patil,
Age : 50 years, Occu: Agri.,

Both R/o. Umbarkhed, Tq.
Chalisgaon Dist. Jalgaon.

... PETITIONERS
(Orig. Defendants)

VERSUS

1. Kai. Pitambar Namdeo Chaudhari
Deceased through L.Rs.
- 1-A) Smt. Indubai Pitambar Chaudhari,
Age: 66 years, Occ: Household,
- 1-B) Sau. Tarabai Vinayak Chaudhari
Age: 56 years, Occu: Household
- 1-C) Sau. Vandanabai Vilas Chaudhari,
Age : 51 years, Occu: Household
- 1-D) Digambar Pitambar Chaudhari
Age: 49 years, Occu: Agri.,
- 1-E) Sanjay Pitambar Chaudhari,
Age : 45 years, Occu: Agri.,
- 1-F) Manoj Pitambar Chaudhari
Age : 41 years, Occ: Agri.,

All R/o- Near Government Milk
Dairy Shukla Building, Chalisgaon
Dist. Jalgaon.

2. Ashok Namdeo Chaudhari
Age: 66 years, Occ: Agri.,
R/o. At Post Umberkhed, Tq.
Chalisgaon, Dist. Jalgaon.

... RESPONDENTS
(Orig. Plaintiffs)

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Advocate for Petitioners : Mr. Nilesh N. Desale
Advocate for respondent No.1 : Mr. N.L. Choudhari

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CORAM : MANGESH S. PATIL, J.

DATE : 07.12.2021

JUDGMENT :

Heard both the sides finally with consent. Rule. The learned advocate for the respondents plaintiffs Mr. Chaudhary waives service.

2. The petitioners are judgment debtors and the respondents are the decree holders of a decree for possession of the property in dispute. The property is stated to be 26 Are portion from the land Gat No.33. A request was made by the petitioners by moving an application (Exhibit-22) seeking appointment of a Court Commissioner for carrying out measurement in view of the fact that enormous time had lapsed between passing of the decree and actual execution and the topography at the site had undergone a sea change in view of change of course by Girna river which passes along the land in question. By the order under challenge the request have been rejected by the executing court.

3. It is transpires during the course of argument that even a similar request, in a different form, was made by the respondents decree holders by moving application (Exhibit - 16). They had claimed that possession of the encroached portion be delivered to them by the bailiff with the aid of the T.I.L.R. Even that application (Exhibit-16) was rejected by the executing court by the order dated 02.03.2020.

4. Admittedly, possession of the encroached portion is to be

delivered in execution of the decree. As can be seen from the judgment of the trial court, encroachment was duly established by proving a map (Exhibit-29) which was a map prepared by the T.I.L.R. who was also examined as a witness confirming encroachment over an area of 26 Are out of land Gat No.33. Needless to state that the bailiff won't be able to demarcate such encroached portion so that the decree can be effectively executed through him. It would be in the fitness of things that bailiff can be asked to take the aid of the T.I.L.R. while executing the possession warrant. This would resolve the matter in controversy. The learned Judge does not seem to have comprehended a situation that bailiff won't be able to demarcate the encroached portion not being an expert.

5. In view of the above state of affairs, even the learned advocates of both the sides unanimously submit that the possession warrant may be directed to be executed by the bailiff by taking aid of the T.I.L.R. in terms of the Map (Exhibit-29).

6. In view of this, the Writ Petition is partly allowed. The challenge to the impugned order is rejected. However, the executing court shall now issue a possession warrant and issue appropriate direction so as to enable the bailiff to take aid of the T.I.L.R. so that possession can be delivered in accordance with the Map (Exhibit-29), a copy of which shall be annexed to the possession warrant.

7. It is clarified that since a statement is made at the bar that the petitioners have simultaneously challenged the judgment and decree in

appeal, this order shall be subject to the jurisdiction of the appellate court to grant appropriate relief in respect of execution or otherwise of the decree under challenge.

8. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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