



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.15706 OF 2025**

**IMRAN GAFU SHAIKH AND OTHERS
VERUS**

**GURUNATHAPPA SIDRAM HARKARE DIED THR LRS
MAHESH GURUNATHAPPA HARKARE AND OTHERS**

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Mr. Gopal D. Kale, Advocate for the Applicants.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 19th JANUARY, 2026.**

FINAL ORDER:-

1. The present Writ Petition takes exception to orders dated 20.12.2025 passed below Exhibits-50, 40, 41 and 48 by Civil Judge Junior Division, Udgir in Regular Darkhast No.3/2024. The particulars of applications and orders passed thereon are set out in following chart:

Sr No.	Applications filed in Regular Darkhast No.03/2024	Reason	Order	Remark
1.	Exhibit-35	Application filed by Judgment Debtors for Appointment of Court Commissioner.	20.12.2025	Rejected
2.	Exhibit-41	Application filed by Decree Holder for providing Police Aid.	20.12.2025	Allowed
3.	Exhibit-40	Application filed by Decree Holder for Re-issuance of Possession Warrant.	20.12.2025	Allowed
4.	Exhibit-48	Application filed by Judgment Debtors to visit suit property and make local investigation.	20.12.2025	Rejected

2. The petitioners are original defendants in Regular Civil Suit No.99/2013. The respondents/plaintiff had filed suit for possession

of suit plot and recovery of arrears of rent. On 19.03.2018, Trial Court decreed suit directing defendants to deliver vacant possession of suit plot and payment of arrears of rent. The decree has attained finality. The respondents/decreed holders filed Regular Darkhast No.3/2024, wherein petitioners/judgment debtors filed application below Exhibit-35 seeking appointment of Court Commissioner on ground that they have already vacated decretal property and Court Commissioner can be asked to ascertain aforesaid fact. The Trial Court rejected said application observing that Bailiff report shows that decretal property is not vacated. The decretal property is identifiable and appointment of Court Commissioner is not essential. The respondents/decreed holders sought issuance of possession warrant. The Trial Court allowed said application and directed issuance of possession warrant under Order 21 Rule 35 of Code of Civil Procedure and further directed to provide police assistance for execution of decree vide order passed below Exhibit-41.

3. The learned Advocate appearing for petitioners would submit that defendants were directed to deliver vacant possession of suit plot admeasuring 15 ft. x 20 ft. out of Survey No.375 situated at Udgir. The petitioners have already complied with decree. He would submit that now respondents/plaintiff are trying to recover possession of properties beyond decree which were not subject

matter of suit. Therefore, order issuing possession warrant alongwith police aid is liable to be quashed and set aside.

4. Perusal of judgment in Regular Civil Suit No.99/2013 would show that plaintiff claimed recovery of possession of encroached area admeasuring 15 ft. x 20 ft. out of CTS No.375. The defendants in their counter claim took plea that they are in possession of area admeasuring 50 ft. x 50 ft. and they are in occupation of same since 1988. As such, they sought declaration of ownership and perpetual injunction. Ultimately, Trial Court concluded that plaintiff is owner and possessor of entire Survey No.375 and defendants failed to prove any right or title to continue in possession of suit property, which constitutes part of Survey No.375.

5. In aforesaid backdrop, when possession warrant was issued in pursuance to decree, petitioners had raised objection that decree is passed only for area admeasuring 15 ft. x 20 ft. from Survey No.375 and their possession over excess area cannot be subject matter of execution of decree. The Executing Court rejected aforesaid objection of petitioners, firstly on the ground that petitioners' counter claim seeking declaration of ownership over 50 ft. x 50 ft. area has been already adjudicated and attained finality in Regular Civil Appeal No.20/2018. The aforesaid factual aspect would show that petitioners do not hold any right to continue possession in land Survey No.375 owned by plaintiff. In aforesaid

backdrop, reference can be given to law laid down by Supreme Court in case of **B. Gangadhar Vs. B. G. Rajalingam**¹, particularly paragraph no.6, which reads thus:

“6. Rule 35(3) of Order 21 itself manifests that when a decree for possession of immovable property was granted and delivery of possession was directed to be done, the Court executing the decree is entitled to pass such incidental, ancillary or 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 possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment debtor or a person interested or claiming right through the judgment debtor has taken law in his hands and made any construction of the property pending suit, the decreeholder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the court. Otherwise, the decree becomes inexecutable driving the plaintiff again for another round of litigation which the Code expressly prohibits such multiplicity of proceedings.”

6. Similar view has been reiterated by Single Judge of this Court in case of **Iqbal Hussain Ali Hussain Vs. Municipal Council, Purna**², in which following observations are made in paragraph no.23, which reads thus:

“23. It is thus clear that the Court executing the decree is entitled to pass such incidental, ancillary, necessary orders for effective enforcement of the decree for possession. This power also includes the power to remove any obstruction, or

¹ AIR 1996 SC 780.

² 2015 (6) Mh.L.J. 833.

superstructure made pendente lite. In the case in hand, the decree of possession had become final. It was for the Respondent Municipal Council, Purna not to allow any such illegal constructions raised pendente lite by the side of the road. Thus, the petitioner/decreed holder is not bound by any such illegal constructions. It is not necessary for the petitioner to file a separate suit, otherwise, the decree becomes inexecutable driving him again for another round of litigation which the Code expressly prohibits such multiplicity of litigation.”

7. In light of aforesaid exposition of law, petitioners who lost claim over suit properties or any other part of Survey No.375, which is exclusively and entirely owned by respondents/decreed holders cannot be permitted to obstruct execution of decree on only technical plea, particularly, when their claim of adverse possession over 50 ft. x 50 ft. area is already negated in trial. Hence, there is no merit in Writ Petition. In result, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE