



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1811 OF 2026**

1. Dattatraya Uttam Pavbake,
Age: 57 years, Occu. Agri.,
R/o. Pavbake Road, Ghulewadi,
Tq. Sangamner,
Dist. Ahilyanagar (Ahmednagar).

2. Sanjay Uttam Pavbake,
Age: 55 years, Occu. Agri.,
R/o. As above.

..Petitioners
(Org. JD Nos.2 and 3)

Versus

1. Karbhari gopala Pavbake,
Age: 70 years, Occu. Agril.,
R/o. Pavbake Road, Ghulewadi,
Tq. Sangamner,
Dist. Ahilyanagar (Ahmednagar)
2. Uttam Murlidhar Pavbake,
(Now Deceased),
L.R's. already on record
i.e. petitioner and respondent Nos.2 to 4.
3. Balasaheb Uttam Pavbake,
Age: 48 years, Occu. Agri.,
R/o. Pavbake Road, Ghulewadi,
Tq. Sangamner,
Dist. Ahilyanagar (Ahmednagar)
4. Sunil Uttam Pavbake,
Age: 45 years, Occu. Agri.,
R/o. As above.

..Respondents
(Res. No.1-Orig. DH, Res. No.2
to 4-Orig. JD Nos.1, 4 and 5)

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Mr. A. N. Nagargoje, Advocate for the Petitioners.
Mr. A. S. Bajaj, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th FEBRUARY, 2026.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing at the admission stage.

2. The petitioners impugn common order dated 02.02.2026 passed below Exhibits-33 and 35 by Civil Judge Junior Division, Sangamner, District Ahmednagar in R.D. No.149/2022, whereby petitioners application filed below Exhibit-35 for issuance of witness summons to TILR has been rejected and respondents application filed below Exhibit-33 to appoint Bailiff for execution of decree passed in Regular Civil Suit No.101/2006 is allowed with consequential direction.

3. The petitioners are original defendants in Regular Civil Suit No.101/2006. The respondent no.1 had instituted suit claiming relief of perpetual and mandatory injunction. The suit came to be decreed on 25.01.2011. Ultimately, decree attained finality by judgment and order dated 18.02.2022 passed by this Court in Second Appeal No.300/2018. The respondent no.1 filed R.D. No.149/2022 for execution of decree and filed application below Exhibit-15 to appoint Bailiff to remove construction of 'ota' and 'grills' made by petitioners. The petitioners contended that in Rasta Case filed by respondents such construction is already removed and there is nothing for further execution of decree. Accordingly, respondent no.1 had filed another application at Exhibit-25 for appointment of Court Commissioner to verify factual position. The said application was allowed. The TILR was appointed as Court Commissioner, who after ascertaining factual

position on spot submitted his report mentioning that construction still exist over suit property.

4. At this stage, petitioners/Judgment Debtors filed application Exhibit-35 objecting map and report submitted by TILR and sought issuance of witness summons for his examination. On other hand, respondents filed applications below Exhibit-33 for appointment of Bailiff to execute decree, thereby removing construction of 'ota' and 'grills' by taking help of TILR or Surveyor to clarify area of 20 meters width as per decree. Even police aid is granted on payment of Bhatta of Decree Holders.

5. Mr. Nagargoje, learned Advocate appearing for petitioners would submit that when suit was filed there was construction of 'ota' and 'grills'. However, respondents had filed another proceeding in Rasta Case, which was allowed and in execution of that order 'ota' and 'grills' that was standing within suit property is already removed. The Court Commissioner was specifically appointed to find out existence of alleged 'ota' and 'grills' on spot. However, Court Commissioner failed to discharge his duties in terms of directions and submitted ambiguous report. In that view of matter, it is necessary to cross-examine TILR. The map and report submitted by TILR cannot be relied for purpose of execution of decree.

6. On other hand, Mr. Bajaj, learned Advocate appearing for respondents points out that TILR was appointed as Court Commissioner only for purpose of ascertaining existence of construction over suit property. He was not expected to submit measurement of encroachment or particulars thereof. The report of TILR clearly shows existing construction within 20 meters of suit property. Therefore, there is no reason to call Court Commissioner by issuing witness summons. He would submit that decree passed by Trial Court has attained finality upto Supreme Court and petitioners are creating hurdles in its execution by adopting various tactics.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that in Regular Civil Suit No.101/2006 filed by respondent no.1 decree has been passed with following directions:

- “1. *Suit decreed with costs.*
2. *Counter Claim of Defendant dismissed with costs.*
3. *Defendant Nos.1 to 5 are hereby directed to remove the ‘ota’ constructed by them in the open space of 20 Meter on western side within 30 days from the date of decree at their costs.*
4. *It is further directed that, if defendants fails to remove the ‘ota’ and ‘grills’ constructed by them as per above direction then plaintiff is at liberty to remove the same by following due procedure of law at the costs of defendants.*
5. *Defendant Nos.1 to 5 in person, through agents or servants are hereby perpetually restrained from doing any type of construction or any act which will likely to close the user of plaintiff on western side of stream and upon space of 20 Meter adjacent to the road.*

6. *Defendant Nos.1 to 5 shall pay the cost of this suit and cost of counter claim to plaintiff.*
7. *Defendant Nos.1 to 5 shall bear their own costs.*
8. *Decree be drawn up accordingly.”*

8. The aforesaid decree has attained finality. Perusal of judgment and order in Second Appeal No.300/2018 arising out of aforesaid decree shows that this Court has specifically observed that suit property has been specifically described and there is absolutely no confusion as regards to identity of property in respect of which plaintiffs have been claiming reliefs. Since petitioners came with case that in execution of order passed in Rasta Case, ‘ota’ and ‘grills’ have been removed, TILR was appointed as Court Commissioner, who submitted factual report that encroachment still subsists within suit property. Perusal of impugned order would show that Executing Court has appointed Bailiff to execute decree with aid of TILR and police. The petitioners would have no prejudice, if suit property is put into possession of respondents as per decree, which has already attained finality. Apparently, there is no reason to issue witness summons to TILR, as report of TILR and map was only to find out existence of encroachment, if any, within boundaries of suit property and not for measurement or fixation of boundaries.

9. In that view of matter, this Court do not find any reason to interfere in impugned order and stall execution of decree, which

has attained finality upto Supreme Court. Hence, Writ Petition stands dismissed.

10. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/January-2026