

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 589 of 2024

Decided on: 6.10.2026

Kanya Lal & ors.

... Petitioners

Versus

Karam Chand

...Respondent

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting? yes

For the Petitioners: Mr. Sanjeev Kuthiala, Senior
Advocate, assisted by Ms.
Tamanna Sharma, Advocate.

For the Respondents : Mr. Raju Ram Rahi, Advocate,
for the respondent.

Virender Singh, Judge (oral)

Petitioners Kanya Lal & others have filed petition, under Article 227 of the Constitution of India, against the order dated 09.09.2024, passed in case No. 44 of 2015, titled as, 'Karam Chand versus Bhoop Ram (since deceased) Kanya & others, by the Court of Learned Senior Civil Judge, Kullu, District Kullu, HP, (hereinafter referred to as 'The Executing Court').

2. By way of order dated 09.09.2024, the objections filed by the petitioners, were ordered to be dismissed.

3. For the sake of convenience, parties to the present lis, are hereinafter referred to, in the same manner, in which, they were referred to, by the learned Executing Court.

4. Brief facts, leading to the filing of the present petition, before this Court, as borne out from the record, may be summed up as under:

The Decree-Holder, Karam Chand, along with two other persons, namely Teji and Hari, sons of Budhu @ Budh Ram, had filed a suit for permanent prohibitory injunction, and in the alternative, for possession, qua the land comprising Khata Khatauni 40/61, Khasra number 2021/941, measuring 0-13 biswas, situated in Phati and Kothi Chong, Tehsil and District Kullu, (hereinafter referred to as 'the suit land'). The said suit was partly decreed by the learned Executing Court, by granting the following relief:

i) As a sequel to my above discussion and findings on issue No. 1 to 8 above, the suit of the plaintiffs in alternative for possessive of the land in suit by way of

demolition of structure, is decreed in favour of plaintiffs and against the defendants with costs. Decree sheet be drawn up accordingly. File, after completion, be consigned to records.”

4.1 Admittedly, the said judgment and decree had attained finality. Thereafter, Decree-Holder Karam Chand has filed the execution petition, under Order 21 Rule 32, read with Section 151 of the CPC, alleging that when the judgment and decree has attained finality, after the dismissal of RSA No. 476 of 2022, filed by the JDs, the Judgment Debtors have threatened to demolish the structure and to kill the Decree-Holders.

4.2 The notices of the Execution Petition were issued to the JDs, and they have filed the objections. Vide order dated 09.09.2024, those objections were rejected.

5. Feeling aggrieved from the said rejection order, the present petition, under Article 227 of the Constitution of India, has been filed by the petitioners-Judgment Debtors.

5.1 By way of present petition, order impugned herein has been assailed on the ground that share of the original plaintiffs, Hari and Teji, has been purchased

partially by the predecessors-in-interest of the petitioners, namely, Bhoop Ram, as such, Bhoop Ram has become co-owner of the suit land.

5.2 The JDs contended that the share of the original Decree-Holders Hari and Teji Ram has been purchased partially by the predecessors-in-interest of the petitioners, namely Bhoop Ram, and said Bhoop Ram had become the owner, with respect to the share, so purchased, and as such, the decree is stated to be unexecutable, against the co-owner, without partition, by metes and bounds.

5.3 Asserting the fact that the predecessor-in-interest of the petitioners Shri Bhoop Ram, has become co-owner in the subject matter of the lis, as such, according to the petitioners, the decree has become unexecutable.

5.4 Relying upon the decision of this Court in a case titled as, **Milkhi Ram & others versus Raghunandan & others**, reported in AIR 1982 Himachal Pradesh 87, it has been pleaded that the decree cannot be executed

and is no longer executable, as the JDs have stepped into the shoes of the co-owner.

5.5 On the basis of above facts, Mr. Sanjeev Kuthiala, Senior Advocate, assisted by Ms. Tamanna Sharma, Advocate has prayed that the present petition may kindly be allowed, by setting aside the judgment passed by the learned Executing Court, and the Execution Petition may kindly be dismissed, by holding that the decree has now become unexecutable, due to subsequent events.

6. The prayer, so made, has been opposed by Mr. Raju Ram Rahi, learned counsel for the Decree-Holder, on the ground, that in view of specific provisions, as contained in Order 21 Rule 102 CPC, whatever done after the institution of the suit, is not liable to be taken into consideration while executing the decree, which has attained finality. As such, according to him, the objections filed by the Judgment Debtors, in the present case, have rightly been dismissed by the learned Executing Court.

7. Heard.

8. The perusal of the record shows that after receiving the notices of the execution petition, the JDs have filed the objections, before the learned Executing Court, under Section 47 of the CPC. Relevant paragraph-2 of the objections is reproduced as under:

“That the respondent-JD No. 1 is owner in possession of land measuring 0-2-16 bighas, which has been exchanged with Hem Raj owner and the mutation of which has also been attested and sanctioned in this behalf in favour of J.D. No. 1. As such, the decree is not executable. At the time of passing the decree the respondents were not owner of the disputed land and after decision, the J.D. No. 1 has become owner and as such, the structure standing on the spot is with in the share of respondent No. 1. As such, the structure standing cannot be removed.”

9. On the basis of above, a prayer has been made to dismiss the execution petition.

10. The objections have been contested by denying the averments, as made in the application, and it has been pleaded that the judgment and decree, passed in favour of the Decree Holders has attained finality, after dismissal of the Regular Second Appeal, by this Court.

11. The plaintiffs, in the present case, had filed the suit for permanent prohibitory injunction and in the

alternative, suit for possession, asserting the fact that the plaintiffs are owners in possession of the land and defendants are stated to be strangers to the same. Thereafter, relief of possession has been granted.

12. In the objections, the main contention of the Judgment Debtors is that JD No. 1 has exchanged the land with Hemraj (owner), mutation of which has already been sanctioned in his favour.

13. If the said stand is taken into consideration, in view of the provisions of Order 21 Rule 102 of the CPC, then, this contention is not liable to be taken into consideration. Moreover, the said contention does not fall within the definition of 'objections', as per Section 47 of the CPC, which are only confined to execution, satisfaction, and discharge of the decree. Order 21 Rule 102 of the CPC is reproduced as under:

"Order 21 xxxxx

102. Rules not applicable to transferee pendent lite.

Nothing in [Rules 98 and 100](#) shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation-

In this rule, “transfer” includes a transfer by operation of law.

12. Admittedly, the exchange was made by the Judgment Debtors, after passing of the decree, in favour of the Decree-Holder. Once, the decree has attained finality, then, the learned Executing Court is left with no other option, but to execute the decree, as it is.

13. So far as the decision of this Court in **Milkhi Ram’s** case (supra), is concerned, the same, in no way, helps the case of the JDs. Moreover, the Coordinate Bench of this Court in **Milkhi Ram’s** case has not considered the provisions of Order 21 Rule 102 CPC, as whatever has been done by the Objector, has been done after passing of the judgment and decree, in favour of Decree Holders.

14. Similarly, so far as the decision of Madras High Court in a case titled as, ‘**Alamelu Ammal versus Chinnaswamy Reddiar**, reported in AIR 1989 Madras 311, is concerned, the said case also, in no way, helps the case of the Judgment Debtors, as, whatsoever done

by the Judgment Debtor No.1, has been done, after passing of the decree.

15. So far as the decision of Karnataka High Court in a case titled as, **The Vijaya College Trust versus The Kumta Co-operative Arecanut Sales Society Limited and anr.**, reported in AIR 1995 Karnataka 35 is concerned, the same is also not applicable to the facts and circumstances of the present case, as the exchange had taken place after passing of the decree, in favour of the Decree Holder.

16. Consequently, there is no jurisdictional error, in the order passed by the learned Executing Court. As such, the present petition is dismissed.

17. It is further observed that the dismissal of the present petition, does not preclude the JDs to raise all legal questions, before the learned Executing Court, which would be decided by the learned Executing Court, as per law.

18. The pending application(s), if any, are also disposed of.

19. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present application.

20. Record be sent back.

21. Parties, through their counsel, are directed to appear before the learned trial Court, on 4.11.2026.

6.10.2026
Kalpana

(Virender Singh)
Judge

