

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**C.R. No.113 of 2026**  
**Decided on: 27.08.2026**

Rampati and others ...Petitioners  
Versus

Kadasi and others ...Respondents

*Coram*

**Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge**

*Whether approved for reporting?*<sup>1</sup>

For the petitioners: Mr. Kuldeep Singh Chandel and  
Mr. Kamaljeet Sharma, Advocates.

**Jiya Lal Bhardwaj, Judge (Oral)**

**CMP No.22161 of 2026**

By way of present application, the applicants/petitioners have prayed for placing on record the copy of the plaint.

2. In view of the prayer made in the application, the same is allowed and copy of the plaint is ordered to be taken on record. The application is accordingly disposed of.

**C.R. No.113 of 2026**

The petitioners by way of present petition have challenged the order dated 01.08.2026, passed by the learned Sr. Civil Judge, Nalagarh, Dist. Solan (HP) (in short 'learned executing

<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

Court'), whereby the objections preferred by the judgment debtors have been dismissed and warrants of possession has been issued in favour of the respondents-decree holders for delivery of vacant possession of suit land measuring 17 Bighas 04 Biswas, bearing khasra Nos. 170 (00-12-00), 173(00-14-00) 174 min(00-05-00), 175 min(00-06-00), 182 min(00-12-00), 228(01-00-00), 229 min(02-03-00), 13(00-09-00), 171 min(00-18-00), 174 min(02-00-00), 175 min(00-18-00), 229 min(00-18-00), 359(00-10-00), 360(01-06-00), 361(01-11-00), 376 min(00-13-00), 406(00-07-00), 446(00-15-00), 169(00-07-00), 182 min(00-13-00) and 376(00-13-00) kitas 21, presently comprised in khewat No. 5, khatauni Nos. 15, 16 and 17 pertaining to and situated in the area of Village Nandpur, Hadbast No. 170, Tehsil Baddi, District Solan H.P., in accordance with the judgment and decree dated 27.10.2022 passed by this court in RSA No. 449 of 2005. The precise grouse of the petitioners-judgment debtors is that since title of the respondents-decree holders was under cloud as per the written statement filed by them during trial of the civil suit, they could have amended their pleadings to get decree for declaration of title, but they even after written statement having filed did not seek and get a decree for declaration of title. Hence, the decree passed by this Court is inexecutable and as such the impugned order passed by the learned executing Court is

without jurisdiction.

2. The respondents-decree holders had instituted the suit seeking decree for vacant possession of the suit land mentioned above, which suit was dismissed by the learned Sub Judge, Nalagarh, District Solan, H.P., (in short 'learned trial Court') on 27.11.2002. The respondents-decree holders had challenged the judgment and decree passed by the learned trial Court before the learned Additional District Judge, Solan, Camp at Nalagarh ( in short 'learned appellate Court') in Civil Appeal No. 12-NL/13 of 2003, titled as ***Kadasi and others vs. Smt. Ramapati and others***, who had dismissed the same vide judgment dated 20.05.2005.

3. The respondents-decree holders, feeling aggrieved by the judgment passed by the learned trial Court, which was affirmed by the learned Appellate Court, had preferred the appeal in this Court. The appeal registered as RSA No. 449 of 2005, titled, ***Smt. Kadasi and others vs. Smt. Ramapati and others***, was allowed on 27.10.2022 and the judgment and decree dated 27.11.2002 passed by the learned trial Court in Civil Suit No. 313/1 of 1998, as affirmed by learned appellate Court, vide judgment and decree dated 20.05.2005, passed in Civil Appeal No. 12-NL/13 of 2003, was set aside and the suit filed by the respondents-decree holders was decreed as prayed for with costs.

4. The petitioners-judgment debtors have placed on record copy of the plaint and reliefs claimed in the plaint are reproduced hereunder:-

*"a. By granting decree for vacant possession of the suit land measuring 17Bighas 4 biswas, comprising khewat/khatauni No.3/3 to 5 bearing khasara no s.170(0-12), 173(0-14), 174min(0-5), 175min (0-6), 182 min (0-12), 228(1-0),229min(2-5), 13(0-9), 171(0-12), 174min (2-0), 175min (0-18), 229min(0-18),359(0-10), 360(1-6), 376min(0-13), 361(1-11), 406 (0-7), 446 (0-15), 169(0-7), 182 min (0-13), 376min (0-13), kitats- 21,as entered in the copy of jamabandi for the year 1992-93 annexed herewith as "Annexure- A" pertaining and situated in the area of village Aandpur H.B.no 170, Prg. Dharampur, Teh. Nalagarh, Distt. Solan, HP, in favour of plaintiffs and against the defendants.*

*b. And further granting decree for prohibitory permanent injunction restraining the defendants from changing the nature character and user of the suit land or any part thereof, by way of raising construction or otherwise in any manner and from claiming any right, title and interest in and over the suit land."*

5. This Court had decreed the suit in terms of the prayer clause made by the respondents-decree holders and thus the respondents-decree holders are entitled to get the possession of the suit land. The learned counsel for the petitioners-judgment debtors has vehemently argued that once the title of the respondents-decree holders was under cloud, the learned executing Court has committed an error while passing the impugned order

dated 01.08.2026, whereby the objections raised by the petitioners-judgment debtors have been dismissed and warrants of possession has been issued to deliver the possession of the suit land to the respondents-decree holders and as such the said order may be quashed and set aside.

6. I have heard the learned counsel for the petitioners-judgment debtors and also perused the pleadings placed on record.

7. Once the suit of the respondents-decree holders has been decreed as prayed for in terms of the prayer clause made in the suit, whereby the decree for vacant possession of suit land has been granted in favour of the respondents-decree holders, the plea taken by the petitioners-judgment debtors that there is a cloud on the suit land cannot be gone into in the execution proceedings. Executing Court is empowered to decide questions relating to execution, discharge or satisfaction of the decree and has no jurisdiction to go behind the decree sought to be executed. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in ***Vasudev Dhanjibhai Modi versus Rajabhai Abdul Rehman and others*** 1970 (1) SCC 670 and the relevant paragraph reads as under:

*"6. A Court executing a decree cannot go behind the decree between the parties or their representatives it must take the decree according to its tenor, and*

*cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."*

8. In view of the above, the plea taken by the learned counsel for the petitioners-judgment debtors that the title of the respondents-decree holders is under cloud cannot be gone into in the execution proceedings and the same could have been questioned only by preferring the appeal against the judgment and decree passed by this Court.

9. This view was again reiterated by the Hon'ble Supreme Court in ***Sunder Dass versus Ram Prakash***, (1977) 2 SCC 662. It was further held that the executing Court can go behind the decree if it is pleaded that the decree was a nullity by reason of the Court passing it lacked inherent jurisdiction to pass it. The relevant paragraph of the judgment reads as under:

*"3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void*

*by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh v. Chaman Paswan and Seth Hiralal Patni v. Sri Kali-Nath. It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent.*

10. The above view that the executing Court cannot go behind the decree and modify the same, has again been reiterated by the Hon'ble Supreme Court in **Deepa Bhargava and another vs. Mahesh Bhargava and others**, (2009) 2 SCC 294. The relevant paragraph of the judgment is reproduced hereunder:-

*"9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent judgment-debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It*

*has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Contract Act."*

11. It is not the case of the petitioners-judgment debtors that the decree under execution has been obtained either by playing fraud or is a nullity by reason of the Court passing it, lacked inherent jurisdiction. The Court has only to see that the decree which is passed has been executed or not.

12. The view that the executing Court cannot go behind the decree has again been reiterated in ***Maurice W. Innis versus Lily Kazrooni @ Lily Arif Shaikh***, 2026 INSC 340 and thus, the Court is of the considered view that the plea which has now been taken by the petitioners-judgment debtors that the title of the respondents-decree-holders was under cloud cannot be gone into while executing the decree and the plea taken by the learned counsel for the petitioners-judgment debtors could have been raised only in case the judgment, which is sought to be executed was further assailed before the Hon'ble Supreme Court and the Court was hearing the appeal. In case the petitioners-judgment debtors are permitted to raise such plea, then there will be no end to the litigation and the decree passed by the Court will be only a piece of paper, and,

therefore, no illegality has been committed by the executing Court while dismissing the objections and issuing warrants of possession of the suit land to be delivered to the respondents-decree holders with the assistance of the revenue authorities.

13. Learned counsel for the petitioners-judgment debtors has placed reliance upon the judgment of Hon'ble Supreme Court in ***Anathula Sudhakar vs. P. Buchi Reddy (dead) by LRs and others***, (2008) 4 SCC 594 and submitted that once the petitioners-judgment debtors had taken a specific plea in the written statement with respect to the title, the parties could have amended the plaint and since the respondents-decree holders have not amended the plaint, the decree could not have been passed. However, the said judgment is not attracted to the facts of the present case for two reasons, firstly, in the said case, the challenge was not with respect to the order passed in the execution proceeding and secondly, the parties had challenged the decree by way of an appeal by availing the remedy before the Hon'ble Supreme Court. In the present case, as already noticed above, the judgment and decree which is sought to be executed has attained finality and thus, the executing Court has only to see whether the judgment and decree passed by the Court has been complied with or not. As already observed above, the executing Court cannot go behind the decree and as such, the

executing Court has exercised the jurisdiction vested in it and there is neither any perversity nor illegality having been committed by the learned executing Court while issuing warrants of possession, especially when this Court had passed the decree in favour of the respondents-decree holders.

14. Consequently, I do not find any merit in the present petition and the same is dismissed. However, there shall be no order as to costs. Pending applications, if any, also stand disposed of.

**27<sup>th</sup> August, 2026**  
(Anurag)

**( Jiya Lal Bhardwaj )**  
**Judge**