

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CR No.159 of 2025
Reserved on: 13.08.2026
Decided on: 29.09.2026
Uploaded on: 29.09.2026

Kishan Singh alias Krishan Singh

...Petitioner

Versus

Diwan Singh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ Yes

For the petitioner: Mr. Sanjeev Kuthiala, Senior Advocate with Ms. Tamanna Sharma, Advocate.

For the respondents: Mr. Anand Sharma, Senior Advocate, with Mr. Virender Thakur, Advocate, for respondents No.1 & 2.

Jiya Lal Bhardwaj, Judge

The petitioner-judgment debtor has challenged the order dated 12.08.2025 passed by the learned Senior Civil Judge, Mandi, Distt. Mandi, H.P. in Execution Petition No.27 of 2020, titled, ***Diwan Singh and another vs. Kishan Singh and others***, whereby the executing Court has ordered to grant the relief of joint possession in favour of respondents No.1 and 2-decree holders, along with

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

judgment debtors, wherein symbolic possession is to be given in their favour by way of Munadi, the charges of which shall be deposited by respondents No.1 and 2-decree holders with the Court within a period of 7 days and thereafter one copy of warrant of possession has been directed to be affixed on the conspicuous part of the suit property.

2. For the sake of convenience, the parties are hereinafter referred to as decree holders-plaintiffs and judgment debtors-defendants.

3. The decree holders-plaintiffs had filed a suit for declaration and possession of suit land against the judgment debtors-defendants which was decreed on 29.09.1997 by the learned Senior Sub Judge, Mandi, H.P. (in short 'learned trial Court'). A decree declaring the Will executed by Pat as illegal, null and void was passed and the decree holders-plaintiffs were held owners in possession of the suit land to the extent of $1/6^{\text{th}}$ share and judgment debtors-defendants No.3 to 7 to the extent of $1/6^{\text{th}}$ share each as successors of Pat and a decree for joint possession of the suit land in favour of the decree holders-plaintiffs and against the judgment debtors-defendants was passed.

4. The judgment debtors-defendants feeling aggrieved by the judgment and decree dated 29.09.1997 passed by the learned trial Court had preferred an appeal before the learned Additional District Judge, Mandi, which was dismissed on 29.08.2003. Thereafter, the judgment debtors-defendants preferred an Appeal before this Court, which was registered as RSA No.438 of 2003 and the same was dismissed vide judgment dated 01.12.2012.

5. The decree holders-plaintiffs thereafter filed an execution petition under Order 21 Rule 11 read with Rule 35 of the Code of Civil Procedure (in short 'CPC'), seeking execution of the judgment and decree dated 29.09.1997 passed by the learned trial Court. The petitioner-Judgment debtor No.1 preferred objections against the execution of the decree on the grounds that the execution petition is not legally maintainable and is liable to be dismissed, since the same has not been filed within limitation.

6. Thereafter an application under Order 6 Rule 17 CPC was filed by the petitioner-Judgment debtor No.1 seeking amendment of the objections. It was averred in the amended objections that it is wrong that the decree holders-plaintiffs are having 1/6th share in the suit land. As a matter

of fact, Pat had died on 17.10.1981 and after his death, the Will executed by him has been declared null and void and as such after his death, his land/property has also been inherited by his widow Smt. Kanchnu Devi, two sons, Inder Singh and Lalman and four daughters and as such decree holders-plaintiffs being predecessor-in-interest of Sh. Lalman are having 1/7th share in the land under execution. Smt. Kanchnu Devi had died on 08.12.1988 and she had already bequeathed her landed property in favour of judgment debtors No. 1 and 2. Similarly Kala Devi daughter of Pat had died on 12.06.2017 leaving behind judgment debtors No.1 and 2 being her sole successors on the basis of registered Will dated 30.07.2001. Further the decree holders-plaintiffs are having no legal right to file the execution petition against the judgment debtors-defendants.

7. The executing Court on the basis of the averments made in the execution petition coupled with the decree sought to be executed has passed an order on 12.08.2025, thereby granting the relief of joint possession of the suit land by way of symbolic possession to be given to the decree holders-plaintiffs alongwith the judgment

debtors-defendants No.3 to 7 by way of Munadi. While passing the order, the executing Court has taken note of the fact that the Will executed by Pat was declared illegal, null and void and the decree holders-plaintiffs were held owners in possession of the suit land to the extent of 1/6th share and judgment debtors-defendants No.3 to 7 to the extent of 1/6th share each as being successors of Pat along with joint possession. The averment made by the judgment debtors-defendants that the decree holders-plaintiffs are not entitled to 1/6th share of the property, rather to the 1/7th share as Pat's property was inherited by his widow Kanchnu Devi, two sons Inder Singh and Lalman and four daughters was also considered. As per the head note of the judgment dated 29.09.1997, the plaintiffs-decree holders are sons of deceased Lalman, son of Pat and defendants No.1 & 2 are sons of Inder Singh, son of Pat and defendants No.3 to 6 are the daughters of deceased Pat and defendant No.7 is son of Pat and the Court has set aside the Will alleged to have been executed by Sh. Pat in favour of the sons of Inder Singh. Therefore, the judgment debtor Nos.1 and 2-defendants No.1 & 2 would step into the shoes of defendant No.7 as to the share that he will be receiving by their father

Inder Singh and thus, the entitlement of the decree holders-plaintiffs and the judgment debtors-defendants is only to the extent of 1/6th share to the property and not 1/7th share as alleged. No doubt, the decree holders-plaintiffs have not denied the receipt of the share of Kanchnu Devi upon her death by judgment debtors-defendants No.1 and 2, but since the matter qua her share was never raised at the time of decision in the main suit, it cannot be raised in the execution petition, hence, the executing Court passed an order granting relief of joint possession, to be given to the decree holders-plaintiffs along with the judgment debtors, wherein symbolic possession is to be given in favour of the decree holders-plaintiffs by way of Munadi.

8. The petitioner-judgment debtor No.1 feeling aggrieved by the order dated 12.08.2025 passed by the learned Senior Civil Judge, Mandi, District Mandi, H.P. (in short 'learned executing Court'), has preferred the present petition *inter alia* on the ground that once a finding was given by this Court in RSA No.438 of 2003, titled, ***Kishan Singh and another vs. Jawahar Singh and others*** to the effect that the Will of Pat was shrouded by suspicious circumstances and on the basis of inheritance, the sons,

daughters and widow of Pat were entitled to 1/7th share and not 1/6th share, as has been sought to be executed in the execution petition, the finding returned by the executing Court that the decree holders-plaintiffs are entitled to 1/6th share is bad in law and deserves to be quashed and set aside. Further the executing Court had dismissed the application for amendment of the objections on the inference that the share of Kanchnu Devi by way of inheritance from the property of Pat was never raised in the suit and had failed to take into consideration that the suit was for declaration with respect to the Will made by Pat in favour of the petitioner-judgment debtor No.1 and proforma respondent No.3, was held to be invalidated on account of suspicious circumstances and the property was to be given by way of inheritance. It has also been averred that the executing Court has failed to take into consideration the fact that the amendment of the objections, as sought, and the objections were to be decided together, since the amendment was required for proper and effective adjudication of the controversy between the parties and thus, prayed for quashing the order passed by the executing Court, whereby the symbolic possession was ordered to be

given in favour of the decree holders-plaintiffs by way of Munadi and also prayed to allow the objections preferred by the petitioner-judgment debtor No.1.

9. I have heard the learned senior counsel representing the parties and also perused the record carefully.

10. Learned senior counsel representing the petitioner-judgment debtor No.1 vehemently argued that this Court had returned the findings in the Regular Second Appeal preferred by the judgment debtors-defendants that the Will executed by Pat was shrouded by suspicious circumstances and on the basis of inheritance, the sons, daughters and widow of late Pat were entitled to $1/7^{\text{th}}$ share and not $1/6^{\text{th}}$ share, as has been sought to be executed in the execution petition and thus, the executing Court has erred while passing the impugned order holding that the decree holders-plaintiffs are entitled to $1/6^{\text{th}}$ share. He further strenuously argued that the executing Court has also erred in dismissing the application seeking amendment of the objections. The executing Court has not framed the issues to the effect whether the decree holders-plaintiffs were entitled to $1/6^{\text{th}}$ share and $1/7^{\text{th}}$ share. The executing

Court has failed to take into consideration that the suit was for declaration with respect to the Will made by Pat and once the Will was declared as void, the property was to be inherited by way of inheritance and widow of Pat namely Kanchnu Devi was also entitled to one share and the executing Court while passing the impugned order has acted illegally and with material irregularity and as such prayed for quashing the order under challenge as well as for allowing the objections. He placed reliance upon the judgment of the Hon'ble Supreme Court in ***Sanwarlal Agrawal and others vs. Ashok Kumar Kothari and others***, (2023) 7 SCC 307 and judgment passed by the Punjab and Haryana High Court in ***M/s. Woolways, Shop-cum-Office, Chandigarh and others vs. Central Bank of India, Chandigarh and others***, AIR 1990 Punjab and Haryana 92 and argued that the executing Court is free to refer the pleading while executing the decree, so as to construe the true import of the decree.

11. On the other hand, the learned senior counsel representing the decree holders-plaintiffs supported the order under challenge and submitted that once the trial Court had passed the decree for declaration that the Will

executed by Pat is illegal, null and void and the decree holders are owners in possession to the extent of 1/6th share in the suit land and further defendant Nos.3 to 7 are also owners in possession to the extent of 1/6th share each as successors of Pat along with a decree for joint possession of the suit land, the executing Court has rightly passed the order and it is settled law that the executing Court cannot go behind the decree. He placed reliance upon the judgments passed by the Hon'ble Supreme Court in ***Rafique Bibi (dead) by LRs. vs. Sayed Waliuddin (dead) by LRs. and others***, (2004) 1 SCC 287, and ***Deepa Bhargava and another vs. Mahesh Bhargava and others***, (2009) 2 SCC 294. He argued that since there is no ambiguity in the judgment and decree sought to be executed, the executing Court has rightly held that the decree holders-plaintiffs are entitled to 1/6th share and no interference is called for while exercising the revisional jurisdiction and thus, prayed for dismissal of the revision petition.

12. I have given my thoughtful consideration to the submissions made at the Bar. Before adverting to the submissions made at the Bar and the issue raised in the

present petition, it will be relevant to quote the relevant para of the judgment dated 29.09.1997 passed by the trial Court, which reads as under:

"19. Thus, for the foregoing reasons recorded for deciding the aforesaid issues, the suit of the plaintiffs succeeds and therefore, is decreed for declaration that the Will in suit is illegal, null and void and the plaintiffs are owners in possession to the extent of 1/6th share in the suit land and the defendants No.3 to 7 are also owners in possession to the extent of 1/6th share each as successors of Sh. Pat alongwith a decree for joint possession of the suit land is granted in favour of the plaintiffs and against defendants, with no order as to costs in the peculiar circumstances of the case. Decree sheet be prepared accordingly. File, after completion, be consigned to the record room."

13. It is apt even to take note of the decree passed by the trial Court, which is sought to be executed and the same reads as under:-

"The suit is decreed for declaration that the will in suit is illegal, null and void and the plaintiffs are owners in possession to the extent of 1/6th share in the suit land and the defendants No.3 to 7 are also owners in possession to the extent of 1/6th share each as successors of Pat alongwith a decree for joint possession of the suit land is granted in favour of the plaintiffs and against defendants. There is no order as to costs."

14. A perusal of the judgment and decree passed by the trial Court, which was sought to be executed, clearly

shows that the decree holders-plaintiffs have been held owners in possession to the extent of 1/6th share in the suit land and judgment debtors-defendants No.3 to 7 in the suit are held to be owners in possession to the extent of 1/6th share each as successors of Pat and a decree of declaration to that effect has been passed along with a decree for joint possession of the suit land. The petitioner-judgment debtor No.1 and proforma respondent No.3 who are the sons of defendant No.7 Inder Singh are entitled to inherit share of Inder Singh. It is not in dispute that the judgment passed by the trial Court holding that the decree holders-plaintiffs are owners in possession to the extent of 1/6th share in the suit land has been affirmed up to this Court when the appeal preferred by the judgment debtors-defendants has been dismissed. Once the trial Court has categorically held that the decree holders-plaintiffs are entitled to 1/6th share, the executing Court cannot go behind the decree.

15. The judgment cited by the learned senior counsel for the petitioner-judgment debtor No.1 in ***Sanwarlal Agrawal's*** case (supra) is not attracted to the facts of the present case for the reason that the Court in this judgment has held that if there is any ambiguity in the decree, the

executing Court to construe the decree, if necessary, can refer the judgment and if sufficient guidance is not available even from the judgment, the Court can refer to pleadings to construe the true import of the decree. But in the present case, the trial Court had specifically returned the findings and passed the decree that the decree holders-plaintiffs are entitled to 1/6th share. Thus, no illegality has been committed by the executing Court to hold that the decree holders-plaintiffs are entitled to 1/6th share. Relevant para of the judgment reads as under:

"21. With respect to Rajinder Kumar v. Kuldeep Singh, the counsel has placed reliance on the following paragraph: (SCC p. 544, para 21)

"21. If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to the alternative relief would arise. Therefore, there is no question of any ambiguity. As held by this Court in Topanmal Chhotamal v. Kundomal Gangaram and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. Thus, there is no

question of any alternate relief regarding the damages, etc. in the present case since the suit for the specific performance for the conveyance of the property has been decreed."

This elucidation of the law is unexceptionable. It is undeniable that an executing court can construe a decree if it is ambiguous. However, as in the facts of the case herein, this cannot result in additions (to the terms of the consent, embodied in the email dated 28-3-2019) which were not agreed upon by the parties, since the decree was drawn on by consent of both parties at admissions stage itself. Both the Single Judge and Division Bench of the High Court have interpreted the appellants' silence (manifest in their not filing any written statement) as acquiescence to the inclusion of the loan amount, which, is although worthy of adverse inference, cannot be the reason to justify expansion of the decree."

16. It is settled law that the 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 vs. Rajabhai Abdul Rehman and others**, (1970) 1 SCC 670 and the relevant para 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.”

17. A similar view was taken by the Hon’ble Supreme Court in ***Sunder Dass vs. Ram Prakash***, (1977) 2 SCC 662. However, it was 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 para 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."

18. 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's** case (supra). The relevant para 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."

19. Even in the recent judgment, the Hon'ble Supreme Court in **Maurice W. Innis vs. Lily Kazrooni @ Lily Arif Shaikh**, 2026 INSC 340, has again reiterated that the executing Court cannot go beyond the decree and thus, the plea taken by the petitioner-judgment debtor No.1 that the decree-holders are entitled to 1/7th share cannot be accepted and the executing Court has rightly held that they

are entitled to 1/6th share based on the decree passed by the trial Court.

20. Learned senior counsel for the petitioner-judgment debtor No.1 argued that the executing Court has failed to exercise the jurisdiction vested in it while dismissing the application seeking amendment of objections. However, the application seeking amendment was allowed on 19.03.2025 and the executing Court has considered the averments made in the amended petition wherein it was raised that the decree holders-plaintiffs are not having 1/6th share. The executing Court after considering the said averment has given specific findings that as per the decree passed by the Court, the decree holders-plaintiffs are held entitled to 1/6th share and the executing Court cannot decide the matter qua the share of Kanchnu Devi, which was never raised at the time of the decision in the suit. Once the trial Court had held that the decree holders-plaintiffs are entitled to 1/6th share, which findings have been affirmed up to this Court, the executing Court cannot held that the decree holders-plaintiffs are entitled to 1/7th share as pleaded and argued by the learned senior counsel for the petitioner-judgment debtor No.1.

21. Learned senior counsel for the petitioner-judgment debtor No.1 further argued that the learned Court has not decided the objections judicially and not framed the issue while deciding the objections. He placed reliance on the judgment in **M/s. Woolways** case (supra). In this judgment, it has been held that the executing Court is not enjoined by the statute to frame the issues and to dispose of the same in the same manner as a suit, nevertheless the executing Court is under obligation to decide the dispute in a judicial manner. In the present case, the executing Court has decided the issue after noticing that the decree holders-plaintiffs are held entitled to 1/6th share, which findings are based on the judgment and decree passed by the trial Court and the said judgment had attained finality. Therefore, no illegality of material irregularity has been committed by the executing Court while passing the order under challenge.

22. The Hon'ble Supreme Court has time and again held that the power of revisional jurisdiction is to be exercised very cautiously. This Court while exercising the revisional jurisdiction cannot act as an Appellate Court. Not only this, the Court can exercise the jurisdiction, only if there is material irregularity and illegality having been

committed by the executing Court. In the present case, as already noticed above, the executing Court has rightly understood the import of the decree sought to be executed passed by the Court in which it was specifically held that the decree holders-plaintiffs are entitled to 1/6th share and thus, this Court while exercising the revisional jurisdiction cannot conclude that the decree holders-plaintiffs are entitled to 1/7th share. The executing Court has neither committed any illegality nor material irregularity while passing the order under challenge and, thus, no interference is called for.

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

29th September, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**