2026:HHC:48259

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO Nos. : 672 & 711 of 2025
Decided on : 29th October, 2026

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1. CMPMO No.672 of 2025

Pratap Singh (deceased) through LR …Petitioner

Versus

Lekh Raj & Others …Respondents

2. CMPMO No.711 of 2025

Pratap Singh (deceased) through LR …Petitioner

Versus

Sohan Lal & Another …Respondents

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The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1]

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1. **CMPMO No. 672 of 2025**

For the petitioner : Mr. N.K. Thakur, Senior Advocate with Mr. Divya Raj Singh, Advocate.

For the respondent : Mr. Gurinder Singh Parmar, Advocate, for respondents No.1, 3 & 4.

Ms. Shrutika Chauhan, Advocate, for respondent No.2.

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[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

2. **CMPMO No.711 of 2025**

For the petitioner : Mr. N.K. Thakur, Senior Advocate with Mr. Divya Raj Singh, Advocate.

For the respondent : Mr. Gurinder Singh Parmar, Advocate, for respondent No.1.

Ms. Shrutika Chauhan, Advocate for respondent No.2.

Virender Singh, Judge (Oral)

The above-titled petitions, which have been filed under Article 227 of the Constitution of India, are being decided by this common judgment.

2. CMPMO No.672 of 2025, has arisen out of the order dated 25.09.2025, passed in CMA No. 2983 of 2025, filed in Execution Petition No. 506 of 2013, titled 'Pratap Singh v. Lekh Raj and Others', by Senior Civil Judge, Court No.1, Una, District Una, H.P., and CMPMO No.711 of 2025, has arisen out of the order dated 11.11.2025 passed in CMA No.3212 of 2015, filed in Execuiton Petition No.71 of 2014, titled as Pratap Singh (deceased) through LR versus Sohan Lal & Another, by the Court of learned Civil Judge, Court No.3, Una,

District Una, H.P. (hereinafter referred to as 'the executing Court').

3. By way of the orders dated 25.09.2025 and 11.11.2025, the learned executing Court has dismissed the applications, under Order 21 Rule 9 of the CPC, for appointment of a local commissioner.

4. Both these execution petitions have been filed in Civil Suit No.86 of 2006, titled "Pratap Singh v. Surinder & Others."

5. Parties to the *lis* are hereinafter referred to, in the same manner, in which, they were referred to, by the learned executing Court.

6. Brief facts, leading to the filing of these petitions before this Court, as emerged from the record, may be summed up as under:

7. The decree holder/plaintiff Pratap Singh has filed a suit for permanent prohibitory injunction against the defendants, restraining them from causing any interference in the land situated in village Dangoli, Tehsil and District Una, comprising khewat No. 32 min, khatoni No.109, min, khasra

Nos.1585/1, 1585/2, 1590, measuring 0-35-63 square meters (hereinafter referred to as the suit land), with a prayer to restrain them from changing the nature thereof, making any encroachment thereupon, and in the alternative, for possession by way of demolition of superstructure, if raised, during the pendency of the suit.

8. The said suit was decreed vide judgment dated 20.11.2009, by granting the following relief to the plaintiff:-

> *18. In view of the my findings returned on the aforesaid point No.1, the suit of the plaintiff succeeds and is hereby decreed with cost and defendants are restrained from causing any interference in the land sitaute at Village Dangoli Tehsil & District Una and comprising of Khewat No. 32 min, Khatoni No. 109min, Khasra No. 1585/1(0-01-44), 1585/210-02-20), 1590(0-31-99) measuring 0-35-63, changing nature and character thereof, making any encroachment thereupon or raising any construction thereon. Decree sheet be drawn accordingly. File after due competition be consigned to record room.*

9. Thereafter, the plaintiff has filed the above-titled two execution petitions. The opportunity to file the objections has been given in the execution petitions, upon which the execution petitions have been contested, and thereafter, the issues were framed.

10. When the lis was pending for evidence of the decree-holder, then, the applications, under Order 21 Rule 9 of the CPC, have been moved, with a prayer to appoint the local commissioner to demarcate the suit land and to report as to whether the JDs have encroached the site marked as ABCD.

11. It is the further case of the decree-holder that the respondents/JDs have encroached upon the site marked with letters ABCD, shown in red colour in the site plan, by raising new construction over khasra No.1585/1 and 1585/2, which is part and parcel of the suit land, whereas, the JDs in their reply have denied the said fact.

12. It is the further case of the decree-holder that additional issue No. 1-A has been framed, which is reproduced as under:

> *"Whether the site mark with letter ABCD, as shown in the site plan, has been encroached by the JDs, which is part of the suit land,that is Khasra No.1585/1 and 1585/2, as alleged?"*

13. According to the JDs, there is no other alternate to prove the said issue, except to appoint the revenue expert, as

local commissioner, to ascertain the fact whether the JDs have encroached upon the site marked as ABCD or not.

14. When put to notice, th applications have been contested on the ground that the applications are not maintainable, as the JDs have not encroached upon any portion of the suit land. The said applications have been dismissed by the learned executing Court vide orders, which have been assailed by way of these petitions, mainly; on the ground that the local commissioner cannot be appointed to collect the evidence or to substantiate the claim, as made, by the parties.

15. Those findings have now been assailed by way of the above-titled petitions.

16. The decree, in the present case, has attained finality, whereas, in the execution petition, which has been filed, under Order 21 Rule 32 of the CPC, the following prayer has been made, by the DH :

> *" It is therefore prayed that the instant application be allowed and the respondents be sent to Civil Imprisonment as per law and their movable and immovable property may kindly be attached and be sold and requisite compensation*

> *including costs of suit to the tune of ₹1 Lacs be also awarded to the DH ant to restore the possession of the suit land mark with letters ABCD as shown red in colour in the site plan in its original position to DH by way of removal of super structure from the suit land or any other relief as this Hon'ble Court deems fits may kindly be passed in favour of DH and against JDs and present execution be allowed with costs in the interest of justice."*

17. A perusal of the reply shows that the allegations of encroachment have been controverted by the JDs. In such situation, the arguments of the learned counsel appearing for the JDs, qua the fact that the local commissioner cannot be appointed to collect the evidence is not sustainable in the eyes of law, as the learned executing Court has failed to exercise the jurisdiction vested in it, because a specific stand has been taken by the decree-holder that the encroachment has been made by the JDs over khasra No. 1585/1 and 1585/2.

18. Moreover, a prayer has been made to restore the possession of the suit land marked with letters ABCD to the decree-holder.

19. The Hon'ble Supreme Court in ***Civil Appel No.2248 of 2025, titled as Bhudev Mallick Allias***

Bhudeb Mallick & Another versus Ranahit Ghoshal & Others, 2025 INSC 175, has held that where the decree for permanent prohibitory injunction has been passed, then, under the provisions of Order XXI Rule 32 of the CPC, possession can be delivered. Relevant paragraphs 32 to 36 are reproduced as under:-

> *36. It is well settled that a decree of permanent injunction is executable with the aid of the provisions contained in Order XXI Rule 32 of the Code referred to above, and any act in violation or breach of decree of permanent injunction is a continuing disobedience entailing penal consequences.*
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> *37. In Jai Dayal And Others v. Krishan Lal Garg and Another reported in (1996) 11 SCC 588, this Court considered the effect of decree of permanent injunction as well as the scope of provisions of Order 21 Rule 32 of the Code and held as under:-*
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> *"6. It is contended that the High Court has proceeded on the premise that the rights of parties are required to be adjudicated under Section 22 of the Easements Act. The view of the High Court is clearly in error. It is seen that once the decree of perpetual injunction and mandatory injunction has become final, the judgment-debtor is required to obey the decree. In whatever form he obstructs, it is liable to removal for violation and the natural consequence is the execution proceedings under Order XXI, Rule 32, CPC which reads as under:*
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> > *"32.(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months if the judgment-debtor*

has not obeyed the decree, if the decree-holder has applied to have the attached property sold, such property may be sold; out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance, if any, to the judgment- debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease."

7. In this case, since the attachment was made for enforcement of the perpetual injunction and mandatory injunction, the decree is required to be complied with. In case he did not obey the injunction under Clause (1) of Order 32, the judgment-debtor is liable to detention in the civil prison and also to proceed against the property under attachment."

(Emphasis supplied)

38. The High Court of Rajasthan in Maga Ram And Another v. Kana Ram And Others reported in AIR 1993 Rajasthan 208, held as under :

"3. A perusal of the decree under execution shows that it was for mandatory as well as for prohibitory injunction. It stood satisfied so far it concerned with mandatory part of the injunction by the removal of the encroachment existing on the disputed land on the date on which it was passed. The decree in respect of prohibitory injunction was subsisting even after the disposal of first and second execution applications. The third execution application has been moved for the

execution of the decree in respect of the prohibitory injunction. It is perfectly executable under O. XXI, R. 32, CPC.

4. There is also no substance in the second objection relating to limitation. Article 136, Limitation Act, deals with the limitation for execution of decrees other than a decree granting mandatory injunction. The limitation is 12 years from the date the decree becomes enforceable. The decree for prohibitory injunction become enforceable when the judgement- debtors made fresh encroachment on the disputed land. The decree under execution itself was passed on September 20, 1983. As such the third execution application was well within limitation."

(Emphasis supplied)

39. The High Court of Bombay in the case of Shri Benedito (Betty) Dias v. Armando Benedita Fernandes reported in 2017(4) AIR Bom. R 381, held as under:-

"12. The decision of the Kerala High Court, in the case of M.G. Simon (supra), cannot take the case of the petitioners any further and in fact, would assist the respondents. In that case also, it has been held that an application for enforcement of the decree granting prohibitory injunction shall not be subject to any period of limitation and where there is a composite decree, granting mandatory and prohibitory injunction, one part is subjected to limitation period of three years, whereas the other is not subjected to any period of limitation. The petitioner can enforce the prohibitory injunction, whenever violation of that part takes place.

13. In the case of Jai Dayal (supra), the Hon'ble Supreme Court has held that once the decree of perpetual and mandatory injunction has become final, the judgment debtor is required to obey the decree and a party cannot and should not, by his action be permitted to drive the decree holder to file a second suit. It has been inter-alia held that non-compliance is a continuing disobedience in respect of which a separate/fresh suit is barred under Section 47 of the CPC. Thus, in my considered view, the contention based on the execution being barred by limitation, cannot be accepted."

(Emphasis supplied)

40. The High Court of Punjab and Haryana in the case of Dilbagh Singh and Others v. Harpal Singh Alias Harpal Singh Chela and Others reported in 2020 Supreme (P&H) 944, has held as under:-

"6. Although learned counsel for the petitioners has laid much stress on the fact that to seek execution of the decree, qua the restoration of the possession in his favour, the decree holder was supposed to plead specifically as to when and in what manner he has been dispossessed. This Court finds this argument to be noted only to be rejected. The provisions of sub Rule (5) Rule 32 of Order 21 CPC do not prescribe any such condition. Rather, Order 21 Rule 32 CPC prescribes that for execution of a decree if any act is required to be done by the judgment debtor, the Executing Court can order that such an act be done by the judgment debtor; as claimed. Sub Rule (5) Rule 32 of Order 21 CPC has been interpreted by the Supreme Court in various judgments viz. "Samee Khan vs. Bindu Khan, 1998(4) RCR(Civil)

> *125 (SC)" to mean that in an execution proceedings of a decree for injunction, if it is found that the decree holder has been dispossessed after the date of decree, the restoration of possession can also be ordered by the Executing Court. Hence, it is no more res-integra that in execution of a decree for injunction, even restoration of possession can be ordered by the Executing Court. This view has also been taken by this court in 'Kapoor Singh vs. Om Parkash, 2009(4) PLR 178'. Hence, no fault can be found, per-se, with the action of the Executing Court in issuing warrants of possession in the execution proceedings."*
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> *(Emphasis supplied)*
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> *41. Having regard to the dictum of law as laid in the aforesaid decisions, there is no force in the argument of the learned counsel appearing for the appellants that the execution case could not have been instituted by the respondents herein after a period of 40 years from the date of passing of the decree in the original Title Suit. The decree for permanent injunction can be enforced or becomes enforceable when the judgment debtor tries to disturb the peaceful possession of the decree holder or tries to dispossess the decree holder in some manner or the other or creates obstruction in the peaceful enjoyment of the property over which he has a declaration of title from the civil court in the form of a decree."*

20. If the facts and circumstances of the present case are seen in the light of the decision of Hon'ble Supreme Court supra, the approach of the learned executing Court, falls within the definition of jurisdictional error.

21. A futile attempt has also been made by the learned counsel for the JDs., by arguing that the alleged encroachment should have been proved by the decree-holder, by leading the independent evidence.

22. The allegations, qua the encroachment, over the portion marked with letters ABCD and restoration of the possession of the same, can only be ascertained, if a revenue expert will demarcate the suit land.

23. Consequently, this Court has no hesitation to hold that the learned executing Court has failed to exercise the jurisdiction vested in it, to appoint the local commissioner to ascertain the encroachment, if any, made by the JDs., as alleged, in the execution petitions.

24. Resultently, the present petitions are allowed and the order dated 25.09.2025, passed in CMA No. 2983 of 2025, filed in Execution Petition No.506 of 2013, titled 'Pratap Singh v. Lekh Raj and Others', and order dated 11.11.2025 passed in CMA No.3212 of 2015, filed in Execuiton Petition No.71 of 2014, titled as Pratap Singh (deceased) through LR versus Sohan Lal & Another, by learned executing Court, are set

aside, by allowing the applications, under Order XXI Rule 9 of the CPC.

25. The parties to the lis are directed to appear before the learned respective executing Court on ***10th December, 2026***, on which date, after securing the presence of both the parties, the learned executing Court is at liberty to appoint any revenue expert to demarcate the suit land.

26. Pending applications, if any, shall also stand disposed of.

Record be sent back immediately.

(Virender Singh)
Judge

October 29, 2026 *(ps)*