HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 16207 of 2026

Vijay Karan Pandey

.....Petitioner(s)

Versus

State Of Uttar Pradesh And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Birendra Singh, Ratan Singh, Swati Singh
Counsel for Respondent(s)	:	Chetan Prakash, G.A.

Court No. - 78

HON'BLE SANDEEP JAIN, J.

The instant petition under Article 226 of the Constitution of India has been filed for the following reliefs:-

"Issue an order or directing setting aside the ex parte order dated 11.06.2026 passed by the respondent No. 2 the Executive Magistrate/Deputy Commissioner of Police (City), Commissionerate, Prayagraj, in proceedings under Sections 145 and 146 of the Code of Criminal Procedure, whereby the respondent No. 3 has been directed to enforce the order dated 05.06.2017.

Issue an appropriate order or direction commanding the respondent authorities to forthwith de-seal the residential house bearing House No. 1646/928, Mohalla Dariyabad, Police Station Atarsuiya, District Prayagraj, and restore peaceful possession thereof to the petitioner.

Issue any suitable order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of thé case existing the present case."

On 10.07.2026, the following order was passed:-

"The instant writ petition has been filed for the following reliefs:-

"Issue an order or directing setting aside the ex parte order dated 11.06.2026 passed by the respondent No. 2 the Executive Magistrate/Deputy Commissioner of Police (City), Commissionerate, Prayagraj, in proceedings under

Sections 145 and 146 of the Code of Criminal Procedure, whereby the respondent No. 3 has been directed to enforce the order dated 05.06.2017.

Issue an appropriate order or direction commanding the respondent authorities to forthwith de-seal the residential house bearing House No. 1646/928, Mohalla Dariyabad, Police Station Atarsuiya, District Prayagraj, and restore peaceful possession thereof to the petitioner.

Issue any suitable order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of thé case existing the present case."

Learned counsel for the petitioner submitted that respondent nos.4 and 5 had executed a registered agreement to sell dated 12.02.1987 in favour of the petitioner's father, namely, Ram Asrey Pandey @ Bacha Pandey, in respect of the disputed house. Since the sale deed was not executed despite the said agreement, the petitioner's father instituted Original Suit No.67 of 2006 (Ram Asrey Pandey Vs. Mangal Das & others) before the Court of Civil Judge (Senior Division), Prayagraj, seeking specific performance of the registered agreement to sell.

He further submitted that the private respondents entered appearance in the aforesaid suit and filed their written statement disputing the execution of the agreement to sell. They also preferred a counter-claim praying for cancellation of the registered agreement to sell on the allegation that it was forged and fabricated, besides seeking recovery of possession over the disputed property. The said civil suit, along with the counter-claim, is still pending adjudication.

It was further submitted that despite the pendency of the aforesaid civil proceedings involving identical questions relating to title and possession, the private respondents, after an inordinate delay, moved an application in the year 2017 pursuant to which proceedings under Section 145 Cr.P.C. were initiated in respect of the same property. During the said

proceedings, the learned Additional City Magistrate-III, Prayagraj, by order dated 05.06.2017, directed attachment of the disputed property under Section 146(1) Cr.P.C.

Aggrieved by the said order, the petitioner preferred Criminal Revision No.290 of 2017 (Ram Asrey Pandey @ Bacha Pandey Vs. State of U.P. & others), which was decided by the learned Additional Sessions Judge, Court No.9, Prayagraj, on 17.05.2019. Learned counsel submits that although the revisional court, in its detailed reasoning, categorically recorded findings warranting interference with the order dated 05.06.2017 and remand the matter to the Magistrate for fresh consideration, the operative portion of the judgment, apparently due to an inadvertent error, records that the criminal revision stood dismissed. According to him, the reasoning and the operative portion of the revisional judgment are mutually irreconcilable.

He further submitted that after the matter was remitted, the concerned Magistrate/Deputy Commissioner, Prayagraj, instead of independently reconsidering the matter in accordance with law, merely implemented the earlier attachment order dated 05.06.2017 and, by the impugned order dated 11.06.2026, once again directed attachment of the disputed property without recording any fresh satisfaction or assigning independent reasons.

Per contra, learned A.G.A. submitted that a plain reading of the revisional judgment dated 17.05.2019 unmistakably demonstrates that the learned Revisional Court intended to allow the revision petition. The entire reasoning recorded in the judgment culminates in setting aside the order dated 05.06.2017 and remanding the matter for fresh adjudication. However, owing to an apparent inadvertent mistake, the operative portion mentions that the revision stands dismissed. He submitted that where there exists an irreconcilable conflict between the reasoning contained in the body of the judgment and the operative portion thereof, such an inconsistency is liable to be treated as a manifest error. Learned A.G.A. further submitted that, in any event, once a comprehensive civil suit relating to the same property was already pending, initiation of

proceedings under Section 145 Cr.P.C. in the year 2017 was itself legally questionable.

I have considered the rival submissions advanced by learned counsel for the parties and have perused the material brought on record.

From the record, it is evident that respondent nos.4 and 5 executed a registered agreement to sell dated 12.02.1987 in favour of the petitioner's father, Ram Asrey Pandey @ Bacha Pandey. Upon failure of the vendors to execute the sale deed, Original Suit No.67 of 2006 was instituted seeking specific performance of the said agreement. The private respondents contested the suit by filing a written statement coupled with a counter-claim alleging that the agreement to sell was forged and fraudulent and seeking its cancellation as well as recovery of possession over the disputed property.

A perusal of the written statement filed by the private respondents reveals that they themselves have acknowledged that the petitioner is in possession of the disputed property pursuant to the agreement to sell, though they dispute the validity of the said document. Thus, the questions relating to possession and title are already sub judice before the competent Civil Court.

It further transpires that notwithstanding the pendency of the aforesaid civil proceedings, proceedings under Section 145 Cr.P.C. were initiated in the year 2017, culminating in an attachment order dated 05.06.2017 under Section 146(1) Cr.P.C. The petitioner challenged the said order by filing Criminal Revision No.290 of 2017.

A careful reading of the revisional judgment dated 17.05.2019 prima facie indicates that while the learned Revisional Court has assigned elaborate reasons warranting interference with the attachment order and remand of the matter to the Magistrate for fresh adjudication, the operative portion unexpectedly records dismissal of the revision. The reasoning contained in the judgment and its operative portion are manifestly inconsistent and incapable of harmonious construction. Prima facie, therefore, it appears that the revisional

court intended to allow the revision and remand the matter, but due to an inadvertent error the operative portion came to be drafted otherwise.

Had the revision actually been allowed, the attachment order dated 05.06.2017 would have stood set aside and the Magistrate would have been under a legal obligation to independently reconsider the controversy after recording fresh satisfaction in accordance with law. Instead, relying upon the apparent inconsistency in the revisional judgment, the Magistrate has merely reiterated the earlier attachment order and, by the impugned order dated 11.06.2026, directed attachment of the disputed property, which was thereafter executed by the concerned police authorities on 21.06.2026.

At this stage, it is also evident that the petitioner has not challenged the revisional judgment dated 17.05.2019, which appears to be the genesis of the present controversy. Unless the apparent contradiction contained in the revisional judgment is appropriately addressed, the legality of the consequential proceedings cannot be effectively examined by this Court.

Accordingly, learned counsel for the petitioner is permitted to amend the writ petition during the course of the day by suitably incorporating a challenge to the revisional judgment dated 17.05.2019 passed in Criminal Revision No.290 of 2017 and by making appropriate consequential prayers.

Issue notice to respondent nos.4 and 5.

Steps shall be taken by both modes within three days.

List this matter as a fresh case on 20.07.2026."

Learned counsel for respondent Nos. 4 and 5 has filed a counter affidavit, and learned counsel for the petitioner has filed a supplementary affidavit. Both the affidavits are taken on record.

Learned counsel for respondent Nos. 4 and 5 admits that there is an error in the judgment dated 17.05.2019 passed by the revisional court in Criminal Revision No. 290 of 2017, Ram Asrey Pandey @ Bacha Pandey v. State of U.P. and Others, by the Additional Sessions Judge, Court No. 9, Allahabad. The body of the judgment

contains reasoning indicating that the revision ought to have been allowed, however, in the operative portion, it has erroneously been mentioned that the revision stands dismissed.

Learned counsel admits that, had the revision been allowed, the impugned order dated 05.06.2017 passed by the concerned Magistrate would have been set aside, and the Magistrate would have been under an obligation to decide the controversy afresh after hearing the parties.

Learned counsel for the petitioner submits that, owing to the erroneous order passed in Criminal Revision No. 290 of 2017, the impugned order dated 05.06.2017 passed by the City Magistrate has remained in force and in furtherance of the said order, respondent No. 2 directed its execution by order dated 11.06.2026, which has been challenged by the petitioner by filing Criminal Revision No. 244 of 2026, Vijay Karan Pandey v. State of U.P. and Others.

Learned counsel for the private respondents submits that the private respondents are entitled to a one-third share in the disputed property, whereas the petitioner is claiming the entire property, which is erroneous. However, learned counsel admits that there is no legal document to establish that the disputed property has been duly partitioned and that a one-third share therein has been allotted to the private respondents.

It is admitted by learned counsel for both parties that Original Suit No. 67 of 2006, Ram Asrey Pandey vs. Mangal Das and Others, concerning the disputed property, is pending before the Civil Judge (Senior Division), Prayagraj, wherein specific performance of a registered agreement to sell has been sought. The execution of the said agreement has been disputed by the defendants on the ground that it is a forged and fabricated document.

It is further apparent that, in the aforesaid original suit, the private respondents, who are defendants therein, have entered appearance and filed their written statement, wherein they have admitted that the plaintiffs are in actual possession of the disputed property. The validity of the aforesaid registered agreement to sell is yet to be adjudicated by the competent civil court.

In view of the aforesaid facts and circumstances, it is crystal clear that the revisional court intended to allow Criminal Revision No. 290 of 2017 but, owing to an inadvertent error, dismissed the revision by order dated 17.05.2019, thereby causing grave prejudice to the petitioner.

In view of the above, the order dated 17.05.2019 passed by the revisional court in Criminal Revision No. 290 of 2017 is hereby quashed, and consequently, the said criminal revision stands allowed.

The effect of allowing the aforesaid criminal revision is that the impugned order dated 05.06.2017 passed by the concerned Magistrate in the proceedings under Section 145 Cr.P.C., whereby the disputed property was attached and the order dated 11.06.2026 whereby its execution was directed stands set aside.

Consequently, the matter is remanded to the concerned Magistrate for fresh consideration and decision on merits, in accordance with law, after affording an opportunity of hearing to both parties.

It is made clear that the concerned Magistrate shall not be influenced by any observation or finding recorded in this order and shall be at liberty to decide the matter independently on its merits, in accordance with law.

With the aforesaid observations and directions, the instant petition stands **allowed**.

October 29, 2026
Himanshu

(Sandeep Jain,J.)

Digitally signed by :-
HIMANSHU YADAV
High Court of Judicature at Allahabad