

Joginder Singh (Dead) Thr. Lrs vs Dr. Virinderjit Singh Gill (Dead) Thr. ... on 17 October, 2024

Author: Sanjay Karol

Bench: Sanjay Karol

2024 INSC 814

NON-REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). OF 2024
(Arising out of Special Leave Petition Nos. 9202-9204 of 20

JOGINDER SINGH (DEAD) THR. LRS

... APPEL

Versus

DR. VIRINDERJIT SINGH GILL (DEAD)
THR. LRS. & ORS.

... RESP

JUDGMENT

SANJAY KAROL J.

Leave to Appeal is granted.

2. Questioned in these appeals are three judgements of the High Court of Punjab and Haryana passed in CR No. 4418 of 2012 (O & M) dated 6 th May 2015 and 16th September 2015 along with RA-CR No. 265-CII of 2015 in CR No. 4418 of 2012, dated 20th November 2015. The orders in civil revision (dated 6th May and 16th September 2015) were interim and final, respectively, dismissing such a revision against order and judgment dated 17th January 2012 of the Additional District Judge, Moga, which allowed the appeal against the order and judgment dated 17th January 2009 of the Civil Judge, Junior Division Date: 2024.10.23 17:11:00 IST Reason:

1-SLP(C) 9202-9204 OF 2016 who had allowed the objections taken by the Appellants herein in the execution petition filed to enforce the final decree in Civil Suit No. 266 of 1987.

BACKGROUND OF THE INSTANT DISPUTE

3. Although the bone of contention before this court relates to execution proceedings and the objections taken therein, the factual milieu in which the controversy has come to stand, as it does today, is important for the purpose of disposal of these appeals.

3.1 Civil Suit No.66 of 19791 was filed by Mukand Singh (father of the Appellant, now represented by LRs) and Chanan Singh against a total of thirty-

three persons, including Dr. Thakar Singh (father of the Respondent 1 & 2) and LRs of Nand Singh, seeking declaration and separate possession of a half share of the land in Khasra No.6363, Khatauni No.7257 and Khasra No.2259 (measuring 2 Kanals - 18 Marlas). Out of the thirty-three defendants only two, namely, Dr. Thakar Singh and one Karamjit Singh were represented, while others remained ex-parte. The suit was decreed and the plaintiffs were declared owners and possessors of half share of the above property. An appeal was filed thereagainst, but the same came to be dismissed vide order and judgment dated 18th October 1982. In pursuance thereof, a warrant of possession in favour of Mukand Singh was issued on 21st September 1985.

First Partition Suit 2-SLP(C) 9202-9204 OF 2016 The dispute before this court pertains only to Khasra No.2259 (2 Kanals - 18 Marlas), which is part of Schedule 'D' properties described in the plaint.

3.2 Subsequently in 1987, Dr Thakar filed Civil Suit No.2662 against the LRs Nand Singh and approximately seventy other defendants, for his individual one-

fourth share of 58 marlas (Khasra No.2259). It is to be noted that plaintiffs in the first partition suit were defendants in this second partition suit, which included Mukand Singh, the father of Joginder Singh (now represented through LRs). The Additional Senior Sub-Judge, First Class, Moga, framed the following issues :-

1. Whether the plaintiff is owner to the extent of share in the property as detailed in the head note of the plaint? OPP
2. Whether suit is not maintainable? OPD
3. Whether suit is not properly valued for court fees and jurisdiction? OPD
4. Whether suit is bad for misjoinder of parties? OPD
5. Whether plaintiff is entitled to the decree of possession as prayed for? OPP
6. Relief.

For Issues 1 and 5, the learned civil court held that “the plaintiff is owner in possession as co-sharer to the extent of share as mentioned and detailed in Schedule ABCD in the headnote and as such he is entitled to the decree in possession by way of partition. Accordingly, I decide both these issues in

favour Second Partition Suit 3-SLP(C) 9202-9204 OF 2016 of the plaintiff and against the defendants.” Similarly, Issues 2, 3 and 4 were also decided in favour of the plaintiff, and the suit was accordingly decreed with costs. In a subsequent application, the learned civil court appointed a local commissioner. The first report came on 15th December 1996, and an additional report was submitted on 25th October 1997.

3.3 On 4th February, 1998, a final decree was drawn up in the above suit with only one respondent, namely, Karamjit Singh being represented and others ex-

parte. In respect of the contested portion, the final decree records “...Properties shown in headnote ‘D’ of the plaint be partitioned as suggested by local commissioner and possession of khasra nos. 2258/1 and 2258/2 as shown be letters A.B.C.D.E.F.G.H.I.J.K.L.M., and possession of Kh.o.2259 as shown by letters N.O.P.Q, in the site plan Annexure LC-VI be delivered to the plaintiffs-

applicants.”. On 25th January 2002, the Respondents herein, i.e., the decree holders filed an execution petition.

3.4 The present appellant, now represented by LR (son of Mukand Singh) filed objections to the execution petition on 25th January, 2002, under Order XXI Rule 58, 97 r/w Section 47 and 151 of the Code Civil Procedure, 19083.

Objections to the Execution

4. The objections so filed⁴ are reproduced below for reference:

“The objector most respectfully submits as under :-

Hereinafter referred to as ‘CPC’ Annexure P-6 4-SLP(C) 9202-9204 OF 2016

1. That the above noted execution is pending in this Hon’ble Court and is fixed for today.
2. That in the instant execution apart from other property, property bearing Khasra no.2259 (2 Kanals-18 Marlas) is also the subject matter.
3. That the above said execution application is not maintainable against the property bearing khasra Nos.2259/1 (1-6), 2259/2 (0-4), 2259/3 (0-12), 2259/1 (0-16) as entered in the jamabandi for 1997-98, which is owned and possessed by the objector.
4. That the above said execution is liable to be dismissed - qua the property duly shown in the site plan, which is part of khasra nos.2259/1, 2259/2, 2259/1 for the reasons noted below :-

- i. That the property measuring 14.60 marlas which is part of khasra no.2259 is owned and possessed by the objector since 25.5.1989 by virtue of civil court decree passed in civil suit no.107-1 of 27.4.1989 decided on 25.5.1989 by the court of the then Additional Senior Sub Judge Moga. Since then the objector is the owner in possession of 14.60 marlas out of khasra no.2259 and he has raised huge construction on it by spending more than Rs.15.0 lacs. After construction, the objection has rented out parts of the premises constructed on khasra no.2259 to different persons and in same portion, he himself is in possession.
- ii. That vide warrants of possession dated 8.9.85 passed in execution No.116-10 of 12.5.84 by the court of Shri B.C. Rajput, P.C.S., the then Additional Senior Sub Judge Moga, 14.60 marlas out of this property was given in possession to father of the objector i.e. Mukand Singh. iii. That father of objector Shri Mukand Singh died in the year of 1993 and he used to reside along with the objector at Ludhiana since 1965 and as such no proper service either of the objector or his father was ever got effected by the decree holders. Rather the decree holders have mis-guided the honourable court as he was very well within his knowledge that Mukand Singh had died in the year of 1993 and he is residing at Ludhiana. Further more since 1989, the objector is the owner in possession of the property in question and this fact is in the knowledge of the decree holder and his Legal representatives, but with ulterior motive, neither the decree holder Thakur Singh nor his L/Rs ever informed or brought to the notice of the court that the property described & shown in the site plan, which is part of khasra No.2259 is owned and possessed by the objector and by misguiding the honourable court, got the property into their shares, which was owned and possessed by the objector.
- iv. That the objector had no knowledge regarding the pendency of the litigation regarding the property in dispute, as he had no occasion to know the same, as the decree holder willfully and with ulterior motive, kept the honourable court in dark regarding the possession and ownership of the objector. Had the decree holder brought the fact regarding ownership and possession of the objector over the property 5-SLP(C) 9202-9204 OF 2016 in dispute, the Honourable court must have called the objectors. Even in law, the objector was a necessary party, as he was got title in the property, which is the subject matter of the property, which is under execution in the instant petition.
- v. That the objector is a bonafide transferee of the property in dispute vide civil court decree detailed and described above. Mutation no.6016 on the basis of above said decree was also entered and sanctioned in his favour. Even in revenue record, name of the objector is clearly, mentioned, but with ulterior motive, the decree holder has not brought the revenue record before the Honourable court, so that truth should not come to the knowledge of the court. Under the garb of the orders of the Hon'ble Court and by concealment, the decree holder might get the possession of the property, which is duly shown in the attached site plan and which bears khasra Nos.2259/1 etc. as detailed above.
- vi. That Varinderjit Gill d/o Dr. Thakur Singh filed an injunction suit against the objector and his son Manprit Singh, which is also pending in this Hon'ble Court. Son of the objector is not residing with him and is living separately at Moga, as he is not on good terms with the objector. Son of the

objector told the objector on 22.1.2002 regarding the fact that he has received the summons from this Honourable court. After inquiry it came to the notice of the objector regarding pendency of injunction suit and from the plaint of the injunction suit, the objector came to know regarding the passing of the final decree dated 4.2.1998 and the preliminary decree regarding the property in dispute and he was stunned to know that by frustrating the provisions of law and by concealment, the decree holder was going to cause a huge irreparable loss to him by misguiding the Honourable Court. vii. That it is mentioned here that father of the objector and the objector himself left Moga in the year 1979 and since then, they are permanently residing at Ludhiana. It is not understood that how the service of the objector or his father was got effected. As a matter of fact, neither the objector nor his father ever received any service nor they ever refused to accept the service from the Hon'ble Court. It seems that the D.H. by mis-guiding the Hon'ble Court and concealment, got the ex-parte decree against father of the objector, although after 25.9.1989 the objector became the owner in possession of 14.6 marlas of the property.

5. That both in law & equity the property described in the site plan & of which the objector was made owner in possession vide judgment & decree dt. 25.5.1989 is not liable to any execution of any final decree dt. 4.2.98 or any preliminary decree, as the objector was not party in the same and he was neither served nor summoned. The objector as Legal heir of his father Mukand Singh will file appropriate application for setting aside the final decree & pre-decree.

6. That the D.Hs are stopped by their act & conduct & on the principle of acquiescence to file execution reg: the property shown in the site plan, 6-SLP(C) 9202-9204 OF 2016 as D.Hs have been seen the objector raising the construction, but never objected them.

7. That cause of action arose to the objector on 22.1.2002 his son Manprit Singh talked to him reg: pendency of the injunction suit.

8. That the property is situated within the jurisdiction of this Hon'ble Court.

9. Hence it is prayed that the objection petition may kindly be accepted and the instant execution be dismissed qua 14.60 marlas of the property duly shown in the attached site plan, which is owned and possessed by the objector & in which the D.Hs have got no right, title or interest.”"

5. A response to objections was filed on 22nd March, 20025, where preliminary objections of locus standi and maintainability were taken. The said objections are extracted in toto, as under:-

“It is respectfully submitted as under :-

Preliminary Objections :-

1. That the objector has no locus standi to file objections.
2. The objections as framed are not maintainable.

On Merits :-

1. Para No.1 needs no reply

2. Para No.2 is matter of record.

3. Para No.3 is wrong & denied. It is wrong and denied that Khasra No.2259/1 to 2259/3 & 2259/1 as alleged is owned by objector. The total area of these Khasra numbers comes to 2K-18M. The objector in Para No.4(1) below claims 14 ½ marlas on the basis of Civil Court Decree, but in this para claims the whole. The objector cannot blow hot & cold.

4. Para no.4 is wrong and denied.

(i) This sub para is wrong and denied, the perusal of decree (Final shows that D.H. is claiming 1q/4 share in Khasra No.2259. The ¼ share comes to 14 ½ Marlas meaning thereby that whole of Khasra No.2259 is not claimed by the D.H. It is wrong & denied that objector has any right, title or interest in the portion of Khasra No.2259 allotted Annexure P-7 7-SLP(C) 9202-9204 OF 2016 to D.H. in partition proceeds through civil court. Moreover Mukand Singh was very much a party to the Civil Court Decree.

(ii) Sub Para (ii) is wrong and denied.

(iii) Sub Para (iii) is wrong and denied. It is wrong & denied that there was no proper service as alleged of Mukand Singh. Plaintiff filed suit on 11-06-87 which was decreed by way of preliminary decree on 15-10-90. Final decree proceedings initiated on 26-3-91 became final on 4-2-98. The objector has no right, title or interest in the property allotted to D.H. out of Khasra No.2259.

(iv) Sub Para (iv) is wrong and denied. Detailed reply has been given above.

(v) Sub Para (v) is wrong and denied. Detailed reply has been given above.

(vi) This sub para is wrong & denied as alleged. Pendency of injunction suit is admitted. The very objector is a party to the said suit. It is wrong & denied the objector learnt about the suit on 22-1- 2002 as alleged. Nothing has been concealed by D.H.

(vii) This sub para is wrong & denied. In Sub para (iii) above 1965 is the alleged year & this sub para 1979 is the alleged year of departure from Moga and whereas the alleged Civil Court Decree is dated 27-04-89. The fact is that neither the objector nor his father ever left Moga & reside at Moga. Service was effect in according with law.

5. Para No.5 is wrong and denied.

6. Para No.6 is wrong and denied.

7. Para No.7 is wrong and denied.

8. Para No.8 is wrong and denied.

9. Para No.9 is wrong and denied.

It is, therefore, prayed that the objection petition may kindly be dismissed with costs.”

6. The Civil Judge, Junior Division, found the objections raised fully maintainable. A perusal of the said judgment and order reveals the following reasons for such a conclusion-

(i) The objector (appellant herein) is a co-sharer in the property, having one-fourth share thereof. The decree holder does not have a better title than the objector;

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(ii) It was held that if the decree holder is entitled to get his share, the objector shares such entitlement. The decree only qua the shares of the decree holder is non-executable without determination of shares of the other parties and as such, modification of the decree is required.

(iii) On the aspect of maintainability it was observed that since the objector is a co-sharer, he possesses the requisite locus standi to file objections.

(iv) The submission of the decree holder in regard to the maintainability of the objections was dismissed by the learned Judge having observed that the principle of res judicata does not apply to execution proceedings.

7. An appeal against such a finding was filed before the Additional District Judge, Moga, as Civil Misc. Appeal RT No.105/27.05.2011, which was allowed vide Order dated 17th January 2012. The reasoning therefor may be summarized as under:-

(i) No fault can be found with the preliminary decree on the ground that the learned Civil Court did not decide the shares of the remaining parties at the time of passing of the decree.

(ii) Reliance was placed on the well-recognized principle that the executing court cannot go behind the decree nor can it modify the same. Modification can only be carried out by the court which passed the decree.

(iii) If there was any defect in service to the predecessor-in-interest of the objector, such ground should have been raised in modification of the decree in appeal, however, such recourse was not taken and instead he filed objections to the

execution.

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(iv) Relying on *Usha Sinha v. Dina Sinha*⁶ it was held that per the doctrine of *lis pendens*, the objector was bound by the decree under execution. *Lis pendens* on its own is a notice to the purchaser that he is bound by a decree that may be entered in the pending suit.

Given that the property was transferred in the name of the objector by his father, Mukand Singh during the pendency of the suit, he would be bound by the decree.

(v) The objector ought to have raised all objections before the Civil Court by filing an application for setting aside the *ex-parte* decree against his father and predecessor-in-interest, Mukand Singh and not by filing objections to the execution.

8. Aggrieved by allowing the appeal, the High Court was approached under Article 227 of the Constitution of India. The appellant's revision petition was dismissed observing that-

(i) The objections raised under Order XXI Rule 58 read with Order XXI Rule 97 read with Section 47 of the C.P.C. have to be rejected at the threshold since the latter deals with all issues relating to the subject of execution and cannot adjudicate on individual rights of the persons who are not parties. Order XXI Rule 58 enables third parties to present their claims in relation to the suit. The objector/appellant being the son of the judgment debtor, is not a third party to the suit.

(ii) Objection under Order XXI Rule 97 would have to be discarded by virtue of Order XXI Rule 102 which bars the creation of any obstruction, *pendente lite*.

(iii) If a decision was under Order XXI Rule 58 or 97, an appeal was the only possible remedy, which the objector has utilized. If the (2008) 7 SCC 144 10-SLP(C) 9202-9204 OF 2016 objection is under Section 47, only revision is maintainable. The case erroneously made its way to the Court of the Additional District Judge because the Executing Court allowed "a meaningless petition to be entertained which contained a reference to inconsistent provisions". In other words, if Section 47 was taken recourse to as a successor in interest, then a petition under Order XXI Rule 58 or Order XXI Rule 97 could not have been maintained.

(iv) The duty of determining the share of each party arises only when such party seeks said determination. The absence of such a prayer does not take away the competence of a Court to uphold a plaintiff's claim and determination of his share.

(v) Having observed thus, the matter was kept pending for the executing court to appoint a local commissioner who was to be the Naib Tehsildar of the concerned district. The remit was to identify the property in Khasra No.2259 and locate 58 Marlas in that Khasra number; assess the nature of construction and the extent of vacant land and draw up a plan accordingly.

(vi) The matter was taken up on 16th September, 2015. The relevant portion of the order is extracted :

“2. The property inspected and the report submitted to Court by the Naib Tehsildar, Moga would show that there is no vacant space available in 2259/4 except in an extent of 50’x33’ adjoining the Maruti Showroom which is stated to have been sold to yet another sharer. I was only looking for availability of vacant space on the western side for that was the property which was vacant at the time when the suit was instituted. If constructions have come subsequently and the defendant himself has allowed for such constructions to come up after the institution of the suit, he cannot have the benefit of retention of the property unless the property where the construction has come was subsequently allotted to him in the final decree. He had not applied for final decree and the plaintiff has been 11-SLP(C) 9202-9204 OF 2016 granted the share which is now occupied by the defendant. The final decree must go to the next logical stage of making available the property for recovery of possession and the objection taken by the defendant in relation to the execution of the decree after the final decree was passed cannot be sustained. The Court has the power to demolish the construction, if the petitioner-objector does not voluntarily do so.”

9. Aggrieved by the above findings, revision was preferred thereagainst and by order dated 20th November, 2015, the same was dismissed.

10. We have heard learned counsel for the parties. The question that arises for our consideration is whether the objections filed by the present appellant, now represented through LR's, are maintainable and warrant interference with the decree of the learned civil court.

RELEVANT PROVISIONS AND THE POSITION OF LAW

11. As noticed supra, the objections filed are under Order XXI Rules 58 and 97 read with Section 47 of the C.P.C. It is necessary to avert to the provisions and the position of law settled by this Court prior to proceeding to the merits of the matter.

“Section 47. Questions to be determined by the Court executing decree.— (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. (2) ...

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

12-SLP(C) 9202-9204 OF 2016 [Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and (b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.] x x x ORDER XXI Execution of Decrees and Orders Payment under Decree Rule 58 :

58. Adjudication of claims to or objections to attachment of, property.— (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained: Provided that no such, claim or objection shall be entertained — (a) where, before the claim is preferred or objection is made, the property attached has already been sold; or (b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,— (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or (b) disallow the claim or objection; or (c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or (d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

13-SLP(C) 9202-9204 OF 2016 (5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (I), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such-suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

Resistance of delivery of possession to decree-holder or purchaser Rule 97 :

97. Resistance or obstruction to possession of immovable property.— (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

12. This Court has had occasions to expound on the scope, purpose, and applicability of Section 47, CPC.

12.1 In *Deep Chand v. Mohan Lal*⁷, the purpose of execution proceedings was taken note of in the following terms:

“5.....the purpose of an execution proceeding is to enable the decree- holder to obtain the fruits of his decree. In case where the language of the decree is capable of two interpretations, one of which assists the decree-holder to obtain the fruits of the decree and the other prevents him from taking the benefits of the decree, the interpretation which assists the decree-holder should be accepted. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provision of law it should, in all cases, be executed notwithstanding such bar or prohibition. A rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree-holder to reap the fruits of his decree.” (2000) 6 SCC 259 14-SLP(C) 9202-9204 OF 2016 The observations in *Rahul S. Shah v. Jinendra Kumar Gandhi & Ors.*⁸ by a Bench of three learned Judges in this regard are also educative. The scope of the section is recognized as:-

“24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.” 12.2 It is all too well-settled that a Court cannot ‘go behind’ a decree.

Reference may be made to Rajasthan Financial Corpn. v. Man Industrial Corpn. Ltd.⁹; SBI v. Indexport Registered¹⁰; J&K Bank Ltd. v. Jagdish C. Gupta¹¹; and Rajasthan Udyog v. Hindustan Engg. & Industries Ltd.¹² (2021) 6 SCC 418 (2003) 7 SCC 522 (1992) 3 SCC 159 (2004) 10 SCC 568 (2020) 6 SCC 660 15-SLP(C) 9202-9204 OF 2016 12.3 In Sushil Kumar Mehta v. Gobind Ram Bohra¹³, it has been held that if a decree is passed by a competent court after due adjudication of merits, it operates as *res judicata*. If the same is nullity, its validity can be questioned at any stage. It was observed:

“26. Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as *res judicata* in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a *coram non judice*. A decree passed by such a court is a nullity and is *non est*. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. The doctrine of *res judicata* under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of fact and law, which are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them. Thus the decision of a competent court over the matter in issue may operate as *res judicata* in subsequent suit or proceedings or in other proceedings between the same parties and those claiming under them.

(Emphasis Supplied) This was followed/referred in Sabitri Dei v. Sarat Chandra Rout¹⁴, Jamia Masjid v. K.V. Rudrappa¹⁵.

(1990) 1 SCC 193 (1996) 3 SCC 301 (2022) 9 SCC 225 16-SLP(C) 9202-9204 OF 2016 12.4 The executing court is to determine all questions *inter se* the parties to the decree, as flows from the statutory text, have been reiterated in Jugalkishore Saraf v. Raw Cotton Co. Ltd.¹⁶ by SR Das, J. (as his Lordship the then was) in the following terms -

“Section 47 of the Civil Procedure Code does require that the executing court alone must determine all questions arising between the parties or their representatives and relating to the execution, discharge or satisfaction of the decree and authorises it even to treat the proceedings as a suit.”

Similar observations have been made by Vivian Bose, J. in *Jai Narain Ram Lundia v. Kedar Nath Khetan*¹⁷ as follows -

“23. The only question that remains is whether the executing court can consider whether the defendant is in a position to perform his part of the decree. But of course it can. If the executing court cannot consider this question who can? The executing court has to see that the defendant gives the plaintiff the very thing that the decree directs and not something else, so if there is any dispute about its identity or substance nobody but the court executing the decree can determine it. It is a matter distinctly relating to the execution, discharge and satisfaction of the decree and so under Section 47 of the Civil Procedure Code, it can only be determined by the court executing the decree...”^{12.5} An executing court is to execute the decree as it stands and cannot modify its terms. It has been so held in *C.F. Angadi v. Y.S. Hirannayya*¹⁸. The relevant extract is as under:

“10. A Court executing the decree shall execute it as it stands. It cannot modify or vary the terms of the decree. No exception can be taken to that general principle. But the execution court has the right to construe a decree in the light of the applicable provisions of law and if in this case on a construction of the decree in the light of the 1955 SCC OnLine SC 26 1956 SCC OnLine SC 50 (1972) 1 SCC 191 17-SLP(C) 9202-9204 OF 2016 applicable provision of law, it found that the deposit made by the respondent on January 2, 1960, was according to law a deposit in compliance with the terms of the decree, then the execution Court was not varying the terms of the decree but executing the decree as it stood after considering the effect of the deposit in the light of the relevant law.” [See also: *Deepa Bhargava & Anr. v. Mahesh Bhargava & Ors.*¹⁹]^{12.6} A decree passed by a Court not having the jurisdiction to do so, does not ipso facto, render it illegal. The recourse is for the aggrieved to have it set aside as per law. If they fail to do so, they shall be bound thereby. In *Rafique Bibi v.*

Syed Waliuddin²⁰ it was held:

“8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.” The view taken herein was affirmed by a Bench of three judges in *Balvant N. Viswamitra v. Yadav Sadashiv Mule*²¹, and followed recently, in *Asma Lateef v. Shabbir Ahmad*²².

^{12.7} Execution petition dismissed for default of the decree-holder does not operate as *res judicata* qua “further execution of the decree.” *Shivashankar Prasad Shah v. Baikunth Nath Singh*²³ records the position of law as below:-

(2009) 2 SCC 294 (2004) 1 SCC 287 (2004) 8 SCC 706 (2024) 4 SCC 696 18-SLP(C) 9202-9204 OF 2016 “6. The courts in India have generally taken the view that an execution petition which has been dismissed for the default of the decree-holder though by the time that petition came to be dismissed, the judgment-

debtor had resisted the execution on one or more grounds, does not bar the further execution of the decree in pursuance of fresh execution petitions filed in accordance with law — see *Lakshmibai Anant Kondkar v. Rayji Bhikaji Kondkar* [XXXI, BLR 400] . Even the dismissal for default of objections raised under Section 47 of the Civil Procedure Code does not operate as res judicata when the same objections are raised again in the course of the execution—see *Bahir Das Pal v. Girish Chandra Pal* [AIR 1923 Cal 287] ; *Bhagwati Prasad Sah v. Radha Kishan Sah* [AIR 1950 Pat 354] ; *Jethmal v. Mst. Sakina* [AIR 1961 Raj 59] ; *Bisvavannath Kundu v. Smt Subala Dassi* [AIR 1962 Cal 272] . We do not think that the decision in *Ramnarain v. Basudeo* [ILR XXV Pat 595] on which the learned counsel for the appellant placed great deal of reliance is correctly decided. Hence, we agree with the High Court that the plea of res judicata advanced by the appellant is unsustainable.” A judgment of far more recent vintage reiterates this position. See *Bhagyoday Coop. Bank Ltd. v. Ravindra Balkrishna Patel*²⁴.

12.8 In landlord-tenant disputes, writ petitions cannot be entertained when the executing court is seized of applications seeking setting aside of decree of eviction and order of possession. This Court in *Hameed Kunju v. Nazim*²⁵ held-

“26. In any case, in our considered view, the executing court having seized of the applications filed by the respondent, there was no justification on the part of the High Court to have entertained the writ petition and decided them like an original court. All that the High Court, in such circumstances, could do was to request the executing court to dispose of the pending applications (IAs) filed by the respondent on their respective merits leaving the parties to challenge the orders once passed on such applications by filing appeal, before the appellate authorities. It was, however, not done.” (1969) 1 SCC 718 (2022) 14 SCC 417 (2017) 8 SCC 611 19-SLP(C) 9202-9204 OF 2016 12.9 In scenarios where a compromise decree is entered into between the parties, the question to be asked is whether the Court whose duty it is to execute the decree is the one to have recorded the compromise. The following discussion made in *Lakshmi Narayanan v. S.S. Pandian*²⁶ is insightful :-

“11. Where in any execution proceedings objection to executability of a decree is taken under Section 47 CPC on the ground that by virtue of a compromise, the decree got extinguished and became inexecutable, the germane question that should be asked is whether the compromise was recorded by the court whose duty it is to execute the decree.

12. As long back as in 1939, the Privy Council in *Oudh Commercial Bank Ltd. v. Thakurain Bind Basni Kuer* [(1938-39) 66 IA 84 : AIR 1939 PC 80] laid down the law on the subject as follows:

“If it appears to the court, acting under Section 47, that the true effect of the agreement was to discharge the decree forthwith in consideration of certain promises by the debtor, then no doubt the court will not have occasion to enforce the agreement in execution proceedings, but will leave the creditor to bring a separate suit upon the contract. If, on the other hand, the agreement is intended to govern the liability of the debtor under the decree and to have effect upon the time or manner of its enforcement, it is a matter to be dealt with under Section 47. In such a case to say that the creditor may perhaps have a separate suit is to misread the Code, which by requiring all such matters to be dealt with in execution discloses a broader view of the scope and functions of an executing court. Their Lordships are in agreement with the statement in the case of Gobardhan Das [Gobardhan Das v. Dau Dayal, ILR (1932) 54 All 573 : AIR 1932 All 273] that ‘in numerous cases a compromise between the decree-holder and the judgment-debtor entered into in the course of execution proceedings, which was duly recorded, has been enforced’ and they are not of opinion that the practice, which is both widespread and inveterate, is contrary to the Code. They are of opinion that in the present case the compromises can and should be enforced in these execution proceedings.”

14. In a case where parties compromise after the decree in a case has been passed, the effect of the compromise on the executability of the (2000) 7 SCC 240 20-SLP(C) 9202-9204 OF 2016 decree depends upon the intention of the parties, which is a mixed question of law and fact and has to be determined by the executing court on an application under Section 47 CPC on interpretation of the decree and the compromise in the light of the facts and circumstances of each case. If on such determination it is gathered that the intention of the parties is to extinguish the decree and either the decree-holder or the judgment-debtor got the compromise recorded under Rule 2 of Order 21 CPC by the court whose duty it is to execute the decree, the execution of the decree cannot be proceeded with by the executing court. But if the intention of the parties is to keep the decree alive and to give effect to it in the manner agreed upon between the parties in the compromise, the decree will be given effect to accordingly or executed as it is depending upon whether the compromise is recorded by the court as aforementioned or not.” (Emphasis Supplied)

13. Having considered the application of Section 47 CPC, as above, let us now turn to the present facts. The High Court, in our view, has correctly held that the objector-appellant is not a third party to the dispute. The objections brought by him can rightly be considered under this section. In order to properly appreciate the genesis of the objections, let us take an example. A suit is filed by ‘A’ and ‘A1’ for half share of the piece of land owned jointly by them with others such as ‘B’. In time, the suit is decreed and ‘A’ and ‘A1’ are declared owners and possessors of said half of the property. Further down in time, a 2nd suit comes to be filed by ‘B’ against ‘C’ and others, including ‘A’ and ‘A1’, seeking one-fourth share of the very same piece of land, which was the subject matter of the suit filed earlier by ‘A’. The suit was accordingly decreed granting him rights over one fourth share in the property. Objections come to be filed by the successors in interest of A, stating that the very same piece of land granted to their forebears by the earlier suit, now stands granted to ‘B’.

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14. We have already noted above that the dispute, which has travelled up to this Court, pertains to the execution of decree of the second partition suit. The share sought to be divided was a result of the first partition suit. Let us, therefore, understand the import of the first suit. The prayer made thereunder, is reproduced below:

“Suit for declaration to the effect that plaintiffs are owners of $\frac{1}{2}$ share of the land measuring Khasra No.6363 Khatauni No. 7257, Khasra No.2259 (2 Kanals-18Marlas) as entered in Jamabandi 1969-70 situated at Moga Mehla Singh and entitled to separate possession of $\frac{1}{2}$ share of the land in question and possession by land in dispute way of consequential relief or to any other relief to which the plaintiffs are entitled.” The Court on 22nd September, 1979 decreed the suit in favour of the Plaintiffs in the following terms.

“As a result of my findings on the above issues, I decree the suit of the Plaintiffs for a declaration that there are the owners of half share of the suit land and for possession. The defendants will also bear the costs of the suit.” For clarity, it is mentioned that Mukand Singh, father of the objector/appellant herein was the plaintiff in the said suit. An appeal titled ‘Civil Appeal No.16-II of 1982, Dr. Thakar Singh v Mukand Singh & Ors.’ was filed before the Additional District Judge, Faridkot, which was dismissed as meritless vide judgment dated 18.10.1982. Handing over of possession was recorded by Additional Senior Sub-Judge, Moga, on 21st September, 1985 to the LRs of Mukand Singh and Chanan Singh.

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Ex. No. 116-100f 05/12.84 Decided on:

21.09.85 Mukand Singh S/o Lal Singh, Chaman Singh deceased represented by Smt. Parakash Kaur, window, Parvinder Kaur, & Jatinder Kaur daughter of Chaman Singh rs/of Moga.

Vs. Lakhminder Singh S/o Bachan Singh & Ors.

Sir, On spot, after demarcation possession of land measuring half of the 58 Marlas i.e. 29 Marlas given to decree holder. On the sport 14 $\frac{1}{2}$ marlas of land towards each side of the property of Dwarka Dass and 14 $\frac{1}{2}$ marlas of land towards his west side has been given to Jatinder Kaur, Parvinder Kaur, Smt. Parkash Kaur and sons of Mukund Singh decree holder. I did not face any difficulty and during the process, munadi was conducted and munadi fee was taken charged from the decree holder. Report is presented.

“Amar Nath N.N. 8.9.85 Sd/- Decree holder

1. Smt. Parkash Kaur wd/o Chanan Singh
2. Parvinder Kaur D/o Chanan Singh;
3. Jatinder Kaur D/o Chanan Singh;
4. Joginder Singh Sodhi S/o Mukand Singh, all residents of Moga.

Witnesses:

5. Matinder Singh S/o Banta Singh (Witness)
6. Sh. Rupinder Singh S/o Nazar Singh (Witness)
7. Sh. Sarawant Singh Arora S/o Dayal Singh (Witness) Sir, possession given. Sd/- dated 20.08.85

15. To put the grievance of the objector in context, it is that the lands decreed in second partition suit included Khasra No.2259 and in the execution, it is that part of the land that he received from his father Mukand Singh, which has been shown as belonging to the decree holders-respondents herein.

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16. With the appeal before the Additional District Judge, Faridkot, being dismissed, the decree of 1979 in the first partition suit has attained finality.

Therefore, the remit of the second partition suit necessarily has to exclude the portions which already stand decreed per the first partition suit. As already noticed above, by virtue of the first partition decree, the legal representatives of Mukand Singh and Chanan Singh have been in possession of the decreed lands since 21st September, 1985. Any decision qua Khasra No.2259 taken in the second partition suit has to protect the property as allotted to the legal representatives of the above-named persons. The Trial Court in its judgment dated 15th October, 1990 records that 'as regards khasra no.2259 and 2262 plaintiff alongwith Nand Singh are owners in possession of 1/2 share (1/4 share each) out of these Khasra numbers...'. It is evident from the above that Thakkar Singh and Nand Singh both acknowledged that their rights extended only to half the share of Khasra No.2259.

17. It is unclear from the record as to whether the portion of Khasra No.2259 styled 'NOPQ' by the final decree is the very same plot of land granted to the LRs of Mukand Singh by the warrant of possession dated 21 st September 1985, or not. Till and such time a clear determination in this regard is made, this dispute cannot be put to rest since there is no dispute as to the entitlement of one-fourth share. It is only, what part of the land constitutes the respective one-

fourth share which has led to the present judgment being passed. The respondents herein have alleged that the warrant of possession is a 'self prepared 24-SLP(C) 9202-9204 OF 2016 document' and 'not genuine' since there was no demarcation of shares. Both these questions are not for this Court to decide.

18. The impugned orders of the High Court dismissing the revision application are to be interfered with, for that instance, the procedure has managed to compromise the substantive right of the objector. The ground taken by the High Court to dismiss the revision application is that the appellant herein misapplied the provisions in filing his objections before the executing court, inasmuch as the objection petition mentioned both Section 47 as also Order XXI Rule 58 and 97 of the CPC. The High Court found that both these sets of provisions could not be applied together given that the method of assailing the orders passed therein are different and cannot co-exist. Whilst looking at it purely from a procedural point of view, this may have some merit; however, as has been long established, procedural irregularity cannot defeat substantive rights or cannot subvert substantive justice. Since the objector or his father already had a decree in their favour, fruits thereof cannot be denied to them by virtue of the fact that while attempting to protect their rights in a subsequent suit which would have affected their enjoyment of such property, the Sections or Orders under which they sought such protection, were incorrect.

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19. This Court cannot help but be reminded of the famous saying that procedure is the handmaiden of justice. This Court in *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon*²⁷ :

“5. Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of procedure.” We also find support for our conclusion in the judgment of this Court passed in *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Another*²⁸ :

“17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of noncompliance;
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.”

20. Further, The High Court with respect to the first partition suit, observed that it could not have been decreed by virtue of the Punjab Pre-Emption (Repeal) (1969) 1 SCC 869 (2006) 1 SCC 75 26-SLP(C) 9202-9204 OF 2016 Act, 1973, but then noted that this is not an aspect which requires delineation given that the entitlement of share is admitted by the parties. Be that as it may.

We find the said observation to be in error for the reason that the discussion of pre-emption in the judgment rendered in the first partition suit appears to correspond to an earlier transaction having taken place somewhere in the 1930s and 1940s by one Lal Singh, father of the plaintiffs in the first partition suit.

21. In view of the aforesaid discussion, the matter is remanded to the First Appellate Court to take a decision on the objections of the appellant afresh, on merits. It stands clarified that this Court has not expressed any view on the facts of the case. Considering the fact that this matter has been doing the rounds of various Court halls for more than two decades, we request the concerned Court to take all steps necessary for expeditious disposal. After all it was as far back as 1872 that the Privy Council in *General Manager of the Raj Durbhunga v.*

*Coomar Ramaput Sing*²⁹ lamented that the problems of the litigant in India, begin once he has obtained the decree. In *Messer Griesheim GmbH v. Goyal MG Gases Pvt Ltd.*³⁰ a hundred and fifty years later this Court observed that ‘there has been no improvement and still the decree holder faces the same problem what was being faced in the past.’ When a litigant approaches the Court, what he is interested in getting is not the imprimatur of the Court on his right over a certain amount of money or in this case property, what he actually (1871-72) 14 MIA 605:20 ER 912 (2022) 11 SCC 549 27-SLP(C) 9202-9204 OF 2016 wants is the actual money and/or property, and the rights that flow from possessing it, i.e., enjoyment of the same in whatever manner he sees fit.

Needless to add, it shall be open to any party to the instant lis to approach this Court subsequent to the disposal, should the need so arise.

22. The appeals are allowed to the aforesaid extent. The Registry is directed to forward a copy of this judgment to the learned Registrar General of the High Court of Punjab & Haryana who shall then ensure its passage to the concerned Court, expeditiously.

Pending application(s), if any, shall stand disposed of accordingly.

.....J. (J.B. PARDIWALA)J. (SANJAY KAROL) New Delhi;

October 17, 2024 28-SLP(C) 9202-9204 OF 2016