

**In the High Court of Madhya Pradesh**  
**At Indore**  
**BEFORE**  
**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**  
**ON THE 9<sup>TH</sup> OF NOVEMBER, 2022**  
**Miscellaneous Petition No.3521/2021**

Between: -

**Kamlesh Kumar S/o Radha Mohan Ji Sinhal,**  
Age- 56 years, Occupation- Business, Resident of- Neemuch (MP),  
**Present Address:** Subhash Marg, Jawad, Tehsil Jawad, District Neemuch (MP)

.....PETITIONER

(By Shri Brijesh Garg, Advocate)

AND

1. **Smt. Geeta Devi Wd/o Radha Mohan Ji Sinhal,**  
Age- 81 years,
2. **Ashok Kumar S/o Radha Mohan Ji Sinhal,**  
Age- 61 years,
3. **Anand Mohan S/o Radha Mohan Ji Sinhal (Deceased),**  
**Through Legal Representatives-**
  - (a) **Manju Devi W/o Anand Mohan Sinhyal,** Age- 38 years,
  - (b) **Kumari Anandi d/o Anand Mohan Sinhal,** Age- 20 years,  
Resident of- House No.38, Vivek Path, Nayaka Oli,  
Neemuch Cantonment, District Neemuch (MP)
4. **Smt. Kiran W/o Dr. Ashok Ji Goyal,**  
Age- 59 years, Occupation: Household Work,  
Resident of- A-303, Star Avenue, Near Extol College,  
Opposite Shajpura Police Station, Bhopal, District Bhopal 462 039
5. **Smt. Usha W/o Vijay Ji Goyal,**  
Age- 53 years, Occupation- Household Work,  
Resident of- D-136, Ground Floor, Siddharth Nagar,  
Behind North Railway Headquarters, Malviya Nagar,  
Jaipur, Rajasthan 302 017
6. **Nandkishore S/o Shivdayal Ji Sinhal,**  
Age- 74 years, Occupation- Business,  
Resident of- 333, Tilak Marg, Neemuch (MP)
7. **Satyanarayan S/o Shivdayal Ji Sinhal,**  
Age- 71 years, Occupation- Business,  
Resident of- 558, Tilak Marg, Neemuch (MP)

(Respondent No.2 by Smt. Archana Kher, learned counsel along with  
Shri Vinay Vijayvargiya, learned counsel; and  
Respondents No.7 and 8 by Shri Atul Kumar Gupta, learned counsel)

.....RESPONDENTS

.....  
This **PETITION** coming on for orders this day, the court  
passed the following:

### **ORDER**

With consent of the parties, the matter is heard finally.

This petition under Article 227 of the Constitution of India has been filed by the petitioner / plaintiff against order dated 16.04.2019 (Annexure P/5), passed in Execution Case No.20/2018 by the learned District Judge, Neemuch (MP), whereby in execution proceedings initiated by respondents No.1 to 3 / defendants No.1 to 3, an application was filed by the petitioner / plaintiff under Order 21 Rule 10 read with Order 47 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) for dismissal of the execution proceedings on the ground that judgment and decree dated 16<sup>th</sup> May, 2018 (Annexure P/1) passed by the District Judge, Neemuch, District Neemuch in Regular Civil Suit No.49-A/2011 is sought to be executed by the **defendants No.1 to 3** who, apparently are not the decree holders.

2. Learned counsel for the petitioner / plaintiff has submitted that the respondent (s) being judgement debtor cannot file execution proceedings even though the decree was passed in a suit for partition. Counsel has also drawn the attention of this Court to the

fact that initially written statement of the respondent (s) / defendant (s) was that the partition has already taken place and as such, a decree of partition cannot be passed; and now after the decree is passed, the respondent / defendant (s) themselves are proceeding to execute the decree.

3. In support of his contentions, learned counsel for the petitioner / plaintiff has relied upon a decision rendered by a coordinate bench of this Court in the case of **Bhanu Shankar Raikwar & another** v. **Vijay Shankar Raikwar & others** reported as **2013 (1) MPLJ 556**, wherein also, a decree was passed in a partition suit and the Court has held that the defendant is a “Judgment Debtor” as provided under Section 2 (10) of the Code for all practical purposes, hence, cannot execute the decree. Thus, it is submitted that the execution proceedings initiated by the respondent / defendant be set aside.

4. The petition is opposed by Smt. Archana Kher, learned counsel appearing along with Shri Vinay Vijayvargiya, learned counsel for respondent No.2 and Shri Atul Kumar Gupta, learned counsel appearing for respondents No.7 and 8.

5. Shri Vinay Vijayvargiya has submitted that the petition is liable to be dismissed, as admittedly, the decree passed in the present case was in a partition suit and even though the suit for partition was brought by the petitioner/plaintiff, it is a settled law that in a decree of partition, even the defendants are Decree Holders.

6. In support of his contention, Shri Vijayvargiya has relied upon a decision rendered by the Supreme Court in the case of **Dwarika Prasad v. Nirmala & others** reported as **2010 (2) MPLJ 249 = (2010) 2 SCC 107**, wherein it is held in no uncertain terms that every defendant is in the capacity of a plaintiff in a partition suit and is entitled to a decree in his favour. It is also submitted that even after obtaining the decree of partition, the petitioner/plaintiff has not executed the same and is only hampering the execution proceedings initiated by the respondents/defendants.

7. It is further submitted that so far as the case of Bhanu (supra) is concerned, the question before this Court was not whether a Judgment Debtor in a partition suit can execute a decree. In fact, it was a case where a decree was passed in the partition suit, auction proceedings took place and in execution proceedings, defendant raised an objection. Thus, it is submitted that no case for interference is made out, and the petition is liable to be dismissed.

8. Arguments heard, perused the record.

9. The sole question which falls for consideration of this Court is whether in a decree of partition, a “judgment debtor” can execute the decree, especially when he has resisted the civil suit on the ground that the partition had already taken place.

10. So far as the decision rendered by the coordinate bench of this Court in the case of **Bhanu Shankar Raikwar** (supra) is concerned, the relevant paras 9 and 10 read, as under: -

“9. I do not find any merit in the contention of learned

counsel for the appellants that present appellants are not the judgment-debtors and they are decree-holders because in a partition suit every party is a plaintiff. It is true that in a partition suit every party to the proceeding is having interest in the property which is to be partitioned but this would not mean against whom a partition decree has been passed cannot be said to be a judgment-debtor. The term "decree- holder" has been defined in Section 2(3) of CPC which means any person in whose favour decree has been passed or an order capable of execution has been made. If this provision is applied in *stricto sensu* it is revealed that it is in two parts. In the first part a decree-holder means a person in whose favour a decree has been passed and in the second part any order capable of execution has been made in his favour. Thus, the decree of partition which has been passed in favour of respondent no.1 is capable of execution. Indeed, the decree-holder is a person in whose favour decree or executable order has been passed.

**10.** Similarly, the term "judgment-debtor" has been defined in Section 2(10) of CPC which means any person against whom a decree has been passed or an order capable of execution has been made. Thus, in the same manner this provision is also in two parts and includes a person against whom a decree has been passed or an order has been passed capable of execution. The decree in question is passed against the appellants and it is also capable of execution. The judgment and decree passed in Civil Suit No. 56-A/99 dated 4.2.2002 has been seen and on its bare perusal it is gathered that respondent no.1 who was plaintiff has claimed 1/5 th share in the suit property. However, the present appellants resisted the suit by pleading that the plaintiff abandoned his claim in the suit property after having obtained a sum of 1,50,000/- from them since he does not want to reside in the property in dispute. The learned Trial Court framed specific issue no.1 in this regard. While deciding this issue, learned Trial Court did not find the stand of the appellants to be proved. On the contrary, it was found to be not proved and it was held that respondent no.1 is entitled to 1/5 th share in the suit property and is also entitled for separate possession after getting it partitioned. Thus, an executable decree has been passed in favour of respondent no.1 and against the present appellants who are claiming that they are not the judgment-debtors and indeed they are the decree-holders."

(emphasis supplied)

**11. On the other hand, the Supreme Court in the case of Dwarika Prasad (supra) has held, as under: -**

“10. .... What is relevant to notice is that the late father of the respondent No. 1 did not claim any exclusive title to the properties in himself. He claimed partition of the properties as one of the joint owners. Initially, the suit was not only decreed in his favour but also in favour of the third brother. It is well settled that in a suit for partition of the joint properties every defendant is also in the capacity of the plaintiff and would be entitled to decree in his favour, if it is established that he has the share in the properties. Therefore, the suit for partition of the joint properties, filed by the late father of respondent No. 1, could not have been dismissed as withdrawn without notice to another brother, who was also entitled to share in the properties. Taking over all view of the matter, this Court finds that no illegality or irregularity is committed by the High Court in dismissing the Revision Petition filed by the appellant. The High Court has confirmed the order of the learned Additional District Judge, Gwalior, by which substantial justice is done to the parties. Therefore, no case is made out by the appellant to interfere with the order passed by the High Court and, thus, the instant appeal is liable to be dismissed.”  
(emphasis supplied)

**12. So far as the decree in the case on hand is concerned, it has been passed on 16.05.2018, and reads, as under: -**

“38. अतः वाद निम्नानुसार आज्ञप्त किया जाता है:-  
(एक)- वादग्रस्त संपत्ति ग्राम कुमारिया विरान स्थित खसरा नंबर -31 रकबा 5 बीघा भूमि में से 23 बिस्वा भूमि अर्थात् 1 बीघा 3 बिस्वा भूमि पर स्थित प्लॉट नंबर-3, 6 व 15 में वादी का 1/18 अंश या स्वत्व है और प्रतिवादी क्रं.-1 से 5 का भी प्रत्येक का 1/18 अंश या स्वत्व है तथा प्रतिवादी क्रं.-6 व 7 का प्रत्येक का 1/3 अंश या स्वत्व है।  
(दो)- कृषि उपज मंडी नीमच स्थित प्लॉट नंबर-42 पर निर्मित एक पक्की दुकान दो शटर वाली एवं बरामदा एवं उसके आगे खुला चबूतरा व नाल, इत्यादि बना है, उस पर वादी का 1/6 अंश या स्वत्व है और इसी प्रकार प्रतिवादी क्रं.-1 से 5 का भी प्रत्येक का 1/6 अंश या स्वत्व है।  
(तीन)- वादी अपने उक्त अंश या स्वत्व के मान से उक्त ग्राम कुमारिया विरान और कृषि उपज मंडी नीमच स्थित प्लॉट नंबर 42 का विभाजन करवाकर पृथक से आधिपत्य पाने का पात्र है?  
(चार)- नायका ओली नीमच स्थित मकान नंबर 312 (नया नंबर-38) तथा

500 तौला सोना, 30 किलो चांदी और बर्तन व जेवर के संबंध में और प्रतिवादी क्रं.-3 द्वारा प्रतिवादी क्रं.-8 के पक्ष में निष्पादित विक्रयपत्र और प्रतिवादी क्रं.-2 द्वारा प्रतिवादी क्रं. 10 व 11 के पक्ष में निष्पादित विक्रयपत्र को शून्य व व्यर्थ घोषित करवाने के संबंध में वादी का वाद खारिज किया जाता है।

(पाँच)– उभयपक्ष अपना-अपना वाद खर्च वहन करेंगे।

(छः)– अभिभाषक शुल्क प्रमाणित होने पर प्रमाण-पत्र अनुसार या अनुसूचि अनुसार (जो भी कम हो) लगाया जावे।”

(emphasis supplied)

**13.** In the light of the aforesaid decree it is apparent that decree has also been passed in favour of the defendants in their respective share. In such circumstances, regardless of what their plea / defence was in the civil suit, the defendants are also entitled to execute the decree if it is not executed by the plaintiff. Otherwise, if they are not allowed to execute the decree, they would be rendered remedy-less if they want to claim their share in the partitioned property, which cannot be the intention of the legislature and which is also reflected from the definition of 'decree holder', as provided under s.2(3) of CPC, which reads, as under: -

**“2 Definitions.**

**In this Act, unless there is anything repugnant in the subject or context,**

**(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made.”**

(emphasis supplied)

**14.** In this context, provisions of Order XXI Rule 15 CPC are also relevant and read, as under: -

**“ORDER XXI**

**EXECUTION OF DECREES AND ORDERS**

**15. Application for execution by Joint decree-holders.—**

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.”

(emphasis supplied)

15. In view of the aforesaid discussion, and provisions of CPC, it is held that a decree of partition can also be executed by the defendants to the suit being the persons in whose favour a joint decree has been passed, and thus, no illegality has been committed by the learned judge of the executing court in rejecting the application filed by the petitioner/plaintiff that a defendant cannot execute a decree of partition.

16. So far as the decision in the case of Bhanu (supra) is concerned, in the light of the decision rendered by the Supreme Court in the case of Dwarika Prasad (supra), it was not an issue before the court that whether a judgment debtor in a partition suit can also execute a decree. Thus, the observations made in that case do not decide the issue which is raised in this petition and hence, the said decision is of no avail to the petitioner.

17. Resultantly, the Miscellaneous Petition No.3521/2021 being devoid of merits, stands **dismissed**. Learned judge of the executing court is also directed to execute the decree as expeditiously as possible.



All the other pending interlocutory applications, if any, shall stand **disposed of**.

Certified copy as per rules.

**(Subodh Abhyankar)**  
**Judge**

Pithawe RC

