

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

CIVIL REVISION No. 152 of 2023

HEERALAL DECEASED THROUGH LRS. RAJESH AND OTHERS

Versus

OMPRAKASH AND OTHERS

Appearance:

Shri Prafulla V. Bhagwat, Advocate for the petitioners.

Shri Akhil Godha, Advocate for the respondent No.1.

Heard on : 19.08.2025

Pronounced on : 16.09.2025

ORDER

This civil revision under Section 115 of the Code of Civil Procedure, 1908 has been preferred by the petitioners, being aggrieved by the order dated 05.01.2023 passed by the 29th District Judge, Indore (MP) in Execution Case No.1100004/2015, whereby execution application under Order 21 Rule 32 of CPC by which the application for enforcement of the decree filed by the petitioners (decree holders) has been dismissed by the Executing Court, as it was being willfully disobeyed by the respondents/judgment debtors as the identify of the land is not ascertained.

2. Brief facts of the case are that the petitioners/decree holders had instituted an execution before the Additional District Judge, Indore in Civil Suit No.4A/2015 for declaration, permanent and mandatory injunctions in respect of the agricultural land bearing survey No.369/1/1 area 0.699 hectare situated at Village Dakachya, Tehsil Sanwer, District Indore. The respondents were the defendants in the said civil suit. The aforesaid suit was decreed ex-parte on 24.02.2016. Since it was an ex-parte

decree, the respondents preferred an application under Order IX Rule 13 of CPC for setting aside the ex-parte decree before the Trial Court and the Trial Court dismissed the said application vide order dated 29.08.2017 in MCC No.69/2016. The said order was challenged by the respondents in an appeal bearing M.A. No.2608/2017 under Order 43 Rule 1(d) of CPC before this Court and this Court vide order dated 01.11.2018 has also dismissed the aforesaid appeal. Against the said appeal, the respondents have preferred an appeal under Section 96 of CPC against the original judgement and decree dated 28.04.2015 after a delay of 1448 days, which was dismissed vide order dated 02.08.2021 in F.A. No.1306/2019. Vide judgement dated 28.04.2015, the suit was decreed in favour of the plaintiff directing the respondents not to create any obstacles in the way of the petitioners and to remove the "Muram" from the passage of the suit land.

3. The decree holder has filed an application before the Executing Court submitting that the judgement debtors have violated the decree of injunction. Prayer was made for issuance of appropriate direction directing the judgement debtors to remove the "Muram" from the passage of the suit land and for punishing them for willful disobedience of the decree. The judgement debtors contested the application by filing their reply but the Executing Court has passed the order by stating that the judgement debtors has no right to interfere with the peaceful possession of the decree holder and directed the decree holder to have legal action for recovery of possession.

4. By the impugned order, the execution application preferred by the petitioners had been dismissed by the Executing Court by observing that since the decree in favour of decree holder is for permanent injunction and held that Executing Court does not go beyond the decree and the Executing Court has no right to issue possession warrant in regard to the judgement debtors and has rejected the execution proceedings. Being aggrieved by the aforesaid order, the petitioners/decreed holders has preferred this revision on the ground that the order of Executing Court is wrong, illegal and against the settled principles of law. The Executing Court by permitting

the parties to lead evidence and after examining the same had found that the petitioners could not prove that any violation of the injunction order was done by the judgement debtors and accordingly the application under Order 21 Rule 32 of CPC has been rejected. Hence, prays for setting-aside the impugned order passed by the Executing Court. The relevant part of impugned order dated 05.01.2023 reads as under :-.

"22. प्रकरण में निर्णय अनुसार वदग्रस्त आजी 369/1/1 वदी स्वयं के हेलन एवं उसमें रास्त नही हेलन अभिनिर्धारित किय है एवं उससे प्रतिवेगण के प्रेश करने व करवने से निषेधित किय गय है डिक्टर/अवेक्क क तर्क है कि मध्यम/अवेक्क द्वारा प्रस्तुत अपील में प्रर्श प. 7 के अभिप्राय में डिक्टर/वदी के भूमि में उसका रास्त हेलन स्वीकार किय है जे कि उल्लंघन के प्रमाणित करत है किन्तु हस्तगत प्रकरण में आजी नं. 369/1/1 के अवस्थिति के बारे में स्थिति स्पष्ट नही है। किन्तु 05.03.2021 के प्रतिवेदन प्रर्श वे. 1 प्रस्तुत किय गय है जिसमें हस्तगत प्रकरण में निषेधन के काम में कार्यवाही हेतु नियुक्त तहसीलदार द्वारा तहसीलदार द्वारा प्रार किय गय है कि वदग्रस्त आजी 369/1/1 वदी के नम पर दर्ज है। नक्शा सीट में सर्वे नं. 369/1/1 वदी के कब्जे से भिन्न स्थान पर दर्शय गय है जिस कारण प्रमाणित भूमि का चिह्नबन नही हो पय है। प्रस्तुत पंचम प्रर्श वे. 03 में भी प्रार किय गय है कि फिल्टर एवं मैक का मिशन उपरुध नक्शासीट से किय गय व मिशन करने पर पय गय कि प्रस्तुत फिल्टर एवं उपरुध नक्शासीट में मैक के भिन्न है। अभ्यक्षों के मध्य हस्तगत निर्णय एवं डि. किन्तु 28.04.15 परित किये जाने के पश्चात भी राज्य न्यायलय में सीमंवन के संबंध में कार्यवाही लंबित रही हैं जिसमें नया तहसीलदार क्षिप द्वारा अनुविभागीय अधिकारी को दिय गये प्रतिवेदन प्रर्श प. 6 में डिक्टर के भूमि में से बर्तमान रास्त निकाले जाने के तथ्य से इंकार करते हुए पं. प्रमाणित रास्त खण नं. 368 में हेलन बनाय है। तत्पश्चात अभ्यक्षों के मध्य सीमंवन अदेश के संबंध में अपर क्लेयर के समक्ष प्रस्तुत निगमन में परित अदेश किन्तु 28.01.20 द्वारा अभ्यक्षों के निजी भूमि का विधिगत सीमंवन किये जाने के अदेश प्रर्श वे. 08 द्वारा दिय गये हैं। इस प्रकार अभ्यक्षों के भूमि का सीमंवन का मूलभूत विवाद है जिसका निवारण राज्य न्यायलय से नही हो पय है। ऊर सीमंवन के अभाव में आजी नं. 369/1/1 के अवस्थिति स्पष्ट नही है जिसके अभाव में यह नही मन ज सकत कि मध्यम/अवेक्क द्वारा जनसूझर स्थयी निषेधन के अदेश का उल्लंघन किय गय है। अदेश 21 नियम 32 सी.पी.सी. में स्थयी निषेधन के अदेश के उल्लंघन के अवस्थित प्रमाणितियों के संबंध में मन्नीय कर्नल उच्च न्यायलय के न्यायद्वयंत एच एस शिखरमि बम एचएसराघेन्द्र 2012 एससी.सी. अं. 7356 के विवर में लिय जन समीचन है जिसमें अभिनिर्धारित किय है कि

7. In the instant case, we are concerned with the execution of the decree for injunction. The above provision contains the expression 'wilful, which means Dannammadevi Cycle Mart, Rabakavi [AIR 1987 Kar 261. this Court has held that deliberate or intentional In Shivamurthy Mahalingappa Kuchanaur v Order 21 Rule 32(1) requires that the person seeking execution of the decree for injunction by detention of the person bound by the decree in civil prison must place materials

before the executing Court as would enable it to conclude that (1) the person bound by the decree was fully aware of the terms of the decree and its binding nature upon him and (2) that person has had an opportunity of obeying such decree but has wilfully Le..., consciously and deliberately disobeyed such decree so that it can make an order for his detention as sought for. Thus, the onus of placing the aforesaid materials before the executing Court is on the decree holder. The executing Court cannot make an order for detention of the judgment debtor under Order 21 Rule 32(1) without recording a finding on the basis of the materials to be produced by the person seeking execution of the decree that the judgment debtor though has had an opportunity of obeying the decree has wilfully failed to obey it. Therefore, where the executing Court ordered detention of the judgment debtor in civil prison on the finding that he had wilfully disobeyed the decree for injunction merely on the basis of rival arguments heard by it and not on the basis of any material placed before it by the parties, the order of detention would be invalid.

8. *In Kariyappa v. Haladappa [AIR 1989 Kar 163], this Court was considering the meaning of the expression 'wilful disobedience'. It has been held as under:*

"Wilfulness connotes a 'deliberate action', conduct moulded by an obstinacy to act consciously disregarding an injunction against such a conduct. For example, in the case of a right of way, the judgment debtor may plead that on a particular day, he had to put up a fence across it to avert a major disaster and not with a view to obstruct the decree holder. He may agree to the removal of the obstruction or agree to provide a convenient alternate pathway to the decree holder, when called upon to do so under Order 21 Rule 32(1) CPC; in such a situation, disobedience cannot be termed as wilful. But the initial onus to place the relevant material for an action against the judgment debtor will be always on the decree holder."

9. *It is thus clear that in order to detain the judgment debtor in the civil prison for the disobedience of the decree of injunction, the decree holder has to satisfy that the judgment debtor has wilfully failed to obey the decree despite having had an opportunity of obeying it. 'Wilful' means deliberate or intentional and not accidental or by inadvertence. 'Wilfulness' connotes a deliberate action, conduct, moulded by obstinacy to act consciously disregarding an injunction against such an order. If the disobedience is the result of some compelling circumstances under which it was not possible to comply with the order, it is not*

wilful disobedience. The Court under this provision is empowered to order to take away the liberty of an individual and order for detention of the person who violates the order in the civil prison. The said power of the Court is penal in nature. The Court cannot pass an order of detention on suspicion or as a matter of course. There should be a clear proof that the order of disobedience was clear, unambiguous and with full knowledge of the contents of the order; it was wilfully disobeyed. Therefore, the initial onus to place the relevant material for an action against the judgment debtor will always be on the decree holder."

24. हस्तात प्रकरण में वद्वत्त आजी के अस्थिति के संबंध में सीमंकन के संबंध में विद है उसके अभाव में यह नहीं मन ज सक्त कि मधन/अनवेकक द्वा जन्हुमर स्थये निधन के अदेश क उल्लघ्न किय गय है। विविद द्वा प्रस्तुत मन्नीय मप्र उच्च न्ययलय ग्वलियर पीठ क न्ययध्वंत तेरण सिं बम इमत सिं रिट पिशन 5213/2013 निर्णय दिंक 04.08.2017 में बतय गय है कि केवल इस अंशक के अधर पर कि मधन/अनवेकक कजे में हस्तक्षेप करने क प्रयस कर रहे हैं अदेश 21 नियम 32 से पी.सी. के प्रवधन लगू नहीं होते हैं। प्रस्तुत न्ययध्वंत हस्तात प्रकरण से मेल नहीं खत है।"

5. Though submission has been made by counsel for the petitioners in detail on the question as to whether the decree has been violated by the judgement debtors and as to whether the said fact is proved from the material available on record, but it is noticed that the application of the decree holders has been rejected by the Executing Court primarily on the ground that the same is not maintainable. However, it is submitted that the Court below ought to have taken action against the respondents for violating the decree in terms of Order 21 Rule 32 of CPC.

6. On the other hand, learned counsel for the respondents has supported the impugned order and submits that the violation has not been done voluntarily.

7. Heard and perused the record.

8. In case the judgement debtors violate the injunction decree and forcibly take possession, whether the remedy of the decree holders would be to file application under Order 21 Rule 32 of the CPC, has been emphatically settled by this Court in the case of **Toran Singh Vs. Imrat Singh and other, 2012 (3) M.P.L.J, 385**, in which it has been held in paragraph Nos.12 to 16 as under:-

“12. A bare perusal of the recommendation shows that the intention was to adopt a wider view to cover prohibitory as well as mandatory injunctions. Interestingly, this recommendation was made by Law Commission even contrary to the views taken by various High Courts before such recommendation. It was felt necessary to include that Explanation in the interest of justice so that decree-holder should not be driven to a separate suit for getting relief in the nature of enforcement of a decree which will ultimately save his time, labour and money. Once the said recommendation is translated in reality by including it in CPC by way of Explanation, the basic question is whether petitioner can succeed on the strength of existing provision, i.e., Order 21 Rule 32 (1) (5), read with Explanation. In the opinion of this Court, the Executing Court has power and jurisdiction to pass any order to see that the decree is enforced and implemented and it is obeyed by the judgment debtor. Even a decree of a permanent prohibitory injunction needs to be enforced as per the said Explanation. If the judgment debtor had gained possession on the decree-holder's property by violating decree, said judgment debtor needs to be expelled by the Executive Court by exercising powers under Order 21 Rule 32 or by exercising inherent powers under Section 151 of CPC.

13. In my considered opinion, the Court below has given specific finding regarding allotment of land in favour of the petitioner which had not been cancelled, coupled with the finding that the petitioner is in possession. On the strength of these findings, the permanent injunction was granted with further direction to not to disturb the petitioner from the possession. If contrary to aforesaid judgment and decree, judgment debtor had disturbed and gained possession, it amounts to defeating the decree passed by the Court below. Thus, it has to be held that the judgment debtor forcibly dispossessed the plaintiff in violation of order or injunction and took possession of the property. The Executing Court has ample jurisdiction to prevent the decree being flouted and to do justice to the plaintiff by putting back the plaintiff in possession of the property. This Court finds support from the following judgments:-

14. In AIR 1975 Madras 270 (FB), the Full Bench of the High Court held that Order 39 of CPC should not be considered as placing any limit on the scope of inherent power under Section 151, which are wide and not subject to any limitation. Whenever there is any violation of an order or injunction against party, or something has been done in disobedience, it will be the duty of

the Court to put the clock back to set the wrong right and not of the Court will not only be available in such cases, but it is bound to be exercised in that manner in the interest of justice. The same view was taken in Surjit Pal Vs. Prabir Kumar Sun, AIR 1986 Calcutta 220 and Hari Nandan Agrawal and another Vs. S.N. Pandita, AIR 1975 Allahabad 482.

15. I will be failing in my duty, if I do not mention that there were conflicting views expressed in various decisions of various High Courts regarding applicability of Order 21 Rule 32 in respect of decrees of prohibitory injunction. Some of the High Courts took a view that sub-rule (5) of Rule 32 of Order 21 cannot be invoked to enforce a decree of prohibitory injunction, while some Courts have taken contrary view. However, the controversy can be said to be put to rest by bringing the explanation below sub-rule (5). The statement of objects and reasons of CPC (Amendment) Act, 2002, makes the position clear that the Explanation to Rule 32 was added on the basis of the report of Law Commission. Thus, the intention of the Parliament and legal mandate is to implement the prohibitory injunctions in execution proceedings.

16. On the basis of principles of law laid down by various High Courts, there is no doubt that the Executing Court is not justified in closing the matter about delivery of possession on a hyper technical ground that decree for prohibitory injunction cannot be enforced in the manner prayed by the decree holder. The decision is bad in law and if this decision is permitted to stand, it will lead to a situation of lawlessness and the decree holder will be compelled to file another suit for possession. This is not the intention of Order 21 Rule 32 (5) and the Explanation. The duty of the Court is to see that the inherent powers are exercised when needs to be exercised, otherwise the litigant will loose faith in Courts and they may resort to other illegal short cuts than approaching the Civil Court.”

9. Thus, when a decree for permanent prohibitory injunction is violated and judgement debtors gain possession of the decree holders' property by violating the decree, the judgement debtors may be expelled by the Executing Court by exercising powers under Order 21 Rule 32 of the CPC. It would not be necessary for the decree holder to take any proceedings for seeking recovery of possession of the property or to institute a fresh suit. The same can very well be done in the proceedings instituted by the decree holders by the Executing Court itself. In the application which had been

filed by the decree holders before the Executing Court, specific prayer was made for directing the judgement debtors for removal of the "Muram" over the suit land. This was upon allegation that the decree for permanent injunction has been violated by them and they have forcibly taken possession of the suit land. Such a relief could very well be granted to the decree holder in exercise of power under Order 21 Rule 32 of the CPC and it would not be necessary for the decree holder to claim only those reliefs which are specifically mentioned therein. If required, demarcation can be done by the revenue authorities by the order of the Trial Court or on an application by any of the party. The decree holder has alleged the violation of decree for permanent injunction by the judgement debtors and has prayed for removal of "Muram" from the suit property. The said application is in fact an application under Order 21 Rule 32 of the CPC claiming the relief which as per the judgement of **Toran Singh (supra)** can be claimed in such a proceeding. The Executing Court has hence erred in dismissing the application preferred by the decree holder as not maintainable. Disobedience of a decree of injunction is necessary for seeking restitution under Order 21 Rule 32(5). It is well established that an Executing Court cannot go outside or beyond the decree. But the duty of the Executing Court is to give effect to the terms of the decree. Though it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation.

10. After hearing counsel for the parties and on perusal of the record, it is worthwhile to produce Order 21 Rule 32 of CPC, which reads as under:-

"Order 21 Rule 32 CPC

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his

property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunctions been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(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 and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation s 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 here, 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.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

11. On perusal of the record, it seems that there is a dispute of demarcation seen at the spot and both the parties are free to approach the Revenue Court for demarcation. It was found that the judgement debtors was directed not to create any hindrance or obstacles over the suit land of the petitioners/decreed holders.

12. Having regard to the aforesaid and considering the fact that the Executing Court has not duly and properly appreciated the entire arguments before reaching to the conclusion that the petitioners could not establish violation of the decree of permanent injunction by the respondents, I am of the opinion that some error has been committed by the Executing Court in rejecting the said application.

13. In view of the foregoing analysis, present revision is disposed of directing the Executing Court to get the demarcation done by the revenue authorities and to decide the issue with regard to the "Murham" whether it was put on the suit land or on any other land, as the impugned order is a clear violation of injunction order.
14. Miscellaneous application(s), pending if any, shall stand closed.

(ALOK AWASTHI)
JUDGE

gp