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CR-1095-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 16th OF OCTOBER, 2025CIVIL REVISION No. 1095 of 2025*PRABHUDAYAL AGRAWAL**Versus**SMT SWETA AGRAWAL AND OTHERS*

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Appearance:

Shri Shailesh Kumar Jain - Advocate for the petitioner.

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ORDER

The present petition has been filed by the petitioner being aggrieved by the order dated 21.08.2025 passed in execution case no. EXA/540000/2014 by the 29th Civil Judge, Senior Division, Jabalpur, whereby an application submitted by the Judgment debtor/respondent for staying the execution of proceedings under Order 21 Rule 29 of CPC has been allowed and the execution proceedings has been stayed till the decision of the civil suit pending in respect of the subject matter of the execution.

2. It has been contended by learned counsel for the petitioner that the Hon'ble Apex Court in the case of *Shri Krishna Singh vs. Mathura Ahir and Ors.* reported in (1981) 4 SCC 421, following the principle of law laid down by the Hon'ble Apex Court in the earlier judgment of *Shaukat Hussain alias Ali Akram vs. Smt. Bhuneshwari Devi (dead) by Lrs.* reported in AIR 1973 SC 528; has held that Rule 29 provides that the power of the Court to stay execution before it flows directly from the fact that the execution is at the



instance of the decree holder whose decree had been passed by that court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution. It has further been submitted that the other High Courts have also held accordingly and relied on the judgment of the Bombay High Court passed in *Kum. Aniket Anant Late & Ors. vs. Shri Prakash Balu Lale & Ors.* reported in (2018) 3 BOM CR 368, wherein, it is held that the suit and the execution proceedings must be pending in one and the same court in order to invoke the provisions of Order XXI Rule 29 of the CPC.

3 . Considering the backdrop of the present case, it is ample clear that the civil suit in regard to the subject matter for declaration of title and partition are pending and in that, one suit for mandatory injunction by evicting the respondents from the subject matter of the suit has also been filed by the present petitioner who has also claimed his right in the subject matter through succession. It is submitted that the decree of eviction has been passed against all the respondents treating them to be licensee on the basis of an agreement and therefore, such decree cannot be stayed on the ground that the respondents were permitted to occupy the suit accommodation and despite of notice, they have not vacated the premises and became an encroacher. It is submitted that the learned Court below has erred in law in allowing such application against the settled principle of law as laid down by the Hon'ble Apex Court.

4. Heard learned counsel for the petitioner and perused the record.

5. It is evident from the impugned order dated 21.08.2025 that in respect of the subject matter of the property, there are suits - 489/25, 805/19, 314/23 and 630/25 which are pending in respect of sale executed by the original



owner and respective shares of the co-owners. The respondent no.1 had also filed a civil suit no.489/25 for declaration of 1/5th share as well as to declare the Will dated 03.04.2013 and 12.06.2017 as null and void, out of which one is in favour of the petitioner.

Order 21 Rule 29 of CPC provides that where suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending of the suit has been decided.

6 . The Hon'ble Apex Court in the case of *Shri Krishna Singh (supra)* in paragraphs 17 and 18 has held as under :-

*"17. There is yet a very formidable defect in the Order passed by the Civil Judge. Under Order 21, Rule 29 jurisdiction is vested only in the Court which had passed the decree to stay its execution. In the instant case, the suit which was the subject-matter of the appeal was decided by the Munsiff, Varanasi who had passed the decree. Therefore, an application for stay of execution, if any, could have been made before that Court and not before any other court, including the Civil Judge. We are fortified in our view by a decision of this Court in *Shaukat Hussain alias Ali Akram v. Smt. Bhuneshwari Devi (Dead)* by Lrs.(1972) 2 SCC 731, where this Court observed as follows :*

Rule 29 clearly shows that the power of the Court to stay execution before it flows directly from the fact that the execution is at the instance of the decree-holder whose decree had been passed by that court only. If



the decree in execution was not passed by it, it had no jurisdiction to stay the execution.

(emphasis supplied)

18. It was contended by Mr. Asthana that Order 21, Rule 29 was amended by Section 72 of Act 104 of 1976 which introduced the following words: "or of a decree which is being executed by such court". The amendment is of no avail to Sri Krishna Singh because the words "such court" appear in the amendment also. Furthermore, the execution in the instant case was first filed before the City Munsiff who alone had the jurisdiction to proceed under Order 21, Rule 29. As the execution case was transferred to the Civil Judge, he ceased to have any jurisdiction in the matter. Thus, on this ground also the Order of the Civil Judge and as affirmed by the District Judge in revision is a nullity. Moreover, the judgment of the Civil Judge in view of the circumstances detailed above appears to us to be an order passed in defiance of and in disobedience to the clear directions given by us and the decree passed by us in C.A. No. 1802 of 1971 and therefore would be nonest and absolutely without jurisdiction and violative of Article 141 of the Constitution of India."

7. In the case of *Shri Krishna Singh (supra)*, the original decree was passed by the Munsiff and the same has been challenged before the Higher Courts and affirmed by the Hon'ble Apex Court. Thereafter, by the same party, another suit was filed to procrastinate the execution of the earlier decree. The execution of the decree was transferred from the Munsiff Court to Civil Court. There, an application under Order 21 Rule 29 of CPC has been filed and on that, the Court has held that the application can be filed to the Court



where the original execution has been filed or before the Court which has passed the decree. In that case, the Munsiff court was the original court and therefore, it has been opined that if the decree in execution was not passed by the Court, it had no jurisdiction to stay the execution, meaning thereby, the application under Order 21 Rule 29 of CPC can be filed before the Court which has passed the decree.

8. In the present case in hand, the application has been filed before the Executing Court which has passed the decree. Therefore, the Court has rightly passed the order staying the execution pending the disposal of the suits in respect of declaration as well as partition filed by the same parties. If the decree of eviction against the judgment debtor is allowed to be executed at this stage without their right to be determined as they have claimed on the basis of Will or natural succession, the very purpose of provision under Order 21 Rule 29 of CPC would be defeated.

9. Thus, this Court does not find any irregularity or illegality, much less jurisdictional error in the impugned order. Accordingly, the petition sans merits and is hereby **dismissed**.

(DEEPAK KHOT)
JUDGE