



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 153 of 2024

[Application under Articles 226 & 227 of the Constitution of India]

AFR Kalyani Swain and others Petitioners

-Versus-

Bijay Kumar Swain & others **Opp. Parties**

Advocate(s) appeared in this case:

For Petitioners : M/s.Ajit Ch. Mohapatra, A.K. Panda,
& B.K. Panda, Advocates.

For Opp.Parties : M/s. S.C. Samantary & G.K. Sahoo,
Advocates.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

19th December, 2025

SASHIKANTA MISHRA, J.

Long before, in the case of ***General Manager of the Raj Durbhunga v. Maharajah Coomar Ramaput Singh***¹, it was said by the Privy Council that the problems of a decree holder begin after passing of the decree in his favour. Fighting a litigation and obtaining a favourable decree is one thing but getting it enforced is quite

¹ 1872 SCC OnLine PC 16



another. The present case is an illustration of the above truism which often plagues the civil justice system of our country.

2. The petitioners are the judgment debtors in Execution Case No. 13 of 2012 of the Court learned First Addl. Senior Civil Judge, Cuttack. In the present application under Article 227 of the Constitution of India, they assail the order dated 29.01.2023 passed by the 1st Addl. District Judge, Cuttack in Civil Revision Case No. 6 of 2021 confirming thereby the order dated 25.10.2021 passed by the aforementioned executing Court in CMA No. 152 of 2021.

3. The facts of the case, relevant only to decide the present application, are that one Krushna Swain, father of the opposite parties (decree holder) had filed T.S. No. 148 of 1981 against father of the petitioners (judgment debtor) for declaration of right, title, interest, confirmation of possession and permanent injunction over 'C' Schedule property prescribed in the plaint. The suit was decreed by



declaring title of the plaintiff, confirming his possession and by permanently restraining the defendant from interfering with his possession vide judgment dated 09.11.1983 and decree dated 24.11.1983. The defendant carried appeal being TA No.2 of 1984. Said appeal was dismissed on 23.02.1987 confirming thereby the judgment and decree of the trial Court. The defendant carried further appeal to this Court being RSA No.156 of 1987, but the same was also dismissed on 16.01.2008. Thus, the order of the trial court attained finality.

4. The decree holder lodged execution being Execution Case No.13 of 2012 on 20.11.2012 alleging that the judgment debtor forcibly occupied the 'C' Schedule land. Upon receiving notice, the judgment debtor filed objection under section 47 of CPC being CMA No. 38 of 2013. Said application was dismissed on 16.10.2019. The judgment debtor again filed a petition questioning the maintainability of the execution case, which was also rejected vide order dated 26.01.2020. By the said order, the



executing Court directed the decree holder to take necessary steps and for payment of fees for issuing writ of delivery of possession by evicting the judgment debtor. It is stated that said order was complied with by the decree holder on 18.03.2021. The judgment debtor again filed an application under Section 47 of CPC being CMA No.42 of 2021, which was dismissed on 25.10.2021. He thereafter, preferred revision against such order being Civil Revision No.6 of 2021 before the First Additional District Judge, but the same was also dismissed on 29.01.2023 on merits. Despite rejection of such application, the judgment debtor again filed an application under Section 47 of CPC being CMA No.175 of 2021.

5. The executing Court heard both parties in CMA No.152 of 2021, which was filed basically on the ground that the decree being one for confirmation of possession and not recovery of possession, the execution case filed seeking recovery of possession is not possible.



6. After taking note of all relevant facts and the repeated filing of applications by the judgment debtor under section 47 of CPC, the executing Court was of the view that the decree of confirmation of possession can only be satisfied by granting recovery of possession by evicting the judgment debtor from the suit land. The executing Court also found that the same issue having been raised earlier by the judgment debtor had been considered and rejected. On such findings, the executing Court dismissed the application under Section 47 CPC.

7. Being aggrieved, the judgment debtor preferred revision being Civil Revision Case No.6 of 2021 before the learned First Additional District Judge, Cuttack. Taking note of the contentions raised, the Revisional Court framed the following points for determination:

(i) Whether the Execution petition filed by the D.Hr., is barred by law of limitation?

(ii) Whether the suit property is not described properly to identify, therefore it is not executable?

(iii) Whether the learned Court below rejected the petition of J.Dr. with a wrong notion by observing that the D.Hr. got a decree of recovery of possession?



8. On the question of limitation, the Revisional Court observed that the decree in question was not only for declaration of the plaintiff's right, title and confirmation of possession but also for permanent injunction. Therefore, Article 136 of the Limitation Act does not apply. Further, the doctrine of merger would be applicable in view of filing of First Appeal and Second Appeal against the decree.

9. On the question of maintainability of the execution case for recovery of possession in the absence of any decree being passed to such effect, the Revisional Court was of the view that since all the three Courts confirmed the plaintiff's possession over the suit property, it can be presumed that the entry of judgment debtor over the suit property was after disposal of the second appeal. Therefore, the decree holder can seek execution by evicting the judgment debtor.

10. As regards the objection relating to non-description of the property, the Revisional Court held that the judgment debtor having never raised such objection in his written



statement or otherwise, cannot take such a stand at this belated stage. The revision was thus, dismissed. As already stated, the present CMP has been filed against dismissal of the revision.

11. Heard Shri A.C. Mohapatra learned counsel for the petitioner-judgment debtors and Shri S.C. Samantaray, learned counsel for the opposite party -decree holders.

12. Shri Mohapatra would argue that though the execution case was lodged seeking delivery of possession, there is no mention of the date of dispossession of the decree holder nor any evidence was adduced showing the date of dispossession. The executing Court mentioned that the decree is one for recovery of possession, which is an error of record. Both the Courts below have failed to answer whether in the absence of the decree for delivery of possession, issuing a writ for the same is maintainable. The decree being for permanent injunction can be executed under Order XXI Rule 32 read with Section 51 of CPC. Execution of decree for delivery of possession is



governed by Order XXI Rule 35 CPC. Therefore, both the provisions cannot be clubbed to grant the relief claimed by the decree holder. Shri Mohapatra relied upon some judgments in support of his contentions, which shall be discussed later.

13. Per contra, Shri S.C. Samantaray would argue that the main purpose of the judgment debtor, by filing repeated applications questioning maintainability of the execution proceeding is to delay the enforcement of the decree. Since the judgment debtor has lost in all the three Courts and forcibly entered into possession after dismissal of the Second Appeal, the decree can be enforced only by evicting him from the suit land. The decree holder cannot be relegated to file a fresh suit for recovery of possession on the face of his right and title being declared by all the Courts. Shri Samantaray further argues that there is no period of limitation prescribed for execution of decree of permanent injunction. The execution case was filed when the decree holder found that the judgment debtor had forcibly entered



into the suit land. The executing Court has power to interpret the decree in order to deliver possession to the decree holder even in absence of a specific decree therefor, as otherwise, it would amount to rendering the decree passed by the Trial Court as confirmed by the Appellate Courts, a nullity.

14. Before delving into the merits of the contentions raised, this Court observes that multiple applications questioning the maintainability of the execution case were filed by the judgment debtor and rejected. The latest application, which is the subject matter of the present CMP, filed purportedly under Section 47 of CPC was rejected by both the Courts below. Section 47 of CPC is reproduced below:

“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.

* * * * *



(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.

Explanation 1.-- 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."

15. It is borne out from the record that the latest application filed by the judgment debtor was the third such application, his previous two applications being rejected. Fundamentally, repeated applications being filed more or less on the same issue cannot be entertained adopting the principles of *res judicata*, though not *res judicata* proper. In the case of **Rahul S. Shah v. Jinendra Kumar Gandhi**², the Supreme Court observed as follows.

"xxxxxx. Experience has shown that various objections are filed before the executing court and the decree holder is deprived of fruits of litigation and the judgement-debtor, in abuse of process of law, is allowed to benefit

² (2021) 6 SCC 418; AIR 2021 SC 2161



from the subject matter which he is otherwise not entitled to”

The Supreme Court also made it clear elsewhere in the judgment that all frivolous and malafide objections or resistance raised to execution of the decree should be dealt with sternly.

16. It is to be kept in mind that the Trial Court passed judgment and decree 09.11.1983 and 24.11.1983 respectively. The First Appellate Court confirmed the decree of the Trial Court by judgment and decree dated 23.02.1987 and 03.03.1987 respectively. This Court also confirmed the decree in Second Appeal by judgment dated 06.01.2008. As rightly held by the First Appellate Court, all the three Courts having granted the relief of confirmation of possession, it can be reasonably presumed that the judgment debtor forcibly entered into the suit property as alleged by the decree holder after disposal of the Second Appeal. Faced with such a situation, the question is, what recourse would be available for the decree holder?



17. Significantly, the judgment debtor does not contend that he has not entered into possession but raises objections on technical grounds, such as, absence of decree of recovery of possession, limitation etc. In such fact situation, relegating the plaintiff to file a fresh suit for recovery of possession would tantamount to nullifying the decrees passed in his favour by all the three Courts earlier. The judgment debtor cannot obviously be allowed to frustrate the decree against him simply by stepping on to the suit land and claiming that there is no decree for recovery of possession by his eviction. It would be giving a handle to a person who has lost the litigation at all stages. It would also amount to an abuse of the process of the Court.

18. Having held as above, this Court finds that the Executing Court took note of the objections raised and and rightly held that the decree of confirmation of possession can only be satisfied by evicting the judgment debtor from the suit land. It is a case of removing the obstruction caused by the judgment debtor to enforce the decree of



confirmation of possession. The Revisional Court has also vividly discussed the questions raised to hold that the decree holder having got the relief of permanent injunction can file an execution petition to evict the judgment debtor whenever he is found to have interfered with the possession of the decree holder. This Court fully concurs with the reasoning adopted by the Revisional Court.

19. Coming to the grounds raised by the judgment debtor, this Court observes that the first ground raised is with regard to limitation. It is contended that decree being for title and confirmation of possession, the execution case ought to have been filed within 12 years. This contention is considered only to be rejected for the reason that the decree in question was not only for title and confirmation of possession but also for injunction in restraining the defendant from interfering with the possession of the plaintiff. Since it is alleged that the defendant has interfered with the possession of the decree holder by forcibly entering into the suit property, the execution case cannot be held to



be barred by limitation in view of the specific provision under Article 136 of the Limitation Act, which is quoted below:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>"136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.</i>	<i>Twelve years.</i>	<i>When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:</i> <i><u>Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."</u></i> <i>(Emphasis added)</i>

20. It is further contended that the decree for permanent injunction can be enforced under Order XXI Rule 32 CPC, whereas the decree for delivery of possession can be executed under Order XXI Rule 35 CPC. Since the Revisional Court has held that in view of the decree being also for permanent injunction, the execution case is maintainable, the same has to be held to be an application



under Order XXI Rule 32 CPC. Such being the case, directing delivery of possession cannot be granted as the same does not fall within the purview of Order XXI Rule 32 CPC but under Order XXI Rule 35 CPC. A decree for injunction cannot be converted to a decree for delivery of possession. Shri Mohapatra, learned counsel appearing for the judgment debtor has cited the judgment of the Supreme Court in the case of ***Bhavan Vaja and others vs. Solanki, Hanuji Khodaji Mansang***³, and the judgment of Full Bench of Delhi High Court in the case of ***Sarup Singh Vs. Daryodhan Singh***,⁴.

21. In the case of ***Bhavan Vaja*** (Supra), the Supreme Court held that an executing Court cannot go behind the decree under execution. There can be no dispute with regard to the position of law as above, but then in the same case, the Supreme Court also held that even if an executing Court cannot go behind the decree, it does not mean that it has no duty to find out the true effect of that decree and

³ AIR 1972 SC 1371

⁴ AIR 1972 Del 142 FB



that for construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree.

22. In the case of **Sarup Singh** (supra), the decree sought to be executed was only for permanent injunction. Therefore, taking note of the relevant statutory provision, such as Order XXI Rule 32 and Order XXI Rule 35, the Full Bench held that a decree for injunction cannot be converted to a decree for recovery of possession. The facts are entirely different in the case at hand. In the instant case, the decree holder is asking for enforcement of the decree passed in his favour, inasmuch as his possession having been confirmed and there being an order of restraint passed against the defendant, he sought for removal of the defendant in line with the decree for permanent injunction. It cannot be construed that he is seeking something beyond the decree.

23. Thus, from the above analysis, it becomes abundantly clear that both the Courts below have to dealt with the matter in the right perspective and the reasonings



adopted by them cannot be faulted with. This Court therefore, finds no reason to interfere therewith.

24. Resultantly, the CMP is found to be devoid of merit and is dismissed. The executing Court is directed to proceed with the execution case as expeditiously as possible and to make all endeavour to conclude it in accordance with law within two months from today.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 19th December, 2025/ A.K. Rana, P.A.