

**IN THE COURT OF MUNSIF, TEGHRA, BEGUSARAI,
BIHAR
Title Execution No. 05/2015**

**In the matter of:
Bibi Zakiya Saleha**

..... Decree Holder

Versus

Most. Mumtaj Jahan & Ors.

..... Judgment Debtors

Presided over by:-
Shri Shailendra Kumar
Munsif, Teghra, Begusarai

Present: Ld. Counsel for the Decree Holders: Shri *Sanjeev Kamal*, Adv.
Ld. Counsel for the Judgment Debtors: *Shri Rashid Izhar &*
Md. Arsam, Advs.

ORDER

Pending adjudication of the instant execution suit, an application dated 09.03.2026 filed on behalf of the Decree Holder praying therein to be pleased to execute the rest delivery of possession by directing the *Nazir*, Civil Court, *Begusarai*.

In the instant application, Ld. Counsel for the Decree Holder, argued that the instant execution proceeding is pending for the execution of decree passed by the Ld. Court in Title Suit No. 143/1969, wherein, through the process of Court, *Nazir* has already executed half of the delivery of possession. In the meantime, strangers to the original suit, have filed an objection application dated 20.01.2026, which has not been being pressed by them, and they are deliberately causing delay in the execution of decree.

It was also argued by the Ld. Counsel for the Decree Holder that Hon'ble the Supreme Court of India, in the matter of **Periyammal (dead) through Lrs & ors. v. V. Rajamani & Anr.**, Civil Appeal Nos. 3640-3642 of 2025, has directed to complete the process of execution within six months from the date of filing. However, the strangers to the execution proceeding have filed objection and by not arguing, act-

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ing upon and sitting idle upon their objection application, they are delaying the process of execution.

Heard Ld. Counsel for the Decree Holder. Perused the record. From the perusal of the record, it transpires that strangers to the suit have filed an objection application dated 20.01.2026. The objection application was duly responded by a rejoinder dated 17.02.2026.

It also transpired that Ld. Counsel for the Applicants, since filing of their application, have been seeking adjournment, on some or the other pretexts and avoiding arguing their case and not letting the proceeding to its final destination.

Therefore, from the conduct of the Applicants, it transpires that either they are not serious about their claim or they are evading the process of Court, resultantly, delaying the process of execution of decree.

It is pertinent to mention herein, that the partial delivery of possession has already been effected in the instant execution proceeding and partial is yet to be realised, in accordance with the decree.

In the light of above facts, this court is of the considered opinion that in order to further the proceeding, it is necessary to decide the application filed by the strangers to the original suit.

The strangers to the original suit have filed their application dated 20.01.2026 under Order XXI Rule 99 read with Rules 26, 100-101 & 151 of the Code of Civil Procedure Code, 1908, praying therein, to “be graciously pleased to hear the parties and after hearing grant the relief mention in this application, may grant such order/orders relief/reliefs as Applicant may be entitled to in the facts and circumstances of the case and be further pleased to grant stay of the further proceedings of this execution case till the disposal of this application.”

The Applicants submit, in their application that- on 09.03.2026, that the instant application is being filed for the stay of the execution of *ex-parte* Judgement and Decree dated 23.04.2013 and 08.02.2013 respectively, as well as the writ issued by this Ld. Court in instant execution case dated 09.06.2025 holding that above said judgement and decree can be enforced and executed against a person who was not made party in the suit and does not bind the Applicants and after recalling the writ also direct to restore the peaceful possession of Applicants on the part of the suit property which is in clear title of the Ap-

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plicants of their vendors as the Applicants are likely to get dispossessed from the suit property.

It was further submitted that the abovenamed Decree Holders have obtained a decree dated 24.01.2013, which was passed in Title Suit no. 143/1969 dated 09.12.1969, by the Ld. Court of Munsif-II, *Begusarai* against the Opposite Parties 2nd set/Judgment Debtors.

The said Decree Holder has consequently filed the present execution case no. 05/2015 for execution and seeking delivery of possession of the suit property not only against the Opposite Party 2nd set/ Judgment Debtor rather through this execution proceeding have attempted to engulf the land over which the Applicants have independent and separate title since April 1969, before the filing of the suit dated 09.12.1969.

At the very outset the Applicants humbly states that they are neither the Judgment Debtors nor ever arrayed as a party in the above said Title Suit no. 143/1969.

The applicants had no knowledge of the said Title suit as well as execution proceedings and only came to know about execution proceeding recently through the villagers that an execution proceeding will commence on their lands by the administration and on further enquiry they got to know about the said pending execution proceedings and the *Ex parte* Order and Decree dated 24.01.2013 & 08.02.2013 respectively, which was passed without affording any opportunity of contest to them, which *prima facie* looks unjustified, illegitimate and against the well settled principles of natural justice.

It was submitted that the brief facts of the case are that *Shamsul Haque* filed a Suit i.e. Title Suit no. 143/1969 on 09.12.1969 for the redemption of mortgage deed dated 10.04.1933 along with *mesne profits* against *Mumtaz Jahan, Shafi Ahmad, Asmat Ara, Hajra Khatoon, Md. Fudan, Syed Kamruzzama, Syed Masiuzzama* and other Defendants excluding applicants and their vendors.

After the death of *Shamsul Haque* his son *Najmul Haque* became Plaintiff. That in due course of time, *Bibi Zakiya Saleh* made an application before the Ld. Court of Munsif, *Begusarai* for the impleadment as a party in Title Suit no. 143/1969 on the ground that the original Plaintiff *Shamsul Haque* had gifted her the suit property through reg-

istered *Hibanama* dated 26.10.1970.

Further story is that the Title suit no. 143/1969 was dismissed for non-prosecution on the part of the Plaintiff on 02.03.1984 by the Trial Court. After the dismissal of the suit, prayer was made belatedly by Defendant no. 17 *Bibi Zakia Saleha* for her transposition as Plaintiff of the suit on the basis of her claim through *Hibanama* dated 26.10.1970, by her father in law *Shamsul Haque* (original Plaintiff of the said suit) with respect to the suit property, which was dismissed by the Court of Ld. Munsif, *Begusarai* and Hon'ble Patna High Court on the ground that through transposition the scope of the suit cannot be permitted to be enlarged but ultimately through an *ex parte* order dated 25.04.1994 passed by Hon'ble Apex Court, the Defendant no. 17 *Zakiya Saleh* was permitted to be transposed as the Plaintiff of the suit and also the suit was ordered to be revived and be on the file of the trial court.

Thus, after 10 years of dismissal of the suit from 1984 to 1994, suit restored to its file and number. That upon restoration of the said suit, it seems that no notice or information was ever served upon even to the impleaded defendants/now judgement debtors.

During the 10 years of the dismissal of the suit, in a natural course the Defendants might have either died or might have been unavailable and hence in lack of notice or information, ultimately the suit was prosecuted *ex parte* by order dated and without any contest the final order dated 24.01.2013 was passed and decree dated 08.02.2013 got prepared solely upon the pleadings of the Plaintiff without framing of issues which reflects from the said *ex parte* judgment dated 24.01.2013.

The real fact relating to present case is that *Samshul Haque* and *S Razaul Haque* executed a *sudbherna* bond dated 10.04.1933 for 15 *Bigha 4 katha 15 dhur* land in favour of *Bibi Safia*. The rent of the *sudbherna* land was due to the landlords and they filed Rent suits for the realisation of the rent and obtained rent decrees. Subsequently, suit property was legally auction sold in execution of the Rent decrees and the auction purchaser *Chaudhary Aziz Uddin* and *Babu Siya Pd. Singh* came in peaceful possession thereafter.

As the suit property was sold for arrears of rent for the period prior to mortgage, the same was binding upon the mortgagor, despite losing

the title over the suit property, the said mortgagor *Shamshul Haque* executed *Hibanama* in favour of Decree Holder *Zakiya Saleh* in the year 1970, which appears to be illegitimate, unjust, null and void document on the face of it. The rent suit was filed by the landlords much before 1933 and one of the Rent Decrees was executed in execution cases no. 768/1933, where 2 *Bigha* 11 *Katha* 11 *dhur* land appertaining to *khata* no. 14, *khesra* no. 752 and 1196 out of *sudbherna* land were auction sold in the Court.

The said land was purchased by *Chaudhary Azizuddin* and obtained delivery of possession after dispossessing *subhernadar Safia Khatoon* and thus came in peaceful possession over the said lands as an auction purchaser. **(Annexure-1)**

Further the then landlord *Babu Siya Prasad Singh* had filed rent suit for 2 *Bigha* 15 *katha* 19 *dhur* land appertaining to *khata* no. 285 *khesra* no. 688, 694 and 974 and had obtained rent decrees which was executed through execution case no. 295/1934.

Subsequently, the said lands were auction sold and purchased by the said landlord and accordingly obtained possession after dispossessing *sudbhernadar Bibi Safia*. Further, the said landlord *Siya Prasad Singh* had also obtained rent decree for 16 *katha* 2 *dhur* land appertaining to *khata* no. 14, *khesra* no. 619 and executed the same through execution case no. 276/1934, where the landlord purchased the said land in auction sale and came in possession on 14.02.1937 after dispossessing the said *Subhernadar Bibi Safiya*. **(Annexure-2 & 3)**

In the same manner, *Harihar Prasad Singh* and other landlords had preferred rent Suit regarding 08 *Bigha* 09 *katha* 15 *dhur* lands appertaining to *khata* no. 14, *khesra* no. 318, 317, 153, 73, 74, 74/1222, 74/1223, 758 and in the execution of said rent decree through execution case no. 64/1937 the said lands were put on auction sale and the same was purchased by *Chaudhary Azizuddin* and accordingly came in possession over the said lands in the year 1937 after dispossessing *subhernadar Bibi Safia*. **(Annexure-4)**

The landlords *Siya Prasad Singh* and other decree holder purchasers settled the land purchased by them with the *Chaudhary Aziz Uddin* and granted a *Hukumnama* with respect to lands appertaining to *khata* 285, *khesra* no. 688, 674, 694 & 955 admeasuring 2 *bigha* 15 *katha*, 19 *dhur* on 15 *Baisakhi* 1345 *fasli* and subsequently the said

Chaudhary Azizuddin, being the settlee came in peaceful possession over the lands mentioned above.

In the aforementioned manner ultimately *Chaudhary Aziz Uddin* became the absolute owner of the suit property and thereafter the names of said *Chaudhary Azizuddin* were mutated in the name of *serista* of the landlord and rent receipts were also issued in his name, which also speaks a volume against the case of the opposite party 1st set/Decree Holder/plaintiff.

It was further stated that said *Chaudhary Azizuddin* executed a deed of *Bazdavinama* (Relinquishment) dated 27.07.1943 in favour of *Abdul Qaiyyum*, grandfather of the opposite parties 2nd set, with regards to the suit lands and subsequently *Abdul Qayum* came in peaceful possession over the said lands.

After the death of said *Adbul Qaiyyum* and *Safia Khatoon*, there was a partition in the family and suit lands were allotted to the share of original defendant no.2 *Syed Shafi Ahmad*. Thereafter, names of the said *Shafi Ahmad* got mutated in the *serista* of the landlord and is getting rent receipts on payment of rent.

Shafi Ahmad had sold more than 2 *Bigha* land appertaining to *Thana* no. 400, *Mauza Kirtaul, Teghra* bearing *khata* no. 14, *khesra* no. 117 to one *Ram Chandra yadav* son of *Khublal Yadav* through 3 registered deed on 26.04.1969 that is to say about 8 months prior to the commencement of the suit, meaning hereby that in independent right, Title and interest has been created separately from the opposite parties, which was put on record in the Written statements filed by the original Defendant no. 2 *Shafi Ahmad*. (Annexure-5 & 6)

Further, the abovementioned vendee *Ram Chandra Yadav* subsequently alienated the said lands to *Kailash Devi* wife of *Pandit Kulanand Mishra* through registered deed dated 06.03.1982 and in this manner the said *Kailash Devi* became the absolute owner, titleholder and true legal rights bearer of the aforementioned lands pertaining to *khata* no. 14, *Khesra* no. 117 and thereafter, came and remained in actual physical possession of the lands aforesaid. Also, the name of vendee *Kailash Devi* got mutated in the revenue records and accordingly *jamabandi* no. 664 with respect to above mentioned lands was opened in the name of the said vendee *Kailash Devi*, which strongly raises a presumption of genuineness of ownership and possession in

favour of the said vendee and against the Decree holder in particular.
(Annexure-7)

It is of worth importance to mention here that *Ram Dev Mahto* (father of Applicant no. 1) purchased lands appertaining to *Mauza-Kirtaul* bearing *thana* no. 400, *khata* no. 14, *khesra* no. 117, admeasuring 3 *katha* land from said *Kailash Devi* through registered deed dated 25.11.1992 and hence, in this manner, the said *Ram Dev Mahto* became the absolute owner and title holder of the land and came and remained in continuous actual physical possession over the said lands and got his name mutated with respect to the aforementioned part and parcel lands in the revenue records. (Annexure-8)

It is also pertinent to mention here that the said *Kailash Devi* sold 2 *katha* 10 *dhur* land of aforementioned *khata* no. 14 and *khesra* no. 117 of *mauza Kirtaul* to one *Siri Mahto* son of *Nago Mahto* through a registered sale deed dated 25.11.1992 and hence, in this manner the said *Siri Mahto* became the lawful owner and titleholder of the land and thereafter came and running in continuous peaceful possession of the said suit property and subsequently got his name mutated in the revenue records. (Annexure-9)

Similarly, father of Applicant no. 3 *Phulo Shah* purchased 1 *katha* land pertaining to *khata* no. 14, *khesra* no. 117 from one *Ram Balak Sahu* through registered deed dated....., who purchased the said land from *Ramchandra Yadav* through registered deed bearing deed no. 12024 dated 20.01.1986 and hence, the said *Phulo Shah* became the title holder and came in the peaceful possession over the part and parcel of the said land. **(Annexure-10 & 11)**

That like others Applicants, *Minta Devi* also purchased suit property appertaining to *khata* no. 14, *Khesra* no. 117 of *Mauza Kirtaul* from one *Janardan Sahu* son of *Baldev Sahu* through a registered sale deed dated 26.06.2015 and there after running in continuous physical possession of the said part and parcel of suit property in the capacity of being a Title holder as a matter of Right and the vendor *Janardan Sahu* purchased the said suit property from one *Ramchandra Yadav* through registered sale deed dated 28.03.1988. **(Annexure-12 & 13)**

Despite being a necessary party, neither either of the Applicants nor their transferors/ vendors namely *Ram Chandra Yadav & Kailash Devi & Ram Balak Sahu* were ever impleaded as a party to the proceedings

of Title suit no. 143/1969, thereby making the decree dated 24.01.2013 unsustainable in the eyes of law and not binding and not enforceable against the Applicants.

It is worth mentioning here that opposite party 1st set/decreed holder/plaintiff challenged the auction sales in a Misc. case no. 42/1935 but the same was rejected and the auction purchase were confirmed and hence the present suit is also hit by the doctrine of the *res judicata*, which also renders the *ex-parte* order as well as Decree dated 24.01.2013 and 08.02.2013 respectively as *ultra vires*, antithesis, arbitrary and untenable in the eyes of law.

It is pertinent to mention here that since the lands were auction sold for the arrears of rent for the period prior to mortgage, the auction sales are fully binding upon the mortgagor as well as mortgagee and their representatives including the decree Holder *Zakiya Saleh* and they have lost all title and interest in the *sudbherna* lands and the opposite parties has got no right to redeem the mortgage lands.

The applicants are in actual physical possession of the suit land in the capacity of title holder of land as a matter of right and not as trespasser or licensee of the judgement debtors.

The Ld. executing court vide order dated 06.12.2025 recorded in the said order that a slip adjudicating the expense of the police magistrate and the *Nazir* has been filed. After perusing the same it is concluded that the process of delivery of possession can be started any time against the judgement debtors at the back of the applicant who is the true title holder of the said lands. The Applicants were never impleaded in the original suit proceedings despite acquiring the status of a necessary party before the date of commencement of the suit i.e 09.12.1969, as the lands were already alienated and hence the suit is also ad on non-joinder of party and the decree is not binding upon the Applicants being an independent Right Holders.

The suit is barred by the principal of limitation as the suit to redeem the mortgage was filed beyond the period of 30 years. The plaintiff has got no cause of action or right to sue.

The decree holders cannot lawfully evict the Applicants from the suit property, who were not the parties to the suit as the decree was passed against the judgment debtors and not against the applicants

or their vendors and the executing court is duty bound to adjudicate the objections of the applicants filed here under Order XXI, Rule 99, before proceeding further with the delivery of possession.

Unless this Hon'ble court restrains decree holders from proceeding further and adjudicates the objection of the Applicants, they will suffer irreparable injury by being illegally evicted from their own lawful property. The Applicants are left with no substantive effective remedy than to approach this Hon'ble court under Order XXI rule 99 of C.P.C, 1908.

In view of the facts and circumstances stated herein above, it is most humbly prayed that this Hon'ble court may be pleased to:

- A) Admit and allow the present application by declaring right, title and possession over the claimed suit properties as against the decree holders and opposite party 2nd set.
- B) Stay further proceedings in Execution case no. 05/2015 till disposal of the present application.
- C) Recalling the writ issued by this learned court in instant execution case dated 09.06.2025 holding that above said judgement and decree can't be enforced and executed against a person who was not impleaded as a party in the suit being a necessary and proper party and does not bind the Applicants.
- D) Adjudicate that the Applicants have independent rights over the suit properties as claimed and can't be dispossessed from the same under the present decree.
- E) Pass such order/orders as this Hon'ble court may deem fit and proper in the facts and circumstances of this case.

Per contra, the Decree Holder filed a rejoinder dated 17.02.2026, vehemently opposing the prayers in the instant application.

Ld. Counsel for the Decree Holder challenges the application of the Judgment Debtors on the ground of maintainability in the eyes of law and facts that the application as has been framed and filed by the third-party Applicants under Order XXI Rule 99 read with Rules 26, 100, 101 and Section of C.P.C. is not maintainable either on fact or on law.

It was argued by the Decree Holder that the Present application has been filed by third party Applicants who are not concerned either with Decree Holder or with Judgement Debtor.

It is well settled law that an execution proceeding only relates to execution of a decree and judgement passed by the competent civil court and matter relates to the concerned parties i.e. Decree Holder and Judgement Debtor. The full process of enforcement of execution of decree has been detailed in Order XXI and Section 32 to 74 of C.P.C.

From perusal of present application, it would be transpired that these Applicants are no way concerned either with Decree Holder or with Judgement Debtors. In every execution proceeding Judgement Debtors are made parties only to execute the decree smoothly. These Applicants are third party strangers, who in their instant application explained their alleged title over the decretal land in detail and executing court is not a trial court where right, title or any person would be adjudicated.

These Applicants have filed the instant application **U/o XXI R 99, R 100, R 101** read with **Section 151 C.P.C.** The provision of **Order XXI R 99** speaks like that:- **R 99- (1)** “where any person other than the judgement Debtor is dispossessed of immovable property by the holder of a Decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.” **(2)** “Where any such application is made, the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

The provision of Rule 99 as has been laid down in C.P.C. it is well clear that this provision come into force when during the course of execution of decree any person other than the judgement debtor is dispossessed from immovable property, he may make an application before executing court complaining of such dispossession.

In the present situation these Applicants have not made any complaint with regard to any dispossession and above all process of execution is still incomplete. So, this provision is not applicable for these Applicants.

Ld. Counsel for the Decree Holder, further argued that so far Rules 100 and 101, is concerned, it reads:-

100. “Upon the determination of the question referred to in rule 101, the court shall, in accordance with such determination

- a) Make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- b) pass such other order as in the circumstances of the case, it may deem fit.”

R 101- “ Question to be determined:- All questions (Including question relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives and relevant to the adjudication of the application, shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

Ld. counsel continues arguing that from mere reading of Order XXI, R 100 it is crystal clear that this rule is also not applicable for these Applicants who have not made any complaint about dispossession and also so far R 101 of Order XXI is concerned those questions which has been arising during the execution of a decree by way of resistance which has been laid down in Order XXI R 97 and dispossession which has been laid down in Order XXI R 99 shall be determined by executing court. Here in the present scenario, it is well clear that these Applicants have not made any complaint as per R 99 nor made any resistance during the execution of decree as it is still incomplete. So, Applicants have no right to file the present application for determination of their right, title and interest in decretal land.

Further, so far Order XXI Rule 26 is concerned, it relates to stay of execution proceeding and reads:- R 26 “ When court may stay execution- (1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the Judgement Debtor to apply to the Court by which the decree was passed, or to say court having appellate jurisdiction in respect of the decree or the execution thereof, for and order to stay execution or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate court if execution had been issued thereby, or if application for execution had been made there to. (2) Where the property of the judgement debtor has been seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the ap-

plication. (3) Power to require security from, or impose conditions upon judgement debtor:- Before making an order to stay execution. Or for the restitution of property or the discharge of the judgement debtor (the court shall require) such security from, or impose such conditions upon the judgement debtor as it thinks fit.”

Form mere perusal of O XXI R 26, it is crystal clear that this rule is applicable only for the Judgement Debtors. This rule enabled to Judgement Debtors to apply to the court for stay of execution proceeding till the filing of the appeal. These Applicants are not Judgement Debtor. So, this rule is not applicable for them.

According to Section 2 (2) of C.P.C. decree means the judgement passed by the court which decides the right to the parties of the suit regarding to the all matters and the legal consequence of the facts found. Whereas judgement debtor means any person against whom a decree has been passed. So, these Applicants are no-where who may either pray for stay of execution or may pray to adjudicate their right and title.

Under Section 51 of C.P.C execution of decree is defined by the court. In the present situation a competent order has already been passed by competent authority which has been partially complied by the Bailiff of the court and part execution is yet to be completed. So, in present situation such type of application filed by the third party is equal to interference of judicial proceeding which is highly objectionable and not maintainable.

That these Applicants were not parties in original suit and facts which has been elaborated in the present application can be adjudicated in a fresh suit not in the present execution case.

Heard Ld. Counsel for the Decree Holder at length. Perused the record. Also perused **Annexures 1 – 4**, accompanied with the application, which are alleged to have been certificates of auction purchase pertaining to suit land. The said documents/ annexures have been filed as photocopies, written in *urdu* language. Further perusal of the documents reveal that those documents do not bear any seal. Which brings the veracity of the documents under the shadow of doubt. Applicants also stopped appearing, who could have explained the reason of filing the photocopies and not originals.

The above annexures are of vital importance as it originates the chain of title under which the applicants are claiming their rights. The very

documents, despite it's importance of such a serious in nature, have not been filed in originals. Non-appearance of the Applicants/ counsel on their behalf too suggests the veracity of the documents otherwise.

Therefore, in the light of laws above discussed, reasons aforesaid and findings above made, this Court is inclined to dismiss the application dated 20.01.2026 of the strangers to the proceedings.

Accordingly, instant application along with application dated 20.01.2026 and their respective rejoinders are being disposed of with this order.

O/C is being directed to-

1. Issue letters to *Nazir* to complete the delivery of possession, by fixing date, in consultation with Magistrates and Police Force, and submit the report of compliance to this Court.
2. Issue necessary communications to the all concerned.
3. Do the needful to upload this order on CIS.

Munsif
Teghra, Begusarai
23.03.2026