

Sunil Kumar vs. Anand Prakash through his LR

Present: Sh. Parveen Daryal, learned counsel for the Decree-Holder

JD No. 1 (i) proceeded ex-parte v.o.d. 05.12.2025

None for JD No. 2

Today, the case was fixed for arguments on objections. However, none appeared on behalf of JD No. 2. It is already 3:30 pm. Waited sufficiently. No further wait is justified. Accordingly, the JD No. 2 is, hereby, proceeded against ex-parte.

Submissions on behalf of the JD No. 2 and 3:

2. It is relevant to note that prior to the dismissal in default of the present execution petition, Judgment Debtor No. 2 and Judgment Debtor No. 3 had filed written objections before this Court. However, upon restoration of the present execution petition, neither Judgment Debtor No. 2 nor Judgment Debtor No. 3 chose to appear before this Court to press or advance oral arguments in support of their respective written objections. Be that as it may, in the interest of justice and with a view to ensuring that the objections raised by the said Judgment Debtors do not go unaddressed merely on account of their own non-appearance, this Court deems it just, proper, and appropriate to examine and adjudicate them on their own merits.

3. In the written objections, it is submitted that the present execution petition has been filed by the Decree Holder by concealing true and material facts with the sole intent and design of claiming a share larger than what he is legitimately entitled to. It is submitted that during the pendency of the suit, one Sushil Kumar s/o Sh. Mehar Chand died unmarried and intestate in the year 2019. Subsequently, Smt. Sita Devi w/o Sh. Mehar Chand also expired in the year 2021. However, the Decree Holder/Plaintiff has deliberately and intentionally concealed

both these material facts in the present execution petition. It is further submitted that consequent upon the deaths of the aforementioned two persons, the property of Sh. Mehar Chand is liable to be partitioned into four equal shares of 1/4th each to be allotted amongst the Plaintiff, the legal heirs of Sh. Anand Parkash (since deceased), Sh. Khushi Ram, and Smt. Manju respectively. It is, therefore, prayed that the objections filed by the Objector be accepted and the present execution petition be dismissed with costs, in the interest of justice.

Oral submissions on behalf of the Decree-Holder:

4. The learned counsel for the Decree-Holder orally argued that Sh. Sushil Kumar died unmarried and intestate on 17.11.2016 and that Smt. Sita Devi subsequently died on 14.11.2020. The Death Certificates evidencing the deaths of both the aforementioned persons have been placed on record. It was further submitted that consequent upon the death of Sh. Sushil Kumar, who died unmarried and intestate leaving behind no Class I heir other than his mother, his entire share in the suit property devolved exclusively upon Smt. Sita Devi in her capacity as his mother and sole surviving Class I heir under the Hindu Succession Act, 1956. It was further submitted that upon the subsequent death of Smt. Sita Devi, two distinct shares fell to be inherited, namely, first, her original share as crystallized by the preliminary decree and second, the share that had devolved upon her by way of inheritance from her deceased son Sh. Sushil Kumar. It was contended that both these shares, having vested in Smt. Sita Devi during her lifetime, stand bequeathed to the Decree Holder-Sh. Sunil Kumar by virtue of a registered Will dated 04.08.2017 executed by Smt. Sita Devi in his favour. In light of the above, the learned counsel for the Decree Holder prayed that both the aforesaid shares be allotted to the Decree Holder-Sh. Sunil Kumar and that the decree be executed accordingly.

5. Heard the arguments and perused the entire record meticulously.

Analysis and Findings:

6. At the very outset, it is necessary to advert to the factual backdrop of the present proceedings. A preliminary decree in Civil Suit No. CS-81-2013 was passed by the Court of Sh. Ajay Kumar, the then learned Civil Judge (Junior Division), Karnal on 29.08.2013, whereby 1/6th share each was allotted to Smt.Sita Devi, Smt.Manju, Sh.Sunil Kumar, Sh.Sushil Kumar, the Legal Representatives of Sh.Anand Parkash (since deceased), and Sh.Khushi Ram respectively. Consequent upon the passing of the preliminary decree, an application for the passing of the final decree was moved on 25.04.2016. In the interregnum, Sh.Sushil Kumar and Smt.Sita Devi died and the final decree came to be passed on 07.07.2022 completely in consonance with and in terms of the preliminary decree dated 29.08.2013 without any alteration or modification whatsoever.

7. Now, the objections essentially seek to introduce and adjudicate upon the rights of the parties arising out of altered circumstances, namely the subsequent deaths of Sh. Sushil Kumar and Smt. Sita Devi, and further seek to examine the validity or otherwise of the registered Will set up by the Decree Holder. And in essence and substance, the parties are seeking a fresh determination and re-definition of the shares of the respective parties in the suit property. However, any such exercise would necessarily and inevitably amount to altering, modifying, and interfering with the terms of the preliminary decree dated 29.08.2013 as well as the final decree dated 07.07.2022, which this Court being the Executing Court is bound to execute it. It is a well-settled principle of law that an executing court cannot travel beyond the decree or sit in judgment over its correctness, legality, or validity. The question of the validity of the Will, which was never a part of the original suit proceedings and was not adjudicated upon either at the stage of the preliminary decree or the final decree cannot be imported into execution proceedings for the first time.

8. Further, it is pertinent to note that neither the preliminary decree dated 29.08.2013 nor the final decree dated 07.07.2022 has been challenged. In this backdrop, if this Court were to embark upon a fresh inquiry into the shares of the parties and redefine or redistribute the same by taking into account events and circumstances that occurred subsequent to the passing of the preliminary decree, it would, in effect and in substance, amount to sitting in appeal over its own predecessor's decree and assuming a jurisdiction that this Court does not possess. Accordingly, the objections to the instant execution petition are, hereby, ***dismissed with no order as to costs.***

9. Before parting with the present order, this Court makes explicitly clear that the dismissal of the objections and the directions issued herein for execution of the final decree dated 07.07.2022 are strictly confined to the scope and ambit of the present execution proceedings and shall not, in any manner whatsoever, be construed as a final and conclusive determination of the rights of the parties inter se or with respect to the validity, enforceability, or legal effect of the registered Will set up by the Decree Holder.

10. Since, in the present execution petition, the Decree Holder-Sh. Sunil Kumar has sought assistance of this Court by issuing of warrants of possession in terms of the final decree dated 07.07.2022, warrants of possession be issued for **05.09.2026**. The Tehsildar concerned is, hereby, directed to execute the Warrant of Possession at the earliest and to ensure that the parties are put in peaceful and actual possession of her share in the suit property without any delay, obstruction, or hindrance. The Station House Officer of the concerned Police Station is, hereby, directed to extend all necessary police assistance to the Tehsildar for the purposes of execution of the Warrant of Possession, in the event that any resistance, obstruction, or hindrance is caused or threatened by the judgment-debtor or any other person acting on his behalf or at his instance.

11. A copy of this order be given to the Tehsildar as well as S.H.O concerned, free of cost.

Pronounced in open Court on 12.08.2026.

(Alpna Singh)

Civil Judge (Junior Division), Karnal

UID No. : HR0724

Note: All pages of this order have been directly dictated, duly checked and signed by me.

(Alpna Singh)

Civil Judge (Junior Division), Karnal

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