

**IN THE COURT OF SUNIL KUMAR, ADDITIONAL CIVIL JUDGE
(SR. DIVN.), TOSHAM (UID NO. HR0397).**

HRBHD00000412018



CNR No.: **HRBHD00000412018**

CIS No.: **CM-04-2018**

Civil Suit No.: 4-MISC. of 2018

Date of Instt.: 30.01.2018

Date of Order: 06.08.2026.

OBJECTIONS ON BEHALF OF JD/GRAM PANCHAYAT, TOSHAM

Present: Shri Jatin Hans, counsel for the DH/petitioner
Shri N.K. Bagotia, counsel for judgment-debtor.
(Third party objection dismissed v.o.d. 05.08.2026)

ORDER

This order of mine shall dispose of objections filed on behalf of judgment-debtor to the application filed under Order 21 Rule 32 read with Section 151 CPC by plaintiff/decree-holder.

2. It is submitted in the objections that decree-holder Manphool Singh, had filed a suit for permanent injunction against Municipal Committe, Tosham restraining it from demolishing or damaging the laterine constructed in house marked as "AEFG" shown in red colour in the site plan. It is submitted that said suit was dismissed vide judgment and decree dated 30.07.1999 passed by Ms. Meenakshi Girdhar, the then Ld. ACJ(SD) Bhiwani and thereafter, a civil appeal no.140 of 1999 against judgment and decree dated 30.07.1999 was filed in the Court of Ld. District Judge, Bhiwani and same was allowed vide judgment and

decree dated 18.10.2002 passed by Shri B.M. Bajaj, the then Ld. District Judge, Bhiwani and defendant/Municipal Committee/ Gram Panchayat (Gram Panchayat has been brought on record) from interfering into possession of plaintiff over the suit property. It is submitted that after the death of Manphool Singh, his son Sant Lal has filed the present petition for enforcement of judgment and decree dated 18.10.2002. It is submitted that one Yogender Singh son of Jagdish Chander had moved an application to Tehsildar-cum-Assistant Collector IInd Grade, Tosham dated 11.12.2017 for demarcation of street comprised in khasra no.1581, situated at Tosham and report was submitted by Naib Tehsildar-cum-Local commissioner on 17.12.2017 and LC had reported that Sant Lal son of Manphool Singh has illegally encroached upon part of street to the extent of 36 square feet in the main street and created hurdle in the egress and ingress of the general public. It is submitted that after coming to know the illegal encroachment made by Sant Lal, present decree-holder to remove the unauthorized encroachment failing which judgment-debtor would get remove the same at the cost of decree-holder, but instead of removing unauthorized encroachment, decree-holder has filed the present execution petition. It is submitted that suit property in the main suit as well as appeal is other than the encroached property and defendant/Gram Panchayat has every legal right to get the encroachment removed, which is part and parcel of the street and is not part of the house of decree-holder. It is submitted that decree was passed on 18.10.2002, whereas the

present execution petition was filed in 2017, after a lapse of more than 15 years and execution petition, being hopelessly time barred. Hence, the present objections for dismissing the petition.

3. Reply to the objections has been filed on behalf plaintiff/decree-holder regarding the averments of application filed under Order 21 Rule 32 CPC. In reply, it is submitted that objections have been filed on false and frivolous ground. It is submitted that father of present applicant/decree-holder Sant Lal, had filed a civil suit against Municipal Committee, Tosham regarding suit land for restraining them from demolishing the bathroom and laterin and from interfering into possession of plaintiff over suit land and suit of father of applicant was dismissed vide order dated 30.07.1999 by the then Ld. ACJ(SD) Bhiwani and thereafter, father of applicant had filed an appeal no.140 of 1999 and Ld. Appellate Court, Bhiwani decreed the suit of father of plaintiff vide order dated 18.10.2002 and defendants were restrained from interfering into possession of plaintiff over suit land and from demolishing the construction of applicant further. It is submitted that Gram Panchayat/JDs have no concern or relation with the suit land and objections are liable to be dismissed and a request for dismissal of the objections have been made.

4. Learned counsel for the parties have argued on their respective stand taken by them.

5. I have heard the learned counsel for the parties and have

perused the record carefully.

6. After hearing the learned counsels for both the parties and after taking into consideration the entire facts and circumstances of the case, this Court is of the view that present objections filed on behalf of JD/Gram Panchayat Tosham are liable to be **allowed**. Before discussing further, it is relevant to note here that Civil suit no.595 of 1995 titled as “Manphool vs. Municipal Committee, Tosham”, was filed by plaintiff Manphool(father of present applicant) seeking decree of permanent injunction for restraining defendant from demolishing and damaging the laterine constructed in the house marked as “AEFG” as shown in site plan annexed with plaint and suit of Manphool was dismissed by the then Ld. ACJ(SD) Bhiwani on 30.07.1999. Thereafter, Manphool filed an appeal no.140 of 1999 and suit of Manphool was decreed by Ld. Appellate Court and defendants were restrained from interfering into possession of plaintiff over the decretal land. Thereafter, present application under Order 21 Rule 32 has been filed by applicant Sant Lal being son of said Manphool for restraining defendants from interfering into his possession and from damaging and demolishing the laterine constructed over suit land. However, after perusal of case file, the Court does not find any concurrence with the averments of learned counsel for applicant. A perusal of plaint of civil suit titled as “Manphool vs. Municipal Committee” has been placed on file as Ex.P1 and a perusal of said plaint reveals that suit for permanent injunction was filed by plaintiff Manphool

against Municipal Committee for restraining defendant from demolishing the laterine constructed over suit land. Now, defendant/JD Gram Panchayat has issued notice to applicant for removal of laterine constructed over street in question and therefore, present petition under Order 21 Rule 32 CPC has been filed.

7. For deciding whether any laterine has been constructed over public street or not, Ld. Predecessor of undersigned vide order dated 24.08.2022, had appointed BDPO Tosham as LC and BDPO Tosham has submitted his report dated 05.09.2022, specifically mentioning therein that Sant Lal had illegally constructed laterine and bathroom over public street and area measuring 36 square yards of street has been encroached by him and same is causing interference into the use of street by other residents and public at large. Photographs of alleged site/street were annexed with report. The photographs annexed with report of LC has not been disputed on behalf of applicant/DH. The photograph reflects the existing position over suit land. Perusal of report of BDPO, Tosham as well as photographs annexed with report clearly reflects that laterine and bathroom have been constructed over the street and some other part of street has been illegally encroached by present applicant by placing stones/bricks etc. in the street. No doubt decree dated 18.10.2002 was passed in favour of Manphool, but Manphool had sought decree for permanent injunction and the right of injunction is the right of persona and not right in rem. Present applicant Sant Lal, was not a party to civil

suit filed by Manphool. Applicant Sant Lal is not the only legal heir of Manphool. Admittedly, while appearing as PW1 (in third party objections), he(Sant Lal) had admitted that they are five brothers and sister and for this reason also, (Sant Lal) applicant alone is not entitled to the suit property. Moreover, prima facie, this Court is of the view that the decree dated 18.10.2002 has been obtained by Manphool by misrepresentation of facts and by concealment of facts and same cannot be executed through process of law and by filing present application, applicant wants to protect of his illegal possession over street. From the bare perusal of report of BDPO, Tosham and photographs annexed with report of BDPO, it can be seen that the entire street is wide enough, however, only construction in the shape of laterine and bathroom has been raised by in front of house of applicant over said street and the Court cannot protect the illegal possession of a party over public street as Courts are presumed to be guardian of public property. Therefore, objection filed on behalf of judgment-debtor/Gram Panchayat are accepted and present application under Order 21 Rule 32 and Section 151 CPC stands dismissed. File be consigned to record-room after due compliance.

Pronounced in open Court,
Dated:06.08.2026.

Note: Each and every page of this order has been duly checked and signed by me.

Dated:06.08.2026.

Himanshu, SG-II

(Sunil Kumar),
Addl. Civil Judge (Sr. Divn.),
Tosham/UID No. HR0397.

(Sunil Kumar),
Addl. Civil Judge (Sr. Divn.),
Tosham/ UID No. HR0397.

(Sunil Kumar),
ACJ(SD), Tosham
UID No.HR0397