



2026:CGHC:15039



2026:CGHC:15039

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 369 of 2026

Venendra Kumar Sharma S/o Dwarika Prasad Sharma Aged About 78
Years R/o Sunder Nagar, Raipur, District- Raipur (C.G.)

... Petitioner

versus

1 - Rama Verma W/o Dr. L.N. Verma Aged About 60 Years R/o House No.
8, Sunder Nagar, Raipur, Ps And Post- Sunder Nagar, Civil And Revenue
District- Raipur C.G.

2 - Sunder Nagar Grih Nirman Sahkari Society Maryadit Mahadev Ghat
Road, Raipur, Civil And Revenue District- Raipur C.G.

3 - C.P. Dubey S/o Late S.N. Dubey Aged About 69 Years R/o House No.
07, Sunder Nagar, Raipur, P.S. And Post- Sunder Nagar, Civil And Revenue
District- Raipur, (C.G.)

---Respondents

(Cause title taken from Case Information System)

For Petitioner : Mr. Shobhit Koshta, Advocate

Hon'ble Shri Ravindra Kumar Agrawal, Judge
Order on Board

01/04/2026

1. The present petition has been filed by the petitioner challenging the impugned order dated 13.03.2026, passed by learned 5th Civil Judge Junior Division, Raipur in Execution Case No. 9-A/2025, whereby the



application filed by the petitioner under Section 151 of CPC has been rejected.

2. Brief facts of the case are that, the petitioner was prosecuting a civil suit for declaration of the order dated 30.06.2003, passed by the Deputy Registrar, Cooperative Societies, Raipur as null and void, and permanent injunction from interference of the defendants with the possession of the plaintiff over 600 sqft of the land of khasra No. 302/1 situated at village Dangania, P.H. No. 104, Tahsil and District Raipur. The said civil suit of the petitioner was registered as 24-A/2009 before the learned 5th Civil Judge Class-II, Raipur. In the said civil suit, the defendants No. 2 and 3 i.e. Sunder Nagar Grih Nirman Sahakari Sanstha Maryadit and Smt. Rama Verma have filed their counter claim for declaring the suit land as the road as per the map, declaring the sale-deed dated 11.03.2002 as null and void, removal of the encroachment of the plaintiff over the suit land and also for permanent injunction. The said civil suit was decided on merits after a full-fledged trial and recording evidence of the parties and the suit filed by the plaintiff was dismissed and the counter claim filed by the defendants were allowed and decreed vide judgment and decree dated 11.04.2012. By the said judgment and decree, the sale-deed dated 11.03.2002 executed in favour of the plaintiff has been declared null and void and held that the suit land is the road and the plaintiff was directed to remove his encroachment from the suit land and restrained by permanent injunction and not to encroach the same.



3. The challenge to the said judgment and decree by the plaintiff before the learned 3rd Additional District Judge, Raipur was also dismissed vide its judgment and decree dated 23.06.2014, passed in Civil Appeal No. 11-A/2012. The Second Appeal No. 244 of 2014 filed by the plaintiff before this Court has also been dismissed by coordinate bench of this Court vide judgment dated 11.03.2025.
4. After dismissal of the second appeal, the defendant No.3 Smt. Rama Verma initiated an execution proceeding before the learned trial Court for execution of the decree dated 11.04.2012 for removal of encroachment of the plaintiff from the suit land. A warrant of possession was also issued on 01.09.2025 by the learned Executing Court. At the time of its execution, the plaintiff raised an objection about the identity of the land and refused to remove the encroachment, and therefore, the decree cannot be executed. On 30.10.2025, the plaintiff/petitioner has filed an application under Section 151 of CPC for staying the further proceeding of the execution case till the proper identification of the suit land by conducting proper demarcation. By filing this application he raised dispute with respect to the identity of the land. The said application has been decided by the learned Executing Court on 13.03.2026 and dismissed the application of the plaintiff/petitioner. The said order dated 13.03.2026 is under challenge in the present petition.
5. Learned counsel for the petitioner would submit that, though the suit of the plaintiff/petitioner has been dismissed, however before execution for removal of possession of the plaintiff from the suit land, a proper demarcation of the subject land is required. There is no



proper measurement or map with respect to the subject land and in absence thereof, the decree could not be executed in its true sense. The plaintiff/petitioner is not objecting the execution of the decree, but he only prayed for proper demarcation of the suit land to avoid any controversy with respect to the suit land. The proper demarcation of the suit land is required also for the reason that the possession of other adjoining land owners are also there over the land of khasra No. 302/1 and it was a big chunk of land. Therefore, till proper demarcation of the subject land the execution proceeding may be stayed by setting aside the impugned order. In support of his submission he would rely upon the judgment of the Hon'ble Supreme Court reported in 2003 (2) SCC 330 (**Pratibha Singh and another v. Shanti Devi Prasad and another**).

6. I have heard learned counsel for the petitioner and perused the material annexed with the writ petition.
7. Having heard learned counsel for the petitioner and upon perusal of the record, this Court finds that the petitioner himself was the plaintiff in the original civil suit wherein he had specifically claimed declaration and permanent injunction in respect of the subject land on the basis of the sale-deed dated 11.03.2002. Thus, it is evident that the petitioner was fully aware of the identity, nature and boundaries of the suit property at the time of institution and prosecution of the suit. The said suit was dismissed on merits and the counter-claim of the defendants was decreed, whereby the sale-deed dated 11.03.2002 was declared null and void and the suit land was held to be a road, with a specific direction to remove



encroachment. The said findings have attained finality up to the stage of Second Appeal. Therefore, at the stage of execution, the petitioner cannot be permitted to reopen the issue of identification of the land, which stood conclusively determined.

8. It is further apparent from paragraph 17 of the judgment and decree passed by the learned trial Court that the layout, description and boundaries of the suit land were specifically considered and adjudicated upon. The First Appellate Court has also considered in details about the identity and four corners of the land in paragraph 15 to 17 of its judgment dated 23.06.2014 and held that the suit land is the land belongs to the road. The identity of the land was thus clear, definite and free from ambiguity. Once the decree has attained finality and the property in question stands duly identified, the Executing Court is bound to execute the decree as it is and cannot go behind the decree or entertain objections which, in substance, seek to nullify or delay its execution.
9. In the case of ***Brakewel Automotive Components (India) Pvt. Ltd. v. P.R. Selvam Alagappan***, (2017) 5 SCC 371 the Hon'ble Supreme Court observed that:

“20. It is no longer res integra that an executing court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardising the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus unexecutable. An erroneous decree cannot be equalled with one which is a nullity. There are no intervening developments as well to render the decree unexecutable.”



10. In view of the aforesaid settled legal position, the objection raised by the petitioner regarding identification of the land is nothing but an attempt to delay the execution of a decree which has already attained finality. The trial Court as well as Appellate Court has elaborately considered the document (Exhibit P/3), which is the layout plan annexed with the sale-deed dated 11.03.2002 filed by the plaintiff himself, which clearly demonstrates the identity of the subject land and the plaintiff has admitted in his evidence that the subject land belongs to the road. The petitioner/plaintiff, having lost up to the High Court, cannot be permitted to indirectly reopen concluded issues under the guise of seeking demarcation.
11. The judgment relied upon by learned counsel for the petitioner in ***Pratibha Singh*** (*supra*) is clearly distinguishable on facts. In the said case, there was ambiguity with respect to identification of the decretal property. However, in the present case, the petitioner himself was the plaintiff with respect to same subject land and the identity and boundaries of the land were specifically adjudicated and recorded by the trial Court, and no such ambiguity survives.
12. Consequently, this Court does not find any illegality or perversity in the impugned order dated 13.03.2026 passed by the learned Executing Court rejecting the application under Section 151 CPC. The petition being devoid of merit is accordingly **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge