



2026:CGHC:21268



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 547 of 2026

1 - Biranchi Toppo S/o Late Fundra Toppo (Dead) Through Lrs Nil

1.1 - Mrs. Tiharo Toppo W/o Late Biranchi Toppo Aged About 49 Years R/o Shrigarh, Marghatiyapara, Ambikapur, Tehsil And District Ambikapur (C.G.)

1.2 - Ku. Kavita Toppo D/o Late Biranchi Toppo Aged About 15 Years Minors Nos. 1.2 And 1.3, Mother Smt. Tiharo Toppo. R/o Shrigarh, Margahatiyapara, Ambikapur, Tehsil And District Ambikapur (C.G.)

1.3 - Manish Kumar Toppo S/o Late Biranchi Toppo Aged About 13 Years Minors Nos. 1.2 And 1.3, Mother Smt. Tiharo Toppo. R/o Shrigarh, Marghatiyapara, Ambikapur, Tehsil And District Ambikapur (C.G.)

... Petitioners

versus

Dharam Singh Thakur S/o Shri Jam Singh Tahkur, Aged About 48 Years R/o Gramm- Tahraud, Thana Pitaura, Tehsil And District Mahasamund (C.G.)

... Respondent

(Cause title taken from Case Information System)

For Petitioners : Mr. Satish Kumar Tripathi, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

06/05/2026

1. This is a writ petition filed by the petitioner under Article 227 of the Constitution of India claiming the following reliefs:-



“10.1. This Hon'ble High Court may please to issue a Stay order of further hearing in the Civil exe. case 01/2017 in the lower court of First A.D.J Rajnandgaon (C.G.). As well as the entire records of the case be requisitioned by the Honorable Court from the lower court.

10.2. This Hon'ble High Court may please to issue writ of certiorari and set aside all the order which are passed by the lower court (As per Annexure P/1).

10.3. This Honorable High Court may give Such other appropriate orders deem fit to grant in favor of the Petitioner.”

2. Learned counsel for the petitioners would submit that the petitioners are owner of the land of total area of 3.962 hectares of total 7 different Khasra numbers situated at village Baghera, R.I. Circle Ghumka, Tahsil and District Rajnandgaon, they inherited the said land from the husband of petitioner No.1 and father of petitioner No.2 and 3, namely Biranchi Toppo. Earlier the respondent filed a civil suit No. 12-A/2016 against Biranchi Toppo for specific performance of the contract dated 16.12.2013 in which a compromise was arrived at between the parties and the said civil suit was decreed in favour of the plaintiffs by Mega Lok Adalat, Bench No.5, Rajnandgaon on 14.05.2016 on the basis of the compromise. As per the compromise and decree passed by Mega Lok Adalat on 14.05.2016, a decree for execution and registration of the sale deed within 6 months from 14.05.2016 was passed after payment of remaining sale consideration of Rs.2,80,000/-. Based on the said compromise decree, the respondent is prosecuting an execution



application before the learned Executing Court. He would further submit that Biranchi Toppo had challenged the compromise decree dated 14.05.2016, passed by Mega Lok Adalat in WP(227) No. 617 of 2017, in which the interim order of stay of further execution proceeding was passed. The said writ petition was dismissed by coordinate Bench of this Court on 29.08.2023.

3. During the pendency of the execution proceeding, Biranchi Toppo has died. After death of Biranchi Toppo, judgment debtor, the present petitioners have made an objection under Order 21 Rule 58 of the CPC on 05.03.2024, raising their grievance that a decree has been obtained by the decree holder by concealing the material facts and keeping Biranchi Toppo under the influence of liquor. The petitioners are also title and possession holder of the subject land and Biranchi Toppo cannot give his consent for execution of sale deed for entire land. There are manipulations in the agreement and without considering the entitlement of the land owner, alienable title and the entitlement of other shareholder of the property, the decree has been passed on the basis of compromise between the parties. The said application filed by the petitioners under Order 21 Rule 58 of CPC has been rejected by the learned Executing Court on 12.03.2026, along with the other applications filed by the petitioners, i.e. the application under Section 52 of the Transfer of Property Act and application under Section 151 of CPC.
4. Learned counsel appearing for the petitioners would also submit that the entire execution proceeding suffers from jurisdictional error and



cannot continued as the decree itself is obtained on incorrect facts. The petitioners are legal heirs of the deceased defendant Biranchi Toppo and the decree passed on the basis of consent given by Biranchi Toppo cannot be executed against his LR's. He would also submit that the decree can be executed only to the extent of share of the deceased Biranchi Toppo. However, it cannot be executed beyond his share and first it has to be ascertained what was the share of Biranchi Toppo, which he was entitled to alienate the same. Therefore, the petitioners are not challenging any particular order but are challenging the entire execution proceeding and its continuance before the learned Executing Court. Without any prior notice, the petitioners have been impleaded in the execution proceeding, and now the execution of the decree is sought against them also. Therefore, the petition may be allowed and the entire execution proceeding may be quashed.

5. I have heard learned counsel for the petitioners and perused the material annexed with the petition.
6. From perusal of the material annexed with the petition, it transpires that a decree was passed on the basis of compromise between the parties in Civil Suit No. 12-A/2016 by the Mega Lok Adalat, Bench No. 5, Rajnandgaon on 14.05.2016. It further transpires that the respondent/decreed-holder is prosecuting an execution proceeding before the learned trial court for execution of the decree dated 14.05.2016 against the judgment debtor. The judgment debtor, Biranchi Toppo, had defended until his death, and thereafter, the present petitioners, being the legal representatives of the deceased judgment



debtor, have been substituted in his place for execution of the decree. The petitioners could not demonstrate that the decree passed on 14.05.2016 by the Lok Adalat has been set aside by any superior court or reviewed by the same court; and the said decree is still in force. The judgment debtor, Biranchi Toppo, had challenged the said decree dated 14.05.2016 passed in Civil Suit No. 12-A/2016 by the Mega Lok Adalat, Bench No. 5, Rajnandgaon, in WP (227) No. 617 of 2017, which has been dismissed by a coordinate bench of this court on 29.08.2023 and thus, the decree attains finality. The petitioners could not demonstrate that they have further challenged the said decree or order.

7. Section 50 of the Code of Civil Procedure provides that if the judgment debtor dies before the decree has been fully satisfied, it may be executed against the legal representative of the deceased. It is necessary to notice here Section 50 of the CPC:

“50. Execution of decree against firm.—

(1) Where a decree has been passed against a firm, execution may be granted—

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:



Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 30 of the Indian Partnership Act, 1932 (9 of 1932).

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may, apply to the Court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not lease, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided



Family by virtue of the provisions of rule 10 of Order XXX.”

8. In the case of **Prabhakara Adiga v. Gowri and Others**, (2017) 4 SCC 97, the Hon’ble Supreme Court has held that:

“19. The High Court of Karnataka in [Hajaresab v. Udachappa](#) 1984 ILR Karnataka 900 has also held that under the provisions of [Section 50](#) CPC the legal representatives of the deceased defendant against whom the decree for injunction is passed would be liable for violation of that decree. It was also observed that [Section 50](#) CPC does not make any distinction between a decree for permanent injunction and a decree of any other nature. The High Court has referred to the ‘Execution Proceedings’ by Shri Soonavala, 1958 Edition thus:

“7. In Execution Proceedings by Shri Soonavala, 1958 Edition, on page 386 it is said: -

"A decree for injunction does not run with the land and cannot be enforced against a purchaser of the property from the defendant. But it can be enforced against a legal representative of the deceased j.d. Plaintiff obtained a decree against the defendant, restraining the latter from obstructing the access to light and air to her windows. The plaintiff applied for execution praying that the portion of the defendant's house which obstructed her windows should be pulled down. While this application was pending the defendant died



and his son and heir was brought on the record. The lower Courts directed that the decree should be executed as prayed for and directed the appellant (the son and heir of the deceased defendant) to pull down the obstructing portion of the house in question within a given time. It was contended for the appellant that the original defendant having died, the injunction could not be enforced against his son (the appellant) as an injunction does not run with the land. It was held that having regard to the provisions of [Section 50](#), the injunction ordered against the deceased defendant might be enforced against his son and his legal representative.

The author has further said on the same page -

"But a decree for injunction cannot be enforced against a purchaser of the property from the defendant or against a person who is not his legal representative. The plaintiff obtained a decree restraining the defendant in his user of certain land and applied for execution. Mean while the land had been sold in execution of another decree against the defendant and the purchaser at the Court sale obtained possession. The plaintiff thereupon applied that the purchaser should be made a party to the execution proceedings and that execution should go against him as well as against the defendant, It was held that no order for execution could be made. It could



not go on against the defendant as all his interest in the land had been sold in execution of a decree, and it could not go on against the purchaser as an injunction does not run with the land."

The author has further said -

"A decree for injunction does not run with the land and in the absence of any statutory provision, such a decree cannot be enforced against the surviving members of a joint family or against a purchaser from j.d. But where the sons of the j.d. are brought on the record as his legal representatives under [Section 50](#), the decree can be executed against them and so also against the transferees from the legal representatives, under [Section 52](#), Transfer of Property Act. On the same principle, viz., that they are bound by the result of the execution proceedings under [Section 52](#), T.P. Act, the transferees from the original j.d. during the pendency of the execution proceedings against him, can be held to be similarly bound and are liable to be proceeded against in execution".

The author has further said on page 387 as -

"A decree awarding certain reliefs by way of injunction was passed in favour of the plaintiff. Before execution was applied for, the defendant died and the darkhast proceeded against two widows of the



deceased j.d. as his legal representatives. During the pendency of the appeal in execution the legal representatives transferred their property to a stranger. A question was raised that execution could not proceed against the legal representatives and their transferee, as the relief granted by way of injunction was purely personal and the original j.d. having died, the injunction has ceased to be operative, it was held that the darkhast originally filed against the legal representatives was in order under [Section 50](#), C.P.C., and was also good against the transferee as the transfer was not made under the authority of the Court and, being effected during the pendency of a contentions proceeding in execution of the decree, could not be allowed to affect the right of the plaintiff under [Section 52](#), T.P. Act. (Krishnabai - v. - Sawlaram, I.L.R. 51 Bom. 37; 100 LC. 582 : A.I.R. (1927) Bom. 93; also see, 9 Bom. L.R. 1173; I.L.R. 26 Bom. 140, 283.) An injunction is a personal remedy and does not run with the land. A decree for an injunction therefore can be executed only against the persons against whom the injunction is issued and cannot be executed against any other person in the absence of a statutory provision. If an injunction decree is capable of being enforced against a person other than the j.d. by virtue of a statutory provision, e.g. [Section 50](#), C.P.C, it can be executed



equally against the son who inherits the estate of his father as well as against one who was joint with the father and is brought on the record as his legal representative. A d.h. sought to execute a decree for permanent injunction obtained against the father in a joint Hindu family against his sons. It was held that the decree being passed against the father as a manager and representative of the joint family could be executed against his son who represented the joint family; that the son taking the joint family estate by survivorship was to be regarded as a 'person' who in law represented the estate of a deceased person within the meaning of the first part of the definition in Section (2) (11), C.P.C"

25. In our considered opinion the right which had been adjudicated in the suit in the present matter and the findings which have been recorded as basis for grant of injunction as to the disputed property which is heritable and partible would enure not only to the benefit of the legal heir of decree-holders but also would bind the legal representatives of the judgment-debtor. It is apparent from [section 50](#) CPC that when a judgment- debtor dies before the decree has been satisfied, it can be executed against legal representatives. [Section 50](#) is not confined to a particular kind of decree. Decree for injunction can also be executed against legal representatives of the deceased judgment-debtor. The maxim "actio personalis moritur cum persona" is limited to certain class of cases as



indicated by this Court in *Girijanandini Devi v. Bijendra Narain Choudhary* (supra) and when the right litigated upon is heritable, the decree would not normally abate and can be enforced by LRs. of decree-holder and against the judgment-debtor or his legal representatives. It would be against the public policy to ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor when the cause and injunction survives. No doubt, it is true that a decree for injunction normally does not run with the land. In the absence of statutory provisions it cannot be enforced. However, in view of the specific provisions contained in [section 50](#) CPC, such a decree can be executed against legal representatives.”

9. The main grievance of the petitioners is that the decree itself was obtained by fraud and collusion and by suppressing the material facts and therefore it is not executable against the petitioner as their rights have not been determined. However, the fact remains that a decree has been passed by the learned Lok Adalat and the challenge of that decree by judgment debtor has been rejected by the order dated 29.08.2023 passed in WP(227) No. 617 of 2017, and thus, when a decree is still in force, it has to be executed in its terms. The objection raised by the petitioners that the decree cannot be executed as the rights of the petitioners have not been adjudicated in the said decree does not have any bearing, particularly when the decree has not been modified or set aside and the decree holder is prosecuting the decree, which is required to be satisfied.



10. Under the facts and circumstances of the case, as well as in view of the provisions of Section 50 of CPC and the judgment passed by the Hon'ble Supreme Court in **Prabhakara Adiga** (supra), I do not find any perversity or jurisdictional error rejecting the applications of the petitioners and proceeding in the execution case filed by the decree holder.
11. Accordingly, the writ petition fails and is hereby **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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