



2026:CGHC:12837

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 16-03-2026

Judgment delivered on 18-03-2026

SA No. 559 of 2016

Komalchand Jain S/o Hukumchand Jain, Aged About 75 Years R/o Village Gaurela, Police Station Pendra Road, Tahsil Pendra Road, District Bilaspur, Chhattisgarh, Chhattisgarh

... Appellant(s)

versus

Madanlal Gupta S/o Late Gangan Prasad Gupta, Aged About 78 Years R/o Village Gaurela, Police Station Pendra Road, Tahsil Pendra Road, District Bilaspur, Chhattisgarh, Chhattisgarh

... Respondent(s)

For Appellant(s)	:	Mr. Manoj Paranjpe, Senior Advocate along with Mr. Sandeep Patel, Advocate
For Respondent	:	None, despite service of notice.

Hon'ble Shri Bibhu Datta Guru, Judge
C A V Judgment

1. The appellant /defendant/ judgment debtor has preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity CPC) against the order dated 28.07.2016 passed by the Learned Additional District Judge, Pendra Road, Bilaspur in Misc. Civil Appeal No. 13/2015

(Komalchand Jain Vs. Madanlal Gupta) arising out of the order dated 01.10.2015 passed by the learned Civil Judge Class-I, Pendra Road, in Execution case No.220-A/1986 *(Madanlal Gupta v Komalchand Jain)*. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.

2. (a) The respondent/plaintiff Madan Lal Gupta instituted a suit for declaration, mandatory injunction and possession pleading inter alia that the original owner of the land, namely Lal Amol Singh, had sold a part of the property to the defendant by registered sale deed dated 27.04.1974. It was further pleaded that the remaining part of the property, which is the subject matter of the present suit, was purchased by the plaintiff from the widows, sons and daughters of Amol Singh by registered sale deed dated 25.06.1975 and thereafter the plaintiff was settled in possession of the said land. It was further averred that the defendant encroached upon certain portions of the land belonging to the plaintiff and despite service of legal notice continued to raise construction over the same. It was also pleaded that another portion of the suit land was subsequently sold to the plaintiff by the legal heirs of Amol Singh by registered sale deed dated 03.04.1976. According to the plaintiff, when he started raising construction over his portion of the land, the defendant caused obstruction

and interference, whereupon the plaintiff lodged a report with the police in the month of April, 1976.

(b) It was further pleaded that the defendant initiated proceedings under Section 145 of the Code of Criminal Procedure, pursuant to which an ex parte order of attachment was passed on 27.05.1976 in Criminal Case No. 91/1976 by the Court of Sub-Divisional Magistrate, Bilaspur, and consequently the property remained in *custodia legis*. It was also pleaded that by order dated 26.09.1978 the Magistrate directed the parties to approach the Civil Court and further directed that the property shall remain under attachment until an appropriate order is passed by the Civil Court. The plaintiff further alleged that the defendant had made interpolation in his sale deed dated 27.04.1974, in relation to which an FIR bearing Crime No. 107/1976 under Sections 420 and 465 of the Indian Penal Code was registered against the defendant.

(c) On the basis of the aforesaid pleadings, the plaintiff sought the following reliefs in the plaint:

अ. It be declared that the plaintiff is the owner of 40 feet x 80 feet land in the area च, छ, म च in the plaint map and that because of the interpolation made by the defendant in his sale-deed dated 27-4-1974 with respect to the length and width of the area purchased by him, the plaintiff's right over

the area अ. क. ख. ग. म. ज is not affected and in the alternative the plaintiff be delivered possession from the defendant.

आ. It be declared that the plaintiff is entitled to recover possession of the land under attachment in the Court of Sub-Divisional Magistrate in Criminal Case No.91/1976 on the area अ, ज, छ. प. ट. द. न, ख, फ.

इ. Construction raised by the defendant on the area छ. प. ट. द. न. ग. म in the plaint map be demolished and the defendant be directed to deliver possession of the said area to the plaintiff.

(d) By way of amendment in the plaint pursuant to the order dated 26.11.1999 passed by the learned Trial Court, the relief of possession by way of issuance of mandatory injunction was added in prayer clause No. 3. Thereafter, by another order dated 04.05.2000 passed by the learned Trial Court, the plaintiff's prayer for amendment seeking addition of the relief of possession at the end of the relief clause was also incorporated.

3. The defendant, in his written statement, denied the allegations made in the plaint and stated that he had not encroached upon any land belonging to the plaintiff. It was pleaded that the defendant had purchased land measuring

140 feet × 180 feet by registered sale deed dated 27.04.1974 and, therefore, nothing remained with the original owner to alienate thereafter. On this basis, it was contended that the subsequent sale of land from the same khasra made by the legal heirs of Amol Singh in favour of the plaintiff by registered sale deed dated 25.06.1975 is illegal and the plaintiff did not acquire any right, title or interest over the suit land. It was further pleaded that Amol Singh and his heirs belonged to a tribal community and, therefore, they were not competent to transfer the property in favour of a non-tribal. While admitting the initiation of proceedings under Section 145 of the Code of Criminal Procedure, the defendant stated that the said proceedings culminated on 21.12.1983 (Ex.D-14), wherein it was declared that the defendant was in possession of the suit property within two months prior to the date of the preliminary order passed by the Magistrate on 27.05.1976. It was further stated that possession of the land was delivered to the defendant on 12.01.1984 (Ex.D-7). By way of amendment in the written statement, the defendant further contended that although at the time of institution of the suit a mere suit for declaration was maintainable, however, after possession was ultimately delivered to the defendant, the suit for mere declaration was no longer maintainable. It was further contended that the relief for recovery of possession from the defendant was sought by way of amendment in the plaint

after a lapse of about twelve years from 12.01.1984, the date on which possession was delivered to the defendant under the proceedings initiated under Section 145 of the Code of Criminal Procedure, and therefore the suit is barred by limitation.

4. The trial Court partly decreed the suit on the following findings :-

(a) The measurement of the suit land described in the plaint map is correct,

(b) Late Amol Singh had sold an area of 40 feet on the north-sought direction upto the house of Badri Prasad in the east-west direction and not an area of 40 feet x 80 feet to the original defendant Hukumchand Jain,

(c) The plaintiff purchased the area demarcated as अ, क, ल, छ, फ, ब, in the plaint map by registered sale-deed dated 25-6-1975,

(d) The defendant has encroached over the area marked in blue colour in the plaint map.

(e) The plaintiff has legally purchased the area marked as अ, ब, फ, छ, ल, क and ब, ज, फ, छ by registered sale-deed dated 3-4-1976, however, purchase of the area marked as म, ग, ल, स in favour of the plaintiff is illegal,

(f) It is not proved that the sale-deeds dated 25-6-1975

and 3-4-1976 in favour of the plaintiff are illegal and void in view of the provisions of Section 165(6) of the Chhattisgarh Land Revenue Code, 1959,

(g) The suit filed by the plaintiff, which was initially for mere declaration, is maintainable,

(h) Plaintiff's suit is not barred by limitation,

(i) The defendant is not entitled to seek costs from the plaintiff,

(j) The plaintiff is entitled to seek declaration and possession for the land covered within the area अ, ज, ल, क in the plaint map.

5. The learned Trial Court, while deciding Issues No. 7 and 8, held that on the date of institution of the suit neither the plaintiff nor the defendant was in possession of the suit land, as the property had been attached in proceedings under Section 145 of the Code of Criminal Procedure. In such circumstances, since the defendant was not in a position to deliver possession of the land to the plaintiff, it was not necessary for the plaintiff to initially seek the relief of recovery of possession. The Trial Court further observed that when possession of the property was subsequently handed over to the defendant upon conclusion of the proceedings under Section 145 of the Code of Criminal Procedure, the plaintiff

amended the plaint and sought the relief of recovery of possession and, therefore, the suit was maintainable. The plea raised by the defendant with regard to limitation was also negated by the Trial Court on the ground that for a part of the suit land the relief for recovery of possession had been sought in the plaint from the very beginning, whereas for the remaining portion, which was in *custodia legis*, such relief could not have been claimed at the time of filing of the suit. The Trial Court further observed that after possession was delivered to the defendant, the plaintiff amended the plaint and sought the said relief. It was also held that since the proceedings in the suit remained in abeyance for a substantial period due to the pendency of criminal proceedings against the original defendant Hukumchand Jain, the said period was liable to be excluded, as specifically observed by the Trial Court in its order dated 05.05.2000. Accordingly, it was held that the suit was not barred by limitation. The Trial Court further observed that the Court has the power to grant an opportunity to the plaintiff to seek recovery of possession if, during the pendency of the suit, the plaintiff is dispossessed from the suit property. In paragraph 58 of the judgment, the Trial Court also noted that the proceedings in the suit remained in abeyance from 25.06.1984 to 24.06.1999.

6. Against the said judgment and decree passed by the learned trial Court, the defendant preferred an appeal before the learned First Appellate Court, who upon hearing the appeal and after re-appreciating the evidence available on record, partly allowed the appeal and modified the judgment and decree passed by the learned Trial Court. It was directed that the defendant shall hand over vacant possession of the land demarcated by the boundaries अ, ज, छ, प, ह, द, ल, क to the plaintiff. However, the learned First Appellate Court held that the defendant had not encroached upon the portions of land marked as प, छ, ह, द and म, ग, द, न and, to that extent, the decree of the Trial Court was modified.
7. The said judgment and decree were challenged before this Court by both the plaintiff and the defendant by filing Second Appeal No. 557 of 2005 (Komalchand Jain v Madan Lal Gupta) and Second Appeal No. 215 of 2006 (Madan Lal Gupta v Komalchand Jain), which were dismissed by common judgment dated 16.10.2010. Thereafter, the matter travelled upto the Supreme Court by filing SLP No. 29689/2010 (Komalchand Jain v Madan Lal Gupta), which was also dismissed by order dated 29.10.2010.
8. Subsequently in compliance of the judgment and decree passed by the learned Trial court, the execution proceedings have been initiated and the possession of the property was

handed over to the decree holder which is apparent from the Majkuri report (Annexure P-5). Thereafter, the appellant by raising a ground that, the decree holder has obtained the possession of the land in excess of the land mentioned in the decree, & filed an application for appointment of Commissioner for spot inspection under Order 26 Rule 9 of the CPC which was rejected by the Executing Court vide order dated 26.09.2011. Thereafter, appellant preferred an application under Section 47 of CPC , which was also rejected by the trial Court and the said order was challenged in Civil Revision bearing No. 55/2013 (Komal Chand Jain v Madan Lal Gupta). Though there is a pleading in the instant appeal at para 5 that the said revision is pending consideration, however, on verification it came to notice of this Court that the said revision was dismissed on 5-2-2016 for want of prosecution.

9. In the meanwhile, the appellant/ judgment debtor had filed an application under Order XXI Rules 98, 99, 100 and 101 read with Section 151 of the Code of Civil Procedure before the Executing Court. The said application was filed *inter alia* on the ground that the respondent/decreed holder, in the course of execution of the decree, had obtained possession of the property belonging to the appellant. However, the Executing Court rejected the said application vide order dated

01.10.2015. Thereagainst, the appellant preferred an appeal before the learned Additional District Judge challenging the said order. Due to inadvertence, the provisions of Order XLIII Rule 1 CPC were mentioned in the memo of appeal instead of Section 96 of the Code of Civil Procedure. The said mistake was *bona fide*, and in fact the learned District Judge entertained the appeal under Section 96 CPC as there is no provision for filing a miscellaneous appeal against such order. The learned District Judge dismissed the said appeal by the order impugned dated 28.07.2016 on merits. Thus, this appeal by the judgment debtor.

10. Learned counsel for the appellant submits that both the Courts have committed a substantial error of law in dismissing the objections filed by the appellant under Order XXI Rules 97, 98, 99, 100 and 101 of the Code of Civil Procedure in a summary manner without recording any evidence. It is contended that the objections raised by the appellant were dismissed without framing issues, without recording evidence and without granting proper opportunity of hearing. Learned counsel submits that an application under Order XXI Rules 97, 98, 99, 100 and 101 of the Code of Civil Procedure cannot be rejected summarily and must be decided only after following the settled procedure, including framing of issues, recording of evidence and hearing the

parties. It is therefore submitted that the orders passed by the Courts are illegal and unsustainable in the eyes of law and are liable to be set aside. He further placed his reliance upon the decision rendered by the Supreme Court in the matter of **Jini Dhanrajgir and Anr. Vs. Shibu Mathew and Anr. reported in (2023) 20 SCC 76** and upon a decision rendered by the High Court of Madhya Pradesh in the matter of **Ramkumar and Anr. Vs. Pankaj & Ors 2010 Lawsuit(MP) 921.**

11. Despite service of notice, the respondent/decreed holder has chosen not to appear before this Court.
12. I have heard learned counsel for the appellant and perused the records.
13. From the record it appears that during the course of execution proceedings the appellant had earlier filed an application under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Commissioner for spot inspection. On the said application, the Executing Court had already called for a report from the Revenue Inspector, Gaurela and on the basis of the said report, the application under Order XXI Rule 98, 99, 100 & 101 read with Section 151 of the CPC had been decided. The Revenue Inspector, Gaurela, along with the Halka Patwari, had inspected the disputed land bearing Khasra No. 327 of village Gaurela in the presence of

both the parties, village Kotwar and other villagers and thereafter submitted a report dated 12.02.2011 along with a map showing the present possession of the parties over the disputed land.

14. In the said report it was not mentioned that the decree holder had taken possession of any land in violation of the decree, nor was it found that the decree holder had taken possession over the portion marked as प, छ, ह, द and म, ग, द, न belonging to the appellant. Despite the said report, the appellant again moved an application seeking appointment of a Commissioner for the same purpose, which was rightly rejected by the Executing Court.

15. At this juncture it would be appropriate to quote Order XXI Rules 98, 99, 100 and 101 read with Section 151 of the CPC:-

XXI Execution of decrees and orders (payment under decree)

xxx xxx xxx

98. Orders after adjudication-(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(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.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by by decree-holder or purchaser. -

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder or a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he 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.]

100. Order to be passed upon application complaining

of dispossession-Upon the determination of the questions 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

[101. Question to be determined. All questions (including questions 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.]

16. The gist of the aforesaid provisions broadly provide that where resistance or obstruction is caused in execution of a decree for possession, or where any person other than the judgment debtor complains of dispossession by the decree holder or purchaser in execution, such person may approach the Executing Court by filing an appropriate application. Upon such application being filed, the Executing Court is required to adjudicate all questions arising between the parties to the

proceeding, including questions relating to right, title or interest in the property, and thereafter pass appropriate orders in accordance with such determination.

17. From the material available on record, it is evident that the land from which the appellant claims to have been dispossessed does not form part of the property covered under the execution proceedings and the same is also not reflected in the execution map. In terms of Order XXI Rule 99 of the Code of Civil Procedure, an application complaining of dispossession is maintainable only where a person other than the judgment debtor is dispossessed of immovable property by the decree holder or purchaser in execution of a decree for possession of such property. In the present case, since the land alleged to have been dispossessed is not the land covered by the decree or the execution proceedings, the application filed by the appellant under Order XXI Rules 98, 99, 100 and 101 read with Section 151 of the Code of Civil Procedure was not maintainable & the provisions of the Order XXI Rule 98, 99, 100 & 101 read with Section 151 of the CPC was not at all applicable into the grievance of the appellant herein.

18. It is further observed that under Order XXI Rules 100 and 101 of the Code of Civil Procedure, the Court is required to adjudicate questions relating to possession, right, title or

interest in the property only when such questions arise between the parties in respect of the property forming the subject matter of execution. Since the appellant's grievance pertains to land which is not part of the decree or the execution proceedings, such claim cannot be adjudicated in the present execution proceedings. If the appellant is of the view that the decree holder has taken possession of land in excess of what has been decreed, it would be open for him to pursue such grievance by initiating appropriate independent civil proceedings before the competent Court.

19. The decision of the Supreme Court in **Jini Dhanrajgir (supra)** as also the decision of High court of Madhya Pradesh in **Rajkumar (supra)**, cited by the appellant, are only regarding the procedure how to deal with the application under Order XXI Rule 98, 99, 100 & 101 of the CPC. The said decisions are not relevant herein because in the preceding paragraphs of this judgment, this court has held that the provisions of Order XXI Rule 98, 99, 100 & 101 of the CPC will not attract in the present case.

20. In such circumstances, the objections raised by the appellant/judgment debtor appear to be nothing but an attempt to reopen issues which have already been attained finality under the decree. It is well settled that the Executing Court cannot travel beyond the decree, and is bound to

execute the decree as it stands. Therefore, the Executing Court has not committed any illegality in rejecting the application filed by the appellant under Order XXI Rules 98, 99, 100 and 101 read with Section 151 of the Code of Civil Procedure vide order dated 01.10.2015, and the learned First Appellate Court has rightly affirmed the said order. The findings recorded by both the Courts are based on proper appreciation of the material available on record and do not suffer from any perversity so as to warrant interference in this second appeal. Even no substantial question of law arises for consideration in the present second appeal.

21. Accordingly, the second appeal, being devoid of merit, is **dismissed**. However, liberty is granted to the appellant/ judgment debtor to avail such remedy as may be available to him in accordance with law before the appropriate forum, if so advised.

Sd/-

(Bibhu Datta Guru)
Judge