

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 62 of 2024

Reserved on:18.11.2025

Date of decision: 25.11.2025

Bhupinder Kumar Sharma & Anr.

.....Petitioners/JDs

Versus

Mahadev Gupta

...Respondent/DH

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes.

For the petitioners/JDs : Mr. R. K. Bawa, Senior Advocate,
with Mr. O. C. Sharma, Advocate.

For the respondent/DH : Mr. Neeraj Gupta, Senior Advocate,
with Mr. Ajeet Pal Singh Jaswal,
Advocate.

Satyen Vaidya, Judge:

The petitioners/JDs have invoked the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure (for short, "CPC") against the order dated 05.04.2024, passed by the learned Civil Judge (Senior Division), Kasauli, District Solan (H.P.), in Execution Petition No. 1348 of 2019, CNR No. HP S0100003592019.

2. Facts in brief are that the respondent/DH was a tenant in a shop situated in Mauza Dhangyar, P.O. Parwanoo,

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Tehsil Kasauli, District Solan, H.P., measuring 2.28 x 3.19 square meters (for short, “the shop”). The petitioners/JDs were the owners of the shop.

3. The respondent/DH filed a suit bearing No. 89/1/2008 against the petitioners/JDs in the Court of the learned Civil Judge (Senior Division), Kasauli, District Solan (H.P.). The plaint was instituted on 27.11.2008. In the said suit, a decree was sought to the effect that the respondent/DH be not dispossessed from the shop without due process of law. The suit was filed by pleading various instances of illegal interference by the petitioners/JDs in the lawful possession of the respondent/DH over the shop.

4. During the pendency of the suit, proceedings under Section 133 of the CrPC were initiated before the Executive Magistrate at the instance of the petitioners/JDs with respect to the shop. In pursuance of the order passed by the Executive Magistrate, the shop was demolished on 02.09.2009. Later, the order passed by the Executive Magistrate was set aside by the higher Court; however, by that time the shop had already been demolished.

5. The respondent/DH amended the suit and challenged the illegal dispossession. A prayer for possession was made.

6. Civil Suit No. 89/1/2008 was decreed in favour of the respondent/DH by the learned Senior Civil Judge, Kasauli, District Solan (H.P.), *vide* judgment dated 18.08.2017. The following relief was granted in favour of the respondent/DH:—

“Relief:- 19. In the light of my findings on the above decided issues *supra*, the suit of the plaintiff is decreed for vacant possession of shop situated on khasra No. 790 and 790/1 situated in mauza Dangyar, P.O. Parwanoo, Tehsil Kasauli, District Solan which is also depicted in the sale deed Ex. PY measuring 2.28x3.19 square meters and which is also depicted in the site plan/map Ex.PR1. It is clarified for the identification of the shop, the sale deed Ex.PY and the map Ex.PR1 be taken into consideration. The sale deed No.160 dated 22.03.2010 shall bear no effect on the right of the plaintiff as is hit by lis pendence and Section 52 of TPA Act. The suit stands decreed. Decree sheet be prepared accordingly. File, after due completion, be consigned to the record room.”

7. The aforesaid judgment has attained finality. Civil Appeal No. 35-S/13 of 2017 filed by the petitioners/JDs before the learned District Judge, Solan (H.P.), was dismissed on 30.10.2019. The Regular Second Appeal No. 571 of 2019, filed by the petitioners/JDs before this Court against the judgment and decree passed by the learned District Judge, Solan (H.P.), has also been dismissed on 18.09.2023.

8. In the execution petition filed by the respondent/DH, the petitioners/JDs preferred objections under Section 47 of the CPC. The executability of the decree was challenged primarily on

the ground that the location of the suit property was not identifiable. It was alleged that since there was no specific *Tatima* of the demolished shop, the decree for vacant possession of the shop was vague, erroneous, and inexecutable. It was further alleged that the identification of the shop with reference to the site plan/map Ex. PR1 was erroneous, as the said plan was the approval obtained by the petitioners/JDs on 06.07.2006 for alterations in the existing two-storeyed building on Khasra No. 139/98. According to the petitioners/JDs, the shop was never part of the old two-storeyed structure of the petitioners/JDs. It was contended that the shop stood demolished in 2009, whereas the site plan/map Ex. PR1 had been sanctioned on 06.07.2006. As per the petitioners/JDs, the demolished shop had a structure with brick walls and CGI roofing in front of the multistoried building of the petitioners/JDs

9. It was also contended by the petitioners/JDs that the area of the demolished shop, measuring 2.28 x 3.19 square meters, was lying vacant on the spot, as depicted in sale deed Ex. PY. The petitioners/JDs had extended their offer to hand over the said vacant possession to the respondent/DH.

10. The objections filed by the petitioners/JDs were contested by the respondent/DH.

11. The learned Executing Court, *vide* order dated 22.10.2021, dismissed the objections filed by the petitioners/JDs under Section 47 of the CPC. Warrants of possession were ordered to be issued against the petitioners/JDs in terms of the aforesaid decree with reference to sale deed Ex. PY and site plan/map Ex. PR1.

12. The warrant was not executed. On 26.11.2021, the Executing Court passed the following order:—

“Report of the execution of warrant has been received whereby the Executing Officer has mistakenly been giving the possession of the vacant area but, it is clearly specified in the judgment dated 18-8-2017 that vacant possession of the shop situated on khasra No. 790 and 790/1 situated in mauza Dangyar, P.O. Parwanoo, Tehsil Kasauli, District Solan, H.P which is also depicted in the sale deed Ex.PY measuring 2.28x3.19 square metres and which is also depicted in the site plan/map Ex.PR1. However, the Executing Officer has either mistakenly for the best reasons known to him has not complied with the decree of the Court and the order of this Court dt. 22-10-2021 whereby it is clearly held that the warrant of possession be issued against the JD and vacant possession of the shop on khasra No. 790 and 790/1 situated in mauza Dangyar, P.O. Parwanoo, Tehsil Kasauli, District Soian, H.P aforesaid is to be given to the decree holder and not the possession of some vacant area is to be given to him. The report of the t of the Naib Tehsildar is to the effect which is wrong as per the decree of this Court and also the orders passed in execution petition dated 22-10-2021. Let fresh warrant of possession be again issued by making a reference with respect to this order to the Executive Officer so that the

mistake may not be repeated again and before handing over the vacant possession as per decree sheet and judgment dt. 18-8-2017 as well as the orders of this court dated 22-10-2021 be also sent to follow the same in letter and spirit. Report be made returnable to this Court for 29-12-2021.”

13. In compliance to the order dated 26.11.2021, the Naib Tehsildar, Parwanoo, submitted his report. However, the learned Executing Court issued notice to the Naib Tehsildar, Parwanoo, returnable on 22.04.2022, seeking clarification with regard to certain aspects of his report. Thus, the following order was passed on 22.04.2022:-

“Sh. Chattar Singh, Naib Tehsildar, Parwanoo, is present. Clarification sought from him on certain points with regard to his report. He has explained that though Khasra No.790, 790/1 were located inside the building of J.D. but there was no shop, measuring 2.28 x 3.19 square meters, in the building of J.D.

List on 27.05.2022 for consideration.”

14. Thereafter on 13.07.2022, the matter was again taken up by the Executing Court. The Naib Tehsildar, Parwanoo, had reported that Khasra Nos. 790 and 790/1 were located inside the building of petitioners/JDs but no shop measuring 2.28 x 3.19 square meters was found inside the building. In this background, Executing Court formed an opinion that the Planning Officer, Parwanoo, would be the best person to locate the shop. Accordingly, directions were issued to the Planning Officer, Parwanoo to locate the shop in the ground floor of the site

plan/map Ex.PR1. Naib Tehsildar, Parwanoo, was also directed to remain present on the spot. The Planning Officer, Parwanoo, submitted his report on 27.08.2022. The relevant extract of the said report is reproduced as under: -

“3. Spot was visited on dated 27.7.2022, Sh. Bhupinder Sharma (defendant and Sh. Mahadev Gupta (Petitioner) were present at site. Naib tehsildar Parwanoo along with the revenue officials were also present. As per the revenue record as shown by the revenue officials, revenue boundary of kh no. 790 and 790/1 of mauza dangyar was verified. It is pertinent to mention here that defendant was initially allowed retention of ground floor and addition of first floor on kh. No 139/8 mauza dangyar vide no. HIM/Atp/pwn/PP.Case no.466/PWN/PA/2001-3310-11 dated 13.03.2001, subsequently approval for construction for third floor was allowed on khasra no. 139/8(old K.N before settlement) of mauza dangyar vide letter no HIM/Atp/pwn/PP. Case no. 466/PWN/PA-04-1160 dated 7.7.2006 for commercial purpose. Old Khasra no. 139/8 was abutting on Kalka-Shimla NH Road as per the document submitted during approval of map. However after settlement khasra no, 139/8 is reassigned new K.No i.e 790 and 790/1 & 789. Building of Sh Bhupinder kumar (Respondent) exists on K.No 790/1 & 790 K.No 789 is between the building of Sh. Bhupinder Kumar (Respondent) & old Kalka Shimla NH Road .

Ground floor plan of map Ex PR1, verified and it was observed that shop having dimensions 2.28x 3.19 m does not exist within the constructed ground floor of three storeyed commercial building. Tin roof portico stands constructed on K.No 789 on front side of building & old NH 5.”

15. The petitioners/JDs and the respondent/DH filed their separate objections to the report of the Planning Officer, Parwanoo. These objections were decided by the learned

Executing Court *vide* order dated 05.04.2024, which has been assailed by the petitioners/JDs by way of the present petition.

16. I have heard learned counsel for the parties and have also gone through the entire record carefully.

17. Though, in the instant petition, the petitioners/JDs have made reference to Annexure P-4 as the copy of objections filed by them, which allegedly were decided *vide* the impugned order dated 05.04.2024, the record reveals otherwise. The copy of objections placed on record by the petitioners/JDs as Annexure P-4 is, in fact, a copy of the objections preferred by the petitioners/JDs at the first instance under Section 47 of the CPC, which were dismissed by the learned Executing Court on 22.10.2021. By way of the impugned order, the learned Executing Court has decided the later objections raised by the petitioners/JDs to the report submitted by the Planning Officer, Parwanoo. This objection petition bears the date 10.11.2022, whereas the original of Annexure P-4 bears the date 18.09.2019.

18. It has not been disputed by the petitioners/JDs that they had not assailed the order dated 22.10.2021 passed by the learned Executing Court, whereby their objections under Section

47 of the CPC were dismissed. Thus, the order dated 22.10.2021 has attained finality.

19. As noticed above, by way of the earlier objections filed under Section 47 of the CPC, the petitioners/JDs had challenged the executability of the decree on the ground that the shop was not identifiable. The learned Executing Court had passed a detailed order dated 22.10.2021, concluding therein that it could not go behind the decree, and accordingly the objections were dismissed.

20. The later objections submitted by the petitioners/JDs to the report of the Planning Officer, Parwanoo, are nothing but an attempt to rake up the same issues again. In substance, the execution of the decree was again sought to be avoided by the petitioners/JDs by raising a dispute as to the identity of the shop. It was alleged that the plan Ex. PR1, referred to in the decree, related to the three-storeyed building of the petitioners/JDs was constructed on old Khasra No. 139/98. As per the decree in question, the shop was situated in Khasra Nos. 790 and 790/1. According to the petitioners/JDs, since Khasra No. 790 was not part of old Khasra No. 139/98, the shop could not be related or linked to site plan/map Ex. PR1.

21. While deciding the earlier objections of the petitioners/JDs under Section 47 of the CPC, *vide* order dated 22.10.2021, the learned Executing Court had already rejected their plea with respect to the inexecutability of the decree on account of non-identification of the shop. Thus, without assailing the aforesaid order dated 22.10.2021, the petitioners/JDs could not be allowed to raise the same issue substantially, though in a different form, before the same Court.

22. Noticeably, in the instant petition, the petitioners/JDs have not disclosed the factum of the filing of earlier objections under Section 47 of the CPC and the dismissal of their objection petition *vide* order dated 22.10.2021. Rather, the petition has been drafted in a misleading manner so as to create the impression that the objection petition (Annexure P-4) was decided by the learned Trial Court *vide* the impugned order dated 05.04.2024. The conduct of petitioners/JDs, thus, renders their bona fide highly doubtful.

23. Even on merits, the petitioners/JDs have not been able to make out any case for interference with the impugned order in the exercise of the revisional jurisdiction of this Court. The objections filed by the petitioners/JDs have not found favour

with the learned Executing Court primarily on the ground that the Naib Tehsildar, Parwanoo, had already submitted in his report that Khasra Nos. 790 and 790/1 were located inside the building of the petitioners/JDs. The warrant was not executed by the Naib Tehsildar, Parwanoo, only on the ground that the shop measuring 2.28 x 3.19 square meters was not found on the ground floor of the building. Moreover, it is evident from the document (Annexure P-7) annexed with the petition that Khasra No. 790/1 has been carved out from old Khasra No. 139/98 Min. Though the said document does not reflect the new Khasra No. 790, this does not prove that Khasra No. 790 (new) has been carved out from any other old Khasra number than Khasra No. 139/98. If the petitioners/JDs wanted the Court to believe otherwise, they should have placed on record the document reflecting the pre-settlement (old) Khasra number of the new Khasra No. 790

24. The decree under execution is clear and unambiguous and cannot be said to be inexecutable for want of identification. It appears that the petitioners/JDs are trying to prolong the litigation with the purpose of frustrating the decree passed in favour of the respondent/DH. Admittedly, the shop that was originally in the possession of the respondent/DH had been demolished in the year 2009 under the orders passed by the

learned Executive Magistrate, despite the pendency of the Civil Suit. The petitioners/JDs later advanced the plea that they had sold the shop to a person named Prince in the year 2010. The sale deed through which the petitioners/JDs had purportedly sold the shop to Prince was exhibited as Ex. PY in the record of the Civil Suit, and the said sale deed was used by the learned Trial Court in the decree for the purposes of identification of the shop. In sale deed Ex. PY, the shop sold thereby was depicted as a structure with four pillars and a lintel thereon, having measurements of 2.28 x 3.19 square meters. Subsequently, the petitioners/JDs came up with the plea that even the structure sold to Prince by way of sale deed Ex.PY had collapsed in the year 2010 during the construction of a basement. An averment to this effect has been made by the petitioners/JDs in their reply filed to the objections of the Decree Holders to the report of the Planning Officer, Parwanoo, which has been annexed as Annexure R-4 (Colly.) with specific reference to the contents contained in Para No. 1 of the reply at page No. 179 of the paper book.

25. Thus, it is clear that, in terms of the decree, the petitioners/JDs are to provide the shop to the respondent/DH. Since the petitioners/JDs themselves admitted that the shop shown in sale deed Ex. PY stood demolished, the direction by the

learned Executing Court to the petitioners/JDs to reconstruct the shop measuring 2.28 x 3.19 square meters on the ground floor of their building situated over Khasra Nos. 790 and 790/1, in Mauza Dhangyar, P.O. Parwanoo, Tehsil Kasauli, District Solan (H.P.), cannot be said to be illegal or perverse, more particularly when the decree has made reference to site plan/map Ex. PR1 for identification. Even otherwise, the petitioners/JDs are liable to restore possession of the shop to the respondent/DH under the “principle of restitution.” The pleas raised by the petitioners/JDs in the execution petition from time to time have been contradicted by the reports submitted by the Revenue Officers and also the Planning Officer, Parwanoo, before the learned Executing Court. No illegality has been committed by the learned Executing Court in basing its opinion on the said reports. The petitioners/JDs did not raise any objection to the earlier reports submitted by the Revenue Officers.

26. In result, I do not find any merit in the petition, and the same is dismissed with costs of Rs. 50,000/- (Rupees Fifty Thousand Only) to be paid to respondent/DH. Costs have been imposed for the reasons that the petitioners/JDs have not made a correct and factual disclosure in the instant petition, and also that

the petitioners/JDs have taken undue advantage to prolong the litigation for an abnormally long duration.

27. All pending applications also stand disposed of.

25th November, 2025
(Shamsh Tabrez)

(Satyen Vaidya)
Judge