

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No.903 of 2025

Madho Lohar @ Madho Tirkey, aged about 67 years, Son of Late
Bulaki Lohar, Resident of Morabadi, Manda Tand, Harihar Singh
Road, P.O. Ranchi College, P.S. Bariatu, District- Ranchi

... Petitioner

Versus

1. Geeta Devi, D/o Late Sukhram Lohar, Wife of Ashit Kumar Ghosh, resident of Gari Hotwar, P.O. & P.S.- Sadar, District- Ranchi.
2. Dipti Devi, W/o Late Raj Kishore Lohar
3. Sanjay Lohar, S/o Late Sanjay Lohar
4. Geeta Devi, W/o Late Sudama Lohar
5. Pinki, W/o Satyanarayan Lohra

Both 2 to 5 are resident of Tagore Hill Road, Baniya Toli, P.O. & P.S. Bariatu, District- Ranchi.

6. Dilip Oraon, s/o not known, Resident of village Morabadi, P.O. & P.S. Bariatu, District- Ranchi

7. Deputy Commissioner, Ranchi, P.O. & P.S. Ranchi, District- Ranchi

... Opposite Parties

For the Petitioner

: Mr. Rajeev Kumar, Advocate
Mr. Manoj Kr. Ram, Advocate
Mr. Niraj Kr. Singh, Advocate

For the O.P. No.1

: Mr. Manoj Kr. Tamboli, Advocate
Mr. Shambhu Nath Sharma, Advocate

For the O.P. Nos.2 to 6

: Mr. Avilash Kumar, Advocate

For the O.P. No.7

: Mr. Om Prakash Tiwari, GP III

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Civil Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India with the prayer to quash the common order dated 07.08.2025 passed by the learned Civil Judge, Senior Division-XVIII, Ranchi by which the learned Civil Judge, Senior Division-XVIII, Ranchi has dismissed M.C.A. No.825 of 2024 as well M.C.A. No.759 of 2024.

3. The brief facts of the case is that the Execution Case No.69 of 2023 has been filed in the court of Civil Judge, Senior Division, Ranchi to execute the decree passed in Partition Suit No.129 of 2003 in which final decree was signed by the learned Civil Judge, Senior Division-III, Ranchi on 02.03.2023; in which the plaintiff being the decree holder was allotted one-tenth of the share of the suit property as mentioned in Schedule- A of the plaint. A preliminary decree in Partition Suit No.129 of 2003 was passed on 18.11.2011. The parties to the Partition Suit No.129 of 2003 filed altogether two appeals and one cross appeal before the Judicial Commissioner, Ranchi in respect of the said preliminary decree. The appeal filed by the plaintiff against the preliminary decree passed in Partition Suit No.129 of 2003 was numbered as Title Appeal No.78 of 2011. The appeal filed by Madho Lohar who is the present petitioner, against the said preliminary decree was numbered as Title Appeal No.08 of 2012 and the cross appeal filed by Bahri Lohar and others in the said Title Appeal No.08 of 2012 was numbered as Cross Title Appeal No.08 (A)/2012. The learned Judicial

Commissioner-IV, Ranchi vide the common judgement dated 12.12.2013 dismissed the Title Appeal No.08 of 2012 filed by the petitioner herein who was the defendant No.5 to the suit; because the counsel for the petitioner appearing before the concerned Judicial Commissioner-IV, Ranchi, submitted that the petitioner herein, who was the appellant of that appeal, was not aggrieved by the judgment and the preliminary decree and he has no objection if the four plots which were allotted to the share of Karma Lohar is partitioned *inter se* between the plaintiff and the defendant Nos.1 to 4. The petitioner has also filed Civil Appeal No.51 of 2023 against the final decree passed in the said Partition Suit No.129 of 2003 dated 20.01.2023 which is still *sub judice*. The petitioner has also filed Second Appeal No.283 of 2016 against the judgment passed by the Judicial Commissioner-IV, Ranchi in Title Appeal No.08 of 2012 which is still pending in this Court. The petitioner, on 04.06.2024, filed Misc. Civil Application No.759 of 2024 under Order XXI Rule 26 with Section 47 and with Section 151 of the Code of Civil Procedure and the petitioner also filed an objection under Order XXI Rule 23 of the Code of Civil Procedure, challenging the jurisdiction of the trial court for partition of the property, once the same was partitioned by a decree of a court of competent jurisdiction prior to 20.12.2004; in view of the proviso of Section 6 (1) and Section 6 (5) of the Hindu Succession Act, 1956. It is further contended that in the said partition suit, the plaintiff has concealed the facts and even mentioned

the wrong parentage of the petitioner-defendant No.5 of the said Partition Suit No.129 of 2003 and in the plaint, suppressed the fact of the earlier partition made by the decree passed in Partition Suit No.03 of 1961.

4. The learned Civil Judge, Senior Division, Ranchi by the common impugned order which was passed in respect of Misc. Civil Application No.759 of 2024 as well as M.C.A. No.825 of 2024 also; considered the fact that from the preliminary decree passed in Partition Suit No.129 of 2003, Title Appeals were filed as already indicated above. The Second Appeal No.283 of 2016 was also filed by the petitioner who was the defendant/ judgment-debtor No.5. The Second Appeal No.385 of 2016 was filed by the defendant/judgment-debtor No.6 namely Dilip Lohar. The petitioner has filed Civil Appeal No.51 of 2023 against the final decree passed and also considered the settled principle of law that the execution proceedings should not be used to relitigate issues already decided in the suit; as also the settled principle of law that the executing courts cannot go beyond the decree or re-adjudicate the issues already decided in the suit and also considered the principle of law decided in the case of **Rahul S. Shash vs. Jitendra Kumar Gandhi & Others** reported in **(2021) 6 SCC 418** wherein it was held that the benefit under Section 47 of the C.P.C. cannot be availed to conduct a re-trial of the suit. Regarding the settled principle of law that the executing court must not go beyond the decree, the learned Civil Judge (Senior

Division) relied upon the judgement of the Hon'ble Supreme Court of India in the case of **Periyammal (Dead) through Lrs. & Others vs. V. Rajamani & Another** reported in **Civil Appeal Nos.3640-3642 of 2025** arising out of **S.L.P. (C) Nos.8490-8492 of 2020** and by thus considering since the issues were already raised in the suit and were decided in the appeal, dismissed the Misc. Civil Application No.759 of 2024.

5. Learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court of India in the case of **Nidhi Kaim & Another vs. State of Madhya Pradesh & Others** reported in **(2017) 4 SCC 1** and submits that a three-judge Bench of the Hon'ble Supreme Court of India has reiterated the settled principle of law that nothing obtained by fraud can be sustained, as fraud unravels everything.

6. Learned counsel for the petitioner next relies upon the judgment of Hon'ble Supreme Court of India in the case of **Vineeta Sharma vs. Rakesh Sharma & Others** reported in **[2020] 10 S.C.R. 135** paragraph-126 of which reads as under:-

"126. The protection of rights of daughters as coparcener is envisaged in the substituted Section 6 of the Act of 1956 recognises the partition brought about by a decree of a court or effected by a registered instrument. The partition so effected before 20.12.2004 is saved."

and submits that therein the Hon'ble Supreme Court of India has in no uncertain manner has held that the partition effected before 20.12.2004 is saved by the amendment of the Section 6 of the Act of 1956

and answered the reference in paragraph-129 (ii) which reads as under:-

“129. (ii) The rights can be claimed by the daughter born earlier with effect from 09.09.2005 with savings as provided in Section 6 (1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.”

7. It is next submitted that since the partition was effected by the decree passed in Partition Suit No.03 of 1961 so, the same cannot have been repartitioned by the court concerned; in the decree under execution by the said Execution Case No.69 of 2023.

8. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Sarwan Kumar & Another vs. Madan Lal Aggarwal** passed in **Appeal (Civil) No.1058 of 2003 dated 06.02.2003** wherein it was reiterated by the Hon'ble Supreme Court of India that objection to the execution of the decree being a nullity having been passed by a court lacking inherent jurisdiction, could be raised in execution proceedings and the finding recorded in decree that the civil court had the jurisdiction would not operate as a *res judicata*.

9. It is next submitted that in the case of **Saroj Salkan vs. Huma Singh & Others** reported in **2025 INSC 632** which is the judgment passed by the Hon'ble Supreme Court of India in **Civil Appeal No.6389 of 2025**, the facts of the case relates to an appeal that was filed challenging the judgment and final order dated 15.11.2022 passed by the High Court of Delhi in RFA (OS) No.51 of 2016 whereby the

Division Bench of the Hon'ble Delhi High Court dismissed the appeal and upheld the decree passed by the learned Single Judge in CS (OS) No.683 of 2007 dismissing the partition suit under Order XII Rule 6 of the Code of Civil Procedure; the Hon'ble Supreme Court of India found that the suits involved in that case amount to recognition and acceptance of the fact of partition between the parties prior to 20.12.2004. Consequently, the proviso to Section 6 (1) as amended of the Hindu Succession Act is attracted and the old Section 6 will not be applicable in that case and further in paragraph-48 of the said judgment held that such property will be joint family property of the members of the branch *inter se*, but will be separate property of that branch in relation to the larger family in view of the judgment of the Hon'ble Supreme Court of India in the case of **Kalyani (Dead) by LRs. vs. Narayanan** reported in **1980 Supp. SCC 298**.

10. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Bhudev Mallick @ Bhudeb Mallick & Another vs. Ranajit Ghoshal & Others** reported in **2025 INSC 175** and submits that in paragraph-55 therein it has been held by the Hon'ble Supreme Court of India that if any error is committed by a court, be it an error of fact or of law and such erroneous decision has resulted in the subordinate Court or tribunal exercising jurisdiction, not vested in it by law, or in its having failed to exercise the jurisdiction, vested in it by law, that will come within the scope of

Section 115 of the Code of Civil Procedure or for that matter, of Article 227 of the Constitution of India, as the case may be and this error may have resulted from a violation of rules of natural justice, by taking into consideration matters which are extraneous and irrelevant, or by substituting judicial consideration by bias, based on suspicion, arising from those extraneous matters or from any other cause whatsoever but if it has affected the assumption or exercise of jurisdiction, it will be a jurisdictional error for purpose of the Article and in paragraph-56, though not exhaustive, the list of jurisdictional error has been identified as an error exists when a decision maker has committed the wrongs mentioned therein, paragraph-56 of which reads as under:-

"56. There is no exhaustive list of jurisdictional errors, but case law has identified such an error exists when a decision-maker has:

- identified a wrong issue;*
- asked a wrong question;*
- ignored relevant material;*
- relied on irrelevant material;*
- failed to observe a requirement of procedural fairness;*
- made a decision involving fraud;*
- made a decision in bad faith;*
- made a decision without evidence;*
- applied a policy inflexibly."*

and it is submitted that in this case also, the learned Civil Judge, Senior Division-XVIII, Ranchi who has passed the decree under execution in Partition Suit No.129 of 2003, having committed a jurisdictional error by not recognizing the partition that was effected by the decree passed in Partition Suit No.03 of 1961; which has been saved by Section 6 (1) Proviso and Section 6 (5) of the Hindu Succession Act,

1956, hence, the learned executing court ought not have proceeded with the execution of the decree.

11. Learned counsel for the petitioner next relies upon the order of the Hon'ble Supreme Court of India in the case of **Renavva @ Lakshmi & Others vs. Shantilkumarswamy R. Subramanya & Others** passed in **Special Leave Petition (Civil) Diary No (s). 28340 of 2025** dated 20.06.2025 wherein the Hon'ble Supreme Court of India did not find any fault with the observations made by the High Court of Karnataka that the prohibition contained in Section 6 of the amended Hindu Succession Act, 1956 did not have any effect on the registered sale-deed; which was executed prior in point of time to 20th December, 2004.

12. Learned counsel for the petitioner next submits that the report of the Pleader Commissioner, basing upon which the final decree of Partition Suit No.129 of 2003 has been passed, is an ambiguous document and is contrary to the Rule 99 A of the Civil Court Rules as framed by the High Court of Jharkhand. It is further submitted that in the objection under Order XXI Rule 23 of the Code of Civil Procedure, a plea that was taken by the petitioner that non-description of the plots that have been sold, requires clarification as to what is meant by most of the suit plots and also that some of the plots are vacant. Hence, it is submitted that the prayer, as prayed for in this Civil Miscellaneous Petition, be allowed.

13. Learned counsel for the opposite parties on the other hand vehemently oppose the prayer of the petitioner made in the instant Civil Miscellaneous Petition and submit that the undisputed fact remains that the petitioner filed Title Appeal No.08 of 2012 against the preliminary decree for partition passed in Partition Suit No.129 of 2003 and the same was dismissed. Against the final decree passed in the Partition Suit No.129 of 2003, the petitioner filed Civil Appeal No.51 of 2023 which is *sub judice* at present before the court concerned. All these grounds regarding the shortcomings of the decree under execution is under challenge before the superior courts as the Second Appeal No.283 of 2016 filed against the judgment of dismissal of Title Appeal No.08 of 2012 is also *sub judice* before this Court. It is next submitted that the contention of the petitioner that the suit property of Partition Suit No.129 of 2003 was earlier partitioned vide Partition Suit No.03 of 1961 has been dealt with by the Civil Judge, Senior Division in the judgment by which the preliminary decree was passed and issue No.7 was exactly the issue, which reads as under:-

“Whether the suit properties of the Partition Suit No.129 of 2003 were the suit properties of Partition Suit No.03 of 1961?”

and the issue No.7 was taken up together with the other issues but ultimately the issue No.7 was answered in favour of the plaintiff and it was the pleadings of the plaintiff that there was no partition whereas it was the pleadings of the defendant No.5 who is the petitioner herein that there was a prior partition in Partition Suit No.03

of 1961 and the same having been set at rest by even the appellate court, by way of dismissal of Title Appeal No.08 of 2012, the executing court being a court subordinate to the appellate court, cannot arrive at a finding contrary to the appellate court. More so, when the subject matter of the issue is *sub judice* before this High Court in Second Appeal No.283 of 2016. Hence, it is submitted that the learned Civil Judge, Senior Division-XVIII, Ranchi has rightly dismissed the petition filed by the petitioner which was numbered as M.C.A. No.759 of 2024; by the impugned order with the prayer not to proceed with the execution. Hence, it is submitted that there being no illegality in the impugned order, this Civil Miscellaneous Petition, being without any merit, be dismissed.

14. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that, no doubt it is a settled principle of law that nothing obtained by fraud can be sustained, as fraud unravels everything but the question is when the decree under execution which is based on a preliminary decree and the preliminary decree was challenged wherein the issue No.7 relates to “Whether there was an earlier partition of the suit property by Partition Suit No.03 of 1961?” and it was answered against the defendant and in favour of the plaintiff and it was the case of the plaintiff that there was no prior partition; whereas it is the pleadings of the defendant that there was a prior

partition of the suit property by the decree passed in Partition Suit No.03 of 1961, since there is a judgment of the superior court before the executing court in respect of the same subject matter, whether the executing court could have ventured to arrive at a contrary conclusion than to that of a Superior Court. The answer, in the considered opinion of this court is that it is not desirable for an executing court to retry an issue which has not only been answered by the trial court in the judgement, the decree of which is under execution but also the same has been set at rest by the appellate court, which is a Superior Court in comparison to the executing in court. Therefore, this Court do not find any illegality on the part of the executing court in not treading into the forbidden path of entering into the adjudication of the plea of the petitioner- who was the judgment-debtor No.5 of the executing court, as to whether the decree under execution is a fraudulent one, on the ground that there was a prior partition of the suit land; in view of the fact that the same has already been answered as issue no.7 in the suit, in favour of the plaintiff and such finding is confirmed by the appellate court, because of dismissal of the appeal of the petitioner herein.

15. So far as the contention of the petitioner that the decree under execution is ambiguous one and there are other shortcomings in the decree under execution is concerned, in view of the admitted fact that both the Second Appeal in respect of the preliminary decree and the Civil Appeal in respect of the final decree is pending before the superior

courts. So, the proper course for the petitioner is to approach the concerned courts with the prayer to stay the execution proceedings but in view of the pendency of the appeal before the superior courts and even a judgment of dismissal of Title Appeal No.08 of 2012, by a superior court as already indicated above; it is not desirable for the executing court for simultaneously taking such plea, when such plea can be taken in the appeal is filed against both the preliminary decree and the final decree and both such appeals are subjudice before the superior courts, in order to avoid conflict of decisions by two courts, in respect of the same issue.

16. So far as the contention of the petitioner regarding exercise of the power under Article 227 of the Constitution of India regarding the errors either in fact or in law is concerned, the facts of the cases, as already indicated above, are different as in this case, the petitioner himself has availed the statutory remedy of filing civil appeal against the final decree and the Second Appeal in respect of the preliminary decree after his First Appeal was in shape of Title Appeal No.08 of 2012, has been dismissed by the concerned court. So, when the matter is pending before a superior court, to avoid a conflict of findings on the self-same issue between a superior court and that of a subordinate court, as the subordinate executing court restrained itself from treading on the path which may result in the conflicting decisions and self-same matters which can be raised in an appeal, the executing court in the

considered opinion of this Court has not committed any illegality in the impugned order warranting interference of this Court in its limited jurisdiction under Article 227 of the Constitution of India as has been reiterated by the Hon'ble Supreme Court of India in the case of **Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil** reported in (2010) 8 SCC 329 wherein, the Hon'ble Supreme Court of India has summarized the principles on the exercise of the High Court's jurisdiction under Article 227 of the Constitution of India in paragraph no.49 of which reads as under:-

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

- (a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.*
- (b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.*
- (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.*
- (d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh [AIR 1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*

- (e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".
- (f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.
- (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.
- (h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.
- (i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.
- (j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.
- (k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.
- (l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.
- (m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in

order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

- (n) *This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.*
- (o) *An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. (Emphasis supplied)*

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17. Accordingly, this Civil Miscellaneous Petition, being without any merit, is dismissed.

18. In view of disposal of the instant Civil Miscellaneous Petition, the interim order dated 30.01.2026, is vacated.

19. Registry is directed to intimate the Court concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 02nd of July, 2026
AFR/ Animesh
Uploaded on- 13/07/2026