

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.351 of 2024

In the matter of an application under Article 227 of the Constitution of India.

Sarat Chandra Jagadev **Petitioner**

-versus-

Brajakishore Harichandan & others **Opp. Parties**

Appeared in this case:-

For Petitioner : **Mr. R.K. Mohapatra, Advocate**

For Opp. Parties : **None**

CORAM:
JUSTICE A.C. BEHERA

JUDGMENT

Date of hearing :29.04.2026 / date of judgment : 30.04.2026

A.C. Behera, J. This Civil Miscellaneous Petition under Article 227 of the Constitution of India, 1950 has been filed by the Dhr in Execution Case No.5 of 2016 being the Petitioner praying for quashing (setting aside) the impugned order dated 30.01.2024 (Annexure-4) passed in that Execution Case No.5 of 2016 by the learned Civil Judge, Khurda.

2. The Petitioner and the Opposite Parties in this CMP were the decree holder (Dhr) and the Judgment Debtors (Jdrs) respectively in



Execution Case No.5 of 2016 arising out of RSA No.150 of 2004 in connection with the suit vide T.S No.4 of 1998.

3. It is the case of the Petitioner (Dhr) that, as per the impugned order dated 30.01.2024 (Annexure-4) passed in Execution Case No.5 of 2016, the learned Civil Judge, Khurda dismissed to the Execution Case No.5 of 2016 filed by the Petitioner (Dhr) assigning the reasons that,

“the execution case was filed by the Dhr against the Jdrs for execution of the decree passed in RSA No.150 of 2004 by the High Court arising out of T.S No.4 of 1998, wherein a decree for permanent injunction was passed against the Jdrs restraining them (Jdrs) from interfering with the peaceful possession of the Plaintiff (Dhr) over the suit land, but when the Dhr (Petitioner) filed Execution Case No.5 of 2016 praying for execution of that decree for permanent injunction against the Jdrs making a prayer therein for recovery of possession of an area of Ac.0.005 dec. of the suit land, then, the learned Executing Court i.e. learned Civil Judge, Khurda dismissed to the Execution Case No.5 of 2016 of the Dhr (Petitioner) stating that, the Executing Court cannot go behind the decree and in nowhere in the judgment passed in RSA No.150 of 2004 by the High Court, there is no reflection entitling the Dhr (Petitioner) to recover possession of any portion of suit land from the Jdrs (Opposite Parties), but there is a decree only for injunction against



the Jdrs (Opposite Parties), for which, the execution case as well as the petition of the Dhr under Order 21 Rule 35(3) of the CPC is not maintainable. Hence, the execution case is dismissed”.

For which, on being aggrieved with the said impugned order of dismissal to the Execution Case No.5 of 2016 of the Dhr passed on dated 30.01.2024 (Annexure-4) by the learned Civil Judge, Khurda, the Dhr challenged the same by filing this CMP under Article 227 of the Constitution of India, 1950 praying for quashing the said impugned order dated 30.01.2024 (Annexure-4) on the ground that “*when in the petition for execution in Execution Case No.5 of 2016, the Dhr has specifically stated that after passing of the judgment and decree for permanent injunction in RSA No.150 of 2004, the Jdrs have taken possession of Ac.0.005 dec. of the suit land, in respect of which, the decree for permanent injunction was passed against the Jdrs, then, as per law, the learned Executing Court should have recovered the possession of that suit land from the Jdrs executing the decree passed against them (Jdrs) instead of dismissing that Execution Case No.5 of 2016, for which, the impugned order dated 30.01.2024 (Annexure-4) passed in Execution Case No.5 of 2016 is liable to be quashed”.*



4. I have already heard only from the learned counsel for the Petitioner (Dhr), as none appeared from the side of the Opposite Parties (Jdrs) for participating in the hearing of the CMP.

5. After proper interpretation to the provisions of Order 21 Rule 32(5) of the CPC, 1908, the law has already been set at rest that,

“when the Jdr/Jdrs violate an order of injunction or order of stay or act in violation of the judgment/order of injunction, the court, by exercising its inherent power put back the parties in the same position as they stood prior to the passing of the decree for injunction or can give appropriate direction to the police authority to render aid to the aggrieved parties. Because, the law lies in favour of the interpretation, which would prevent multiplicity of proceedings, rather than one, which will generate it.

The decree holder is not required to file an another suit for recovery of possession after passing of the decree for permanent injunction in his favour as he had already obtained the decree in his favour, by spending much time and expending money. Therefore, the executing court has the jurisdiction to pass an order by applying the provision under Order 21 Rule 32(5) of the CPC to restore the possession of the land in dispute to the decree holder, in case, the decree of permanent injunction is violated by the Jdr or Jdrs”.



6. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:

(i) In a case between **Meera Chauhan vrs. Harsh Bishnoi and another** reported in **(2007) 12 SCC 201, Para-18** that,

“When parties violate order of injunction or stay order or act in violation of the said order, the court can by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties.”

(ii) In a case between **Bodulal s/o. Ramdev (since deceased through L.R) vrs. Hanuman s/o. Bhawarlal**, reported in **2026 (2) Civil Court Cases 40 (Rajasthan)** that,

“In a decree for permanent injunction, the executing court instead of examining whether there was willful disobedience of decree and whether remedial measures under Order 21 Rule 32(5) of the CPC were warranted, dismissed execution petition on the ground that, no specific date of dispossession was disclosed and that photographic evidence was not produced. Such an approach of the executing court defeats the very object of execution proceedings and renders the decree nugatory. For which the order of dismissal to the execution petition passed by the executing court was set aside and the matter was remanded for recover of possession in a decree for permanent injunction.”



(iii) In a case between **Kapoor Singh vrs. Om Prakash**, reported in **AIR 2009 (P&H) 188** that,

“The law lies in favour of the interpretation as per the provision of Order 21 Rule 32 (5) of the CPC which would prevent multiplicity of the proceedings, rather than one, which will generate it. The decree holder is not required to file another suit as he had already obtained a decree in his favour by spending much time and expense. Thus the executing court has the jurisdiction to pass an order on the application under Order 21 Rule 32(5) of the CPC to restore the possession of the land in dispute to the decree holder in case the decree of permanent injunction is violated by the Jdrs.”

(iv) In a case between **Sanju @ Payal & another vrs. Kamlesh & another** reported in **2026 (2) Civil Court Cases 97 (P&H)** that,

“Invoking the power under Order 21 Rule 32(5) of the CPC, the executing court can issue warrants of possession in favour of Dhr in a suit for permanent injunction.”

(v) In a case between **Naurang vrs. LRs of late Sri Chunnilal** reported in **2025 (4) Civil Court Cases 340 (Rajasthan)** that,

“Where a decree of prohibitory injunction has been rendered nugatory by willful and unlawful act of JDR particularly dispossession of DHR from decretal property, the executing Court is vested with power under Order 21 Rule 32(5) of the CPC to direct measures necessary to secure compliance including restoration of possession. To give full effect to an injunction decree, executing Court may also remove every obstruction set up in breach thereof, so that successful litigant may truly reap the



benefit of adjudication. Mere penal consequences under contempt jurisdiction may not suffice, in appropriate circumstances restoration of possession becomes the most efficacious mode of enforcement.

(vi) In a case between **Chakradhar Paital (dead) after him, his LRs and others vrs. Gelhi Bewa (dead) after him, her LRs and others**, reported in **2011 (II) OLR 885** that,

“In a decree for permanent injunction, recovery of possession can be prayed under Order 21 Rule 32(5) of the CPC. No limitation for execution as per Article 136 of the Limitation Act.”

(vii) In a case between **Umesh Chandra Dixit and others vrs. Bhikari Mahakud and others**, reported in **2024 (1) OLR 395** that,

“The Order 21 Rule 32(5) of the CPC though is in relation to executing a decree of permanent injunction, but it clearly stipulates that, the executing court is not powerless to direct demolition of the property, if the same is required for execution of a decree be it for demarcation or for recovery of possession.”

(viii) In a case between **Kuni Mohanty vrs. Upendra Barik and others**, reported in **2017 (Supp-1) OLR 937** that,

“It has been clarified that, the execution cannot be so limited driving the decree holder to file a fresh suit.”

(ix) In a case between **Printing & Publishing Co-operative Society Ltd. vrs. Santhosh** reported in **2018 (2) Civil Court Cases 568 (Kerala)** that,



“In a decree of permanent prohibitory injunction, direction issued by the executing court to the Jdr to remove obstructions to shop room and maintain shop room in previous position and to hand over shop room to the decree holders for the purpose of business cannot be said to be beyond scope and ambit of Order 21 Rule 33 CPC, as Order 21 Rule 32(5) thereof, cover both prohibitory as well as mandatory injunctions.”

(x) In a case between **Dilbagh Singh & others vrs. Harpal Singh alias Harpal Singh Chela & others**, reported in **2020 (1) PLR 601** that,

“In execution of a decree for injunction, even restoration of possession can be ordered by Executing Court.”

7. Here in this matter at hand, when the learned Civil Judge, Khurda in the impugned order dated 30.01.2024 (Annexure-4) dismissed to the Execution Case No.5 of 2016 of the Dhr (Petitioner) refusing to execute the decree in recovering the possession of Ac.0.005 dec. of suit land assigning the reasons that,

as in nowhere in the decree for permanent injunction passed in RSA No.150 of 2004, there is any reflection entitling the Plaintiff/Dhr/Petitioner to recover the possession of any portion of the suit land, but when the Dhr (Petitioner) in his petition filed in Execution Case No.5 of 2016, he (Dhr) has specifically stated that, the Jdrs have taken possession of Ac.0.005 dec. of the suit land after passing of the



decree for permanent injunction in his favour and when there is no material in the record on behalf of the Jdrs to controvert the aforesaid allegation of the decree holder alleged against the Jdrs relating to the taking away of the possession of the aforesaid suit land after the decree for permanent injunction against them (Jdrs) and when during the course of execution of the decree for permanent injunction like this matter at hand, the executing court is not powerless to recover the possession of the suit property from the Jdr/Jdrs, then, at this juncture by applying the propositions of law enunciated in the ratio of the aforesaid decisions to this matter at hand, it is held that, the impugned order of dismissal to the Execution Case No.5 of 2016 passed on dated 30.01.2024 (Annexure-4) by the learned Civil Judge, Khurda is not sustainable under law. For which, there is justification under law for making interference with the impugned order dated 30.01.2024 (Annexure-4) passed in that Execution Case No.5 of 2016 by the learned Civil Judge, Khurda through this CMP filed by the Petitioner.

8. As such, there is merit in the CMP filed by the Petitioner. The same must succeed.

9. In the result, the CMP filed by the Petitioner is allowed on merit.

10. The impugned order dated 30.01.2024 (Annexure-4) passed in



Execution case No.5 of 2016 by the learned Civil Judge, Khurda is quashed (set aside).

11. The matter vide Execution Case No.5 of 2016 is remitted back to the learned Civil Judge, Khurda to execute the decree passed in RSA No.150 of 2024 arising out of the suit vide T.S. No.4 of 1998 taking the recourse of law including the recovery of possession of the suit property and to dispose of the said Execution Case No.5 of 2016 as expeditiously as possible following the guidelines/directions of the Apex Court in the decisions between **Periyammal (dead through LRs.) & others vrs. V. Rajamani and others**, reported in **2025 (9) SCC 568** and **Raul S. Shah vrs. Jinendra Ku. Gandhi**, reported in **AIR 2021 SC 2161**.

12. The Registry is directed to communicate the copy of the judgment to the learned Civil Judge, Khurda in reference to the Execution Case No.5 of 2016 immediately.

13. As such, this CMP filed by the Petitioner (Dhr) is disposed of finally.

(A.C. Behera)
Judge