

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Execution First Appeal No. 3/2025

Lalit Kumar S/o Champa Lal Nahta, Aged About 64 Years,
Resident Of Ward No 27 Bhadra District Hanumangarh Rajasthan

----Appellant

Versus

1. Krishna Devi, D/o Shri Indra Chand W/o Shri Kanwal Singh Nahta Through Her Legal Representatives:-
 - 1/1. Amit S/o Late Smt. Krishna Devi,
 - 1/2. Rajneesh S/o Late Smt. Krishna Devi,
 - 1/3. Alka D/o Late Smt. Krishna Devi,
 - 1/4. Sukhmala D/o Late Smt. Krishna Devi,
 - 1/5. Kanwal Singh S/o Shri Champa Lal Nahta,
All above resident of Bhadra, Dist. Hanumangarh At Present Rajasthan Store, Railgate No.1, Mahaveer Sthan, Post Siliguri, District Darjeeling
2. Rajneesh S/o Kanwal Singh Nahta, Resident Of Bhadra District Hanumangarh At Present 3/412 Bada Thakurdwara Second Floor Shahadra, Delhi
3. Umrao Devi D/o Manak Chand Surana, W/o Shri Ummed Singh Nahta, Resident Of Bhadra District Hanumangarh At Present Shubham Buildwell Nilomani Fukan Road Block E First Floor (1B) Guwahati
4. Abhinandan S/o Ummed Singh Nahta, Resident Of Bhadra District Hanumangarh At Present Shubham Buildwell Nilomani Fukan Road Block E First Floor (1B) Guwahati

----Respondents

For Appellant(s) : Mr. Narendra Thanvi with
Mr. Mahendra Thanvi

For Respondent(s) : Mr. Arvind Samdariya

HON'BLE MS. JUSTICE REKHA BORANA
Order

23/03/2026

1. The present execution first appeal has been filed aggrieved of order dated 07.05.2025 passed by the Additional District Judge, Bhadra in Execution Petition No.07/2021 whereby objection application under Order 21 Rule 97 to 102, CPC as filed on behalf of applicant Lalit Kumar, stood rejected.

2. The case of the applicant was that the property in question was purchased on 15.03.1991 during the lifetime of his father Champalal. In fact, the property was purchased from the joint

family proceeds and was a *benāmi* transaction in favour of the four alleged purchasers. The applicant being the legal representative of Champalal, was in possession of the property in question and had even rented out a part of the said property. Therefore, in the absence of any decree against him, he could not be dispossessed in execution of decree dated 15.07.2019. It was further submitted that till the objections as raised by the applicant are decided, the execution of this decree deserved to be stayed.

3. The learned Executing Court, while rejecting the application, observed that in the suit proceedings, an application under Order 1 Rule 10, CPC was filed by some applicants, including the present petitioner, on the same ground i.e. they being the coparceners of the joint Hindu Family, were entitled to be impleaded. The said application preferred by the applicants therein stood rejected vide order dated 08.07.2016 which order stood affirmed in *S.B. Civil Writ Petition No.8790/2016; Lalit Kumar Nahata & Ors. vs. Mst. Krishna Devi & Ors.* (decided on 11.10.2018). The objections now filed by the applicant on the same grounds could not be entertained.

4. Counsel for the appellant submits that the reason assigned by the learned Executing Court for rejection of the objections of the applicant are totally erroneous as prayer for impleadment in terms of Order 1 Rule 10, CPC and objections in terms of Order 21 Rule 97 to 102, CPC stand on a total different footing. Even if the applicant was not held entitled to be impleaded in the suit proceedings, that cannot curtail his right to remain in possession.

5. Counsel submits that although a specific objection was raised by the applicant to the effect that he was in possession of the

property and had even let out a portion of the said property, the learned Executing Court cursorily ignored the same and did not even record any finding qua the same. Counsel therefore submits that order impugned deserves to be set aside.

6. Per contra Counsel for the respondents submits that all the objections as raised by the applicant are the same which were raised in his earlier application under Order 1 Rule 10, CPC. Therein, the Court recorded a specific finding that the suit in question was for partition on the basis of a sale deed and hence, the nature of the suit could not be changed on the application as filed by the applicant. In view of the said finding, no new right accrued to the applicant and hence, his objections have rightly been rejected.

7. Heard the counsels. Perused the record.

8. It is an admitted fact that the decree in question, of which the execution is sought, has been passed in a suit for partition on basis of sale deed dated 15.03.1991 executed in favour of four purchasers. The applicant who claims that the sale deed of Year 1991 was a *benami* transaction, admittedly, never ever prayed for cancellation of the same.

9. It is evident on record that the applicant was aware of the said sale deed right from the inception, still, even after the rejection of his application under Order 1 Rule 10, CPC in the Year 2018, he did not choose to lay any challenge to the same. Further, vide order dated 11.10.2018 passed in the writ petition, the Court specifically observed that there was nothing on record to substantiate the plea of the petitioners that suit property was purchased by their ancestors. The Court further observed that

avoidance of a fresh litigation cannot be a ground to invoke the power under Order 1 Rule 10, CPC. Meaning thereby, at that point of time itself, it was observed by the Court that the petitioners were required to undertake some fresh remedy. However, no remedy, whatsoever, was availed by the applicant qua sale deed dated 15.03.1991. Having not done so, the applicant cannot now be permitted to raise any objection qua the execution of decree for partition, based on the said sale deed.

10. So far as the averment of the appellant of letting out the property in question to a tenant is concerned, the present objections have not been preferred by the so called tenant. Had the tenant been aggrieved of the present order or any eviction, appropriate remedy would have been taken by him. The applicant cannot be permitted to claim any right of a tenant vide the present objections.

11. This Court is of the clear opinion that the learned Executing Court rightly observed that once application under Order 1 Rule 10, CPC of the applicant praying impleadment stood rejected, the present objections raising the same grounds again could not have been entertained.

12. No case for interference in order impugned dated 07.05.2025 is made out and hence, the present execution first appeal stands **dismissed**.

13. Stay petition and pending applications, if any, stand **disposed of**.

(REKHA BORANA),J