

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 6197/2018

Mustak Ali S/o Abdul Hakim, Aged About 55 Years, R/o C/o Mustak Motor Garage, Rupangarh Road, Madnaganj-Kishangarh, Gandhi Nagar, Sarana Road, Madanganj - Kishangarh, District Ajmer

-----Petitioner

Versus

- 1 Smt. Sheela Devi W/o Shri Gyan Singh Gurjar, R/o City Road, Madanganj-Kishangarh.
- 2 Ramkishan S/o Shri Shankar Lal Pareek, R/o Sawantsar, Madanganj-Kishangarh.
- 3 Shri Girdhari S/o Shri Lalu, (Deceased) Therefore Through His Legal Heirs
- 3.1 Shanker Lal Son Of Late Shri Girdhari, (Deceased)
- 3.2 Shri Tejuram S/o Late Shri Girdhari, Resident Of Luhar Colony, Housing Board Madanganj-Kishangarh, District Ajmer
- 3.3 Smt. Kamla D/o Late Shri Girdhari, Resident Of Luhar Colony, Housing Board Madanganj-Kishangarh, District Ajmer

-----Respondents

For Petitioner(s)	:	Mr. Vinodi Lal Mathur Mr. Amit Kumar Dhawan
For Respondent(s)	:	Mr. Satya Pal Poshwal

HON'BLE MR. JUSTICE BIPIN GUPTA
Judgment / Order

25/02/2026

1. The present writ petition has been filed assailing the order dated 06.01.2018, passed by learned Civil Judge-cum-Judicial Magistrate, Kishangarh, in Civil Case No. 05/2000, whereby the application filed by the applicant-petitioner under Order 21 Rule 26(1) of CPC has been rejected.
2. Learned counsel for the petitioner contends that he had already filed a petition under Order 21, Rule 97 of the CPC for adjudication of his claimed rights independently. During the

pendency of the said objections, the present application under Order 21, Rule 26(1) CPC was filed, which, according to the petitioner, was wrongly rejected by the learned Trial Court.

3. Learned counsel for the petitioner further contends that the learned Trial Court failed to exercise its powers vested under the CPC and, therefore, the impugned order dated 06.01.2018 is liable to be quashed and set aside.

4. Per contra, learned counsel for the respondent submits that the provisions of Order 21 Rule 26(1) CPC are not applicable in the present case. He further submits that the said power is exercised by the Court to which an execution petition has been transferred, and not by the Original Court which passed the decree. Therefore, he submits that the application itself was misconceived and was rightly rejected by the learned Trial Court.

5. Heard and perused the material available on record.

6. This Court finds that a decree was passed on 26.10.1999. Against the said decree, the petitioner initially preferred an application under Section 47 of the CPC before the learned Trial Court, which was rejected. The petitioner's writ petition against that order was also dismissed.

7. Thereafter, the petitioner filed a petition under Order 21, Rule 97 of the CPC, pending adjudication before the learned Trial Court. In that petition, an application was filed under Order 21, Rule 26(1) of the CPC, which was rejected by the learned Trial Court.

8. This Court finds that the learned Trial Court rightly rejected the application, as it was not maintainable before the Court which passed the decree.

9. Therefore, this Court finds no error warranting interference with the impugned order dated 06.01.2018. It is noted that execution of the decree dated 26.10.1999 is still pending, highlighting the delay in execution proceedings. In this context, the Hon'ble Apex Court, in **Periyammal (Dead) Through LRs. & Ors. v. V. Rajamani & Anr., (2025) 9 SCC 568**, directed all executing courts to dispose of execution petitions within six months. Accordingly, any objections under Order 21, Rule 97 of the CPC should also be decided within the aforesaid period to give effect to the decree.

10. In view of the above, this Court directs the learned Trial Court to decide the pending petition under Order 21, Rule 97 of the CPC and execute the decree within six months from the date of receipt of a certified copy of this order, in accordance with law.

11. With the above observations, the present Civil Writ Petition stands disposed of.

12. Pending application(s), if any, also stand disposed of.

(BIPIN GUPTA),J