

Before Vikas Bahl, J.

**HARYANA URBAN DEVELOPMENT AUTHORITY AND
ANOTHER—Petitioners**

versus

RAJINDER PAL—Respondent

CR No. 6074 of 2018

May 05, 2026

Constitution of India, 1950—Art. 227—Code of Civil Procedure, 1908—Order 22 Rule 4, Order 9 Rule 13, S.s 115—Petition challenging order of First Appellate Court vide which appeal of Respondent-DH was allowed and order passed in execution proceedings set aside; as a result, objections of Petitioners- JDs dismissed and execution of Respondent-DH allowed.

Whether in execution JD could raise a plea contrary to the stand in the civil suit on the basis of which the suit was decreed?

Executing Court is to execute the decree and cannot go beyond it. If JD is permitted to raise a plea contrary to the stand taken in the pleadings in the civil suit based on which the suit was decreed and the judgment has attained finality, then it would open a Pandora's box. This would delay the execution.

Fraud was not even remotely proved in the case. The objection taken by the Petitioner-Defendant-JD that the Respondent-Plaintiff-DH was not the son of his father, was contrary to the written statement. Hence the objection deserved to be rejected. Petition dismissed being meretricious.

Held, that it is a matter of settled law that the Executing Court is required to execute the decree and cannot go beyond it. In case the Judgment Debtors are permitted to raise a plea contrary to the stand taken by them in the pleadings in the civil suit on the basis of which the trial Court judgment was passed and which judgment has attained finality, then, it would open Pandora's box and would endlessly result in delay of the execution proceedings and would lead to a situation where the Judgment Debtors are permitted to raise pleas which were never raised earlier. The conduct of the petitioners in delaying the execution proceedings endlessly is in the teeth of the direction given by the Hon'ble Supreme Court in the case of Periyammal (Dead) and others Vs. Rajamani and another reported as 2025 SCC Online SC 507, in which the Executing Courts have been directed to dispose of the execution proceedings within six months and thus, permitting the

petitioners and other Judgment Debtors to raise such pleas would violate the mandate of law laid down by the Hon'ble Supreme Court.
(Para 13)

A.V. Papayya Sastry & ors vs Government of A.P. & ors,
2007(4) SCC 221 (Para 3)

Shalini Shyam Shetty and anr vs Rajendra Shankar Patil
2010 (8) SCC 329 (Para 19)

Pritam Singh Saini, Advocate and Paramjit Singh, Advocate,
for the petitioner.

Gaurav Singla, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

CM-14249-CII-2022

(1) This is an application filed under Order 22 Rule 4 of CPC read with Section 151 CPC for impleading the legal representatives of the respondent-Rajinder Pal.

(2) For the reasons stated in the application which is supported by an affidavit, the present application is allowed and legal representatives of respondent-Rajinder Pal as mentioned in para 2 of the application are ordered to be impleaded as party subject to just exceptions and solely for the purpose of defending the main petition and the same would not be construed as an adjudication on the entitlement of the estate of respondent-Rajinder Pal.

(3) Amended memo of parties is taken on record, subject to all just exceptions.

Main case

(1) Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the judgment of the First Appellate Court dated 16.12.2017 (Annexure P-4), vide which, the appeal filed by the respondent-decree holder has been allowed and the order dated 15.01.2015 passed in the execution proceedings has been set aside and the objections filed by the present petitioners-Judgment Debtors have been dismissed and the execution petition filed by the respondent-decree holder has been allowed.

ARGUMENTS ON BEHALF OF THE PETITIONERS:-

(2) Learned counsel for the petitioners has submitted that in the present case, the respondent/plaintiff had filed a suit for permanent injunction restraining the present petitioners/defendants from

dispossessing the plaintiff/respondent from the suit land and other prayers were also made in the said suit and in the said case, he had stated that he is the son of Amar Nath Sharma. It is argued that on the basis of the said plea, an ex-parte decree was passed in favour of the respondent/plaintiff vide judgment dated 08.09.2008. It is further argued that when the execution proceedings were filed, the petitioners were able to lay their hands on a letter dated 18.04.1991 which was written by Jaswanti Sharma wife of late Amar Nath Sharma and as per the said letter, she was living with her unmarried daughter and there was no reference made regarding any son and from the said letter, it is apparent that the respondent is not the son of Amar Nath.

(3) It is submitted that in view of the said letter, objection was raised by the petitioners in the execution proceedings to the effect that the respondent was not son of Amar Nath and thus, the decree was unexecutable. It is highlighted that the Executing Court vide order dated 15.01.2015, allowed the said objection and held that the execution petition was unexecutable. It is argued that however the First Appellate Court vide judgment dated 16.12.2017 illegally reversed the said judgment, even though the objection filed by the petitioners was meritorious and deserved to be allowed. Learned counsel for the petitioners has further argued that in the present case, it is apparent that fraud has been played by the respondent and since fraud vitiates everything, thus, the judgment dated 08.09.2008 was unexecutable. In support of his arguments, learned counsel for the petitioners has relied upon the judgment passed by the Hon'ble Supreme Court in the case of *A.V. Papayya Sastry & others versus Government of A.P. & Ors.*¹.

ARGUMENTS ON BEHALF OF THE RESPONDENT:-

(4) Learned counsel for the respondent, on the other hand, has submitted that the impugned order has been rightly passed and deserves to be upheld and the present revision petition is meritless and deserves to be dismissed. It is submitted that the petitioners had filed written statement in the civil suit and in the said written statement, they had admitted the fact that the respondent was the son of Amar Nath and thus, it is not open to the petitioners to raise a plea in the execution proceedings which is contrary to the plea taken in the said written statement, once the judgment has attained finality. It is further submitted that the respondent-plaintiff had an independent right to file a suit, as admittedly he was in possession of the property and thus, the prayer made by him for injunction was meritorious. It is submitted that a perusal of the written statement filed in the civil suit would show that it was the case of the present petitioners that the

¹ 2007(4) SCC 221

plaintiff was a tenant of the premises and thus, the respondent-plaintiff had an independent right and at any rate, nothing much would hinge on whether the respondent is the son of Amar Nath or not, although it is proved beyond doubt that he is the son of Amar Nath.

(5) Learned counsel for the respondent has further argued that in the civil suit, the petitioners had appeared and filed written statement and thereafter, were proceeded against ex-parte and there is nothing on record to show that any application under Order 9 Rule 13 CPC was filed by the petitioners for recalling the said ex-parte order or any appeal was filed by the petitioners against the judgment dated 08.09.2008. It is submitted that it is a matter of settled law that the Executing Court cannot go beyond the decree, more so, at the instance of the Judgment Debtors who are now wanting to raise plea which is contrary to the stand taken in the written statement. It is submitted that the plea of fraud is absolutely baseless, inasmuch as, sufficient number of documents were produced on behalf of the respondent to show that he is the son of Amar Nath and at any rate, the said fact was admitted by the petitioners in their written statement and the sole reliance placed on the letter is absolutely misconceived and has been rightly rejected by the First Appellate Court. It is submitted that in the said circumstances, the impugned order be upheld and the present revision petition be dismissed.

ANALYSIS AND FINDINGS:-

(6) This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the present petition is meritless and deserves to be dismissed for the reasons stated hereinafter.

(7) In the present case, it is not in dispute that the respondent had filed a suit for permanent injunction restraining the defendants from dispossessing the plaintiff forcibly and illegally in any manner from the property in question which was booth No.37 situated in Sector 15, Panchkula. It has been brought to the notice of this Court that initially suit for permanent injunction was filed, but subsequently, by virtue of an amendment, a prayer for grant of decree of declaration was made to the effect that as per the policy dated 23.05.1988, the plaintiff was entitled for allotment of the said booth at the price prevailing in the year 1993-94. A copy of the original plaint has been annexed as Annexure R-1 along with CM-9130-CII-2026 and a copy of the amended plaint has been handed over to the Court during the course of arguments and is taken on record and marked as Mark "A".

(8) A perusal of the original plaint would show that it was the case of the respondent that he was tenant of the premises in question

and the defendants were wanting to take possession of the same forcibly. Additionally, in para 1 of the said plaint, a plea was taken that previously father of the plaintiff-Amar Nath Sharma was doing his business in the said booth. In the amended plaint, in addition to the averments made in the original plaint, it was further stated that during the pendency of the suit, the defendants/present petitioners had issued a letter dated 28.07.2000 and in pursuance of the same, the plaintiff had given a representation to the effect that the said booth was being given at a very high rate and the plaintiff was entitled for the allotment of the said booth at a concessional rate. Other subsequent facts were also mentioned and on the basis of the same, additional prayer for declaration with respect to allotment at the prevailing rate in the year 1993-94 was sought.

(9) In the written statement dated 08.03.1999 which has been annexed as Annexure R-2 along with CM-9130-CII-2026, it was the case of the present petitioners in para 5 of the reply on merits that the plaintiff had got lease deed of the public property but he had not been paying the rent. In para 4 of reply on merits, it was stated that the plaintiff was required to execute a fresh lease deed on the expiry of lease period and according to condition No.4 of the lease, he was required to pay the rent by 7th of each month. It was also averred that the plaintiff was defaulting in payment of the rent. In para 1 of reply on merits, the fact that earlier the property was let out to the father of the plaintiff was admitted. From perusal of the said written statement, it is apparent that the plea of the plaintiff that he is the son of Amar Nath was not disputed but was rather admitted in affirmative terms and it is further apparent that independent plea raised by the plaintiff for allotment was considered by the petitioners and the stand of the petitioners was that the plot can be allotted to him at the prevalent price. It is thus, apparent that the petitioners were considering the case of the plaintiff/respondent on the basis of his independent rights.

(10) The trial Court, vide ex-parte judgment dated 08.09.2008 decreed the suit of the plaintiff. A perusal of the same would show that in para 3 of the judgment which has been annexed as Annexure P-1 along with the revision petition, counsel for the petitioners had appeared and as has been stated hereinabove, had also filed written statement and thereafter, had stopped appearing. From the said facts, it is apparent that the petitioners were well aware of the said proceedings. The trial Court vide detailed judgment dated 08.09.2008 decreed the suit of the plaintiff after taking into consideration the policy dated 30.05.1988 (Ex.P1), copy of lease deed (Ex.P2), copy of letter dated 28.07.2000 (Ex.P5) issued to the plaintiff by the petitioners, representation of the plaintiff dated 16.01.2002 (Ex.P7) and judgments

(Ex.P9 to Ex.P14) passed by the Civil Courts and the Appellate Courts. The trial Court came to the conclusion that the present petitioners by their act and conduct had admitted the plaintiff as their lessee and that he was entitled to the allotment of booth in question in terms of the policy and accordingly, following relief was granted:-

“6. In view of the aforesaid discussion, the suit of the plaintiff is decreed with costs. The booth no.37, Sector-15, Panchkula is ordered to be allotted to the plaintiff on the basis of memo no.A-II-P/77-88/19149-59 dated 30.5.1988 at the rate of similar booth prevailing in the year 1990 as per this policy. The policy memo no.A-1P/2000/6663-64 dated 27.5.2000 Ex.P8 is illegal, null, void, against law and not binding upon the rights of the plaintiff. The defendants are restrained from dispossessing the plaintiff from the said booth by any means. Decree-sheet be prepared and file be consigned to the record room.

Announced: Sd/-Civil Judge (Senior Division), 8.9.2008.
Panchkula.”

A perusal of the same would show that apart from the relief of declaration, defendants were restrained from dispossessing the plaintiff from the property in question, which undisputedly recognizes the independent right of the plaintiff/respondent.

(11) It has been fairly admitted before this Court that there is nothing on record to show that the said judgment and decree was ever set aside and thus, has attained finality. In the execution proceedings, the petitioners, who are the Judgment Debtors and were duty bound to implement the judgment of the Civil Court which had attained finality, had taken a plea that the respondent-plaintiff is not the son of Amar Nath Sharma. In view of the reasons detailed hereinafter, the said plea apart from being not even remotely substantiated could not have been taken at the stage when it was sought to be taken.

(12) It is not disputed before this Court that in the written statement filed by the petitioners the fact that the plaintiff is the son of Amar Nath was not disputed, rather in para 1, it was affirmatively stated by the petitioners that father of the plaintiff i.e., Amar Nath Sharma had been let out the booth in question initially. It is a matter of settled law that no evidence beyond pleadings is admissible. Even the arguments which are contrary to the pleadings of the parties are liable to be ignored. It is not in dispute that no application for amendment of the said written statement was filed. Additionally, it would be relevant

to note that a perusal of the entire plaint as well as written statement would show that right of the plaintiff-respondent for injunction as well as for allotment was primarily based on his possession which was admitted and also on the basis of offer which was made by the petitioners. In para 5 of the reply on merits, it was the case of the petitioners that the plaintiff had got the lease deed of the said property and thus, it cannot be said that the right of the plaintiff, who was in possession, and the injunction granted in favour of the plaintiff were solely based on the fact that he was son of Amar Nath. Thus, the plea of the petitioners even if taken into consideration would not call for the Executing Court to hold that the decree, which has attained finality, is unexecutable.

(13) It is a matter of settled law that the Executing Court is required to execute the decree and cannot go beyond it. In case the Judgment Debtors are permitted to raise a plea contrary to the stand taken by them in the pleadings in the civil suit on the basis of which the trial Court judgment was passed and which judgment has attained finality, then, it would open Pandora's box and would endlessly result in delay of the execution proceedings and would lead to a situation where the Judgment Debtors are permitted to raise pleas which were never raised earlier. The conduct of the petitioners in delaying the execution proceedings endlessly is in the teeth of the direction given by the Hon'ble Supreme Court in the case of ***Periyammal (Dead) and others versus Rajamani and another***², in which the Executing Courts have been directed to dispose of the execution proceedings within six months and thus, permitting the petitioners and other Judgment Debtors to raise such pleas would violate the mandate of law laid down by the Hon'ble Supreme Court.

(14) In the present case, apart from the above aspect, it is not even remotely proved that there was any fraud in the present case. The finding of the First Appellate Court to the effect that the plaintiff was son of Amar Nath on the basis of the documents such as Driving Licence, Voter ID Card, Aadhaar card, Ration card etc. deserves to be upheld. The sole document relied upon by the petitioners to contend that the plaintiff was not the son of Amar Nath was the letter dated 18.04.1991, which has been rightly rejected by the First Appellate Court by observing that no evidence has been led to show that the said letter was actually written and signed by Jaswanti Sharma, who as per the said letter is stated to be the wife of Amar Nath Sharma. It was observed that even the daughter of said Jaswanti Sharma had not been examined on behalf of the petitioners, on whom there was a heavy onus

² 2025 SCC Online SC 507

to prove fraud as well as the fact that the decree was unexecutable. It was further stated that even alleged signatures of Jaswanti Sharma on the said letter had not been compared with admitted signatures so as to even remotely show that the said letter was actually signed by the said Jaswanti Sharma and accordingly, it was rightly held that the petitioners could not substantiate their plea.

(15) Apart from the fact that the plea/objection is contrary to the averments made in the written statement and it is not even remotely substantiated, a perusal of the said letter dated 18.04.1991 would show that same is a typed letter and is stated to be bearing signatures of one Jaswanti Sharma who neither has been examined nor any handwriting expert has been examined by the petitioners to show that the said letter bears the signatures of said Jaswanti Sharma. In the said letter, it was stated that lease rights be transferred in favour of Jaswanti Sharma. There is nothing on record to show that the said letter which is of the year 1991 was ever acted upon by the petitioners and as to whether the said property was ever transferred in her favour or that the said application was ever rejected. In the said letter dated 18.04.1991, reference has been made to the deposit of the rent. On a pointed query raised by this Court, learned counsel for the petitioners has fairly submitted that upto 06.12.1997, receipts regarding rent were in favour of Amar Nath Sharma and subsequently, receipts were in favour of respondent-Rajinder Pal w.e.f., 03.11.1998 and there is no receipt in favour of the said Jaswanti Sharma. The letter dated 18.04.1991 was apparently in existence prior to the filing of the written statement dated 08.03.1999 and in case the said letter was part of the record, there is no justification made before this Court as to why the said letter was not referred to in the written statement filed in the suit.

(16) The said letter does not inspire confidence and at any rate, has never been acted upon. Solely on the basis of the said letter, more so, in view of the abovesaid facts and circumstances, it cannot be said that the respondent is not the son of Amar Nath. At any rate, as has been stated hereinabove, the plaintiff had an independent right, de hors of the fact that he was the son of Amar Nath, to file suit for injunction as well as declaration, which has been decreed ex-parte. Thus, apparently, no fraud has been played by the respondent, rather it is the petitioners who are unnecessarily delaying the execution proceedings.

(17) The judgment of the Hon'ble Supreme Court in the case of **A.V. Papayya Sastry** (Supra), does not further the case of the petitioners. It is a matter of settled law that fraud vitiates all proceedings but it is equally settled that there is heavy onus on the person who is alleging fraud, to prove fraud. In the present case, fraud is not even remotely proved as has been detailed hereinabove. Apart

from the same, the facts of the said judgment are not applicable to the facts of the present case, inasmuch as, in the said case, pleas were not taken by the Judgment Debtors therein in the execution proceedings contrary to the pleas raised in the written statement, rather the factum of fraud was highlighted in the recalling application filed before the High Court and once the High Court was convinced that apparent fraud had been committed by the appellants therein, which fact was also apparent from the detailed report submitted by the Central Bureau of Investigation, the Division Bench recalled its order after observing that fraud had been played and material facts had been suppressed. The Hon'ble Supreme Court upheld the order of High Court vide which the said recalling application was allowed.

(18) In the said case, the entire matter revolved around as to whether the appellants therein had handed over the possession of land to the Port Trust Authorities before the Ceiling Act came into force in the State of Andhra Pradesh on 17.02.1976. The appellants therein had filed declarations taking the stand that they had handed over the possession to the Port Trust Authorities and it was on the basis of the said declarations that the competent authority had held that the appellants therein were 'non surplus landholders'. However, subsequently, the said declarations were found to be absolutely false on the basis of record and the authorities took suo motu action under Section 34 of the Ceiling Act, which provision granted powers to the authority to initiate suo motu action. In pursuance of the said suo motu proceedings, the State Government set aside the order passed by the competent authority declaring that the appellants therein had no surplus land. Writ petition, however, against the same was allowed primarily on the ground that suo motu revisional powers had been exercised after 13 years, and even, Special Leave Petition filed by the State Authorities was dismissed but subsequent to the same, recalling application was filed before the High Court which was allowed on the ground that fraud was established beyond doubt and it was proved that possession was never handed over to the Port Trust Authorities and the said fact was fortified from the report of the Central Bureau of Investigation. Thus, the facts of the abovesaid case are completely different.

(19) The Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty and another versus Rajendra Shankar Patil***³, had observed that the 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

³ 2010 (8) Supreme Court Cases 329

this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but 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. 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. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

(20) Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

(21) All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

Reporter-Shubreet Kaur