

2026 LiveLaw (SC) 395

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

PANKAJ MITHAL; J., PRASANNA B. VARALE; J.

Special Leave Petition (C) No. 8166 of 2022; April 09, 2026

MAURICE W. INNIS *versus* LILY KAZROONI @ LILY ARIF SHAIKH

Code of Civil Procedure, 1908 – Section 47 – Jurisdiction of Executing Court – Power to modify decree – Held: The Executing Court has no jurisdiction to go beyond the decree sought to be executed - It must execute the decree as it stands, without changing its terms or assuming the role of a trial court to substitute its own view - Even if the execution of certain portions of the land as per the decree is deemed "impracticable" due to unauthorized construction or third-party sales, these reasons are immaterial and do not authorize the Executing Court to alter the terms of a compromise decree. [Paras 24 - 30]

Execution of Compromise Decree – Identity of Property – Held: Where a compromise decree clearly describes the portions of land falling into the shares of the parties, there is no dispute regarding identity - The Executing Court must strictly conform to the decree and ensure both parties fulfill their reciprocal obligations in pith and substance. [Relied on Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Ors. (1970) 1 SCC 670; Sunder Dass v. Ram Prakash (1977) 2 SCC 662; Jai Narain Ram Lundia v. Kedar Nath Khetan and Ors. (1956) 1 SCC 75; Paras 27 – 30]

For Petitioner(s): Mr. Shoeb Alam, Sr. Adv. Mr. Anand Dilip Landge, AOR Mrs. Sangeeta Nenwani, Adv. Ms. Revati Pravin Kharde, Adv. Mr. Shreenivas Patil, Adv. Mr. Rahul Prakash Pathak, Adv.

For Respondent(s): Mr. Gopal Jha, AOR (argued by) Mr. Sanjeev Baliyan, Adv. Mr. Tilak Vij, Adv. Mr. Shreyash Bhardwaj, Adv. Mr. Nimish Arjaria, Adv. Mr. Sawan Datta, Adv. Ms. Shireesha Sharma, Adv.

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard learned counsel for the parties.
2. Leave granted.
3. The dispute in this appeal is in connection with the execution of a compromise decree dated 14.07.2017 passed in a Civil Suit No. 68 of 2012.
4. The suit land measures 51R (54895 sq. feet). It is a non-agricultural land of plot No.396(A) situate in village Panchgani, Taluka Mahabaleshwar, Satara in the State of Maharashtra.
5. The plaintiff-appellant had purchased 97.12R area of land of plot no. 396(A) in village Panchgani as referred to above. The plaintiff-appellant initially sold 57R of the aforesaid land purchased by him to the defendant-respondent. Thus, retaining only 40.12R with himself. The purchaser i.e., the defendant-respondent sold back 6R of the said land to the plaintiff-appellant. Thus, the plaintiff-appellant became the owner of a total of 46.12R of the aforesaid plot of land. The defendant-respondent after selling 6R to the plaintiff-appellant, remained with only 51R of the land out of the 57R initially purchased by him. The dispute is regarding this 51R of land retained by the defendant-respondent.
6. The defendant-respondent entered into an agreement to sell the aforesaid 51R of land to the plaintiff-appellant *vide* registered agreement dated 17.04.2009. The plaintiff-appellant filed suit no.68 of 2012 against the defendant-respondent praying for specific performance of the agreement to sell dated 17.04.2009. In the said suit, parties entered

into a compromise on 08.07.2017. The said compromise *inter alia* provided that 10R of the said land would remain a common land in common ownership of both the partners. The remaining 41R of land would be equally divided between them to the extent of 20.5R each. The area of 20.5R to be retained by each one of them would be ascertained by the surveyor and the value of the bungalow and the plinth level construction existing on part of the said land would be determined by the Government valuer. Accordingly, a decree would be drawn.

7. It appears that on the basis of the aforesaid compromise, the suit was decreed after completing the formalities of the survey and valuation. Finally, a decree was drawn on 14.07.2017 incorporating the respective areas falling into the share of each party.

8. The aforesaid compromise decree states that the plaintiff-appellant who had purchased 97.12R of plot No.396(A) of village *Panchgani* had a sanctioned map dated 09.04.2010 which is part and parcel of the compromise and that both parties agree to the said map. The disputed land is only 51R which is situate on the western side of plot No.396(A). The area of 10R is common land for exercise of easementary right as common road for access to their properties.

9. The aforesaid compromise decree in unequivocal terms provided that the area of residential bungalow and the area of construction up to the plinth level towards the southern side of the bungalow plus the area on the western side of plot No.396(A) including two bungalows shown in the sanctioned map, having a total area of 20.5R goes to the share of the plaintiff-appellant. Thus, the area of 20.5R falling into the share of plaintiff-appellant was clearly described.

10. Similarly, the area of 20.5R falling into the share of defendant-respondent was described as situate on the western side of the bungalow of the plaintiff-appellant and includes structures up to the plinth level extending up to the boundary of the two bungalows on eastern side.

11. The decree also provided that the defendant-respondent shall execute the sale deed of the property falling into the share of the plaintiff-appellant on consideration of Rs.10 lakhs which is already paid.

12. The said decree was put into execution by both the parties separately. The plaintiff-appellant filed Execution Petition No.38 of 2020, which allegedly remains pending as on date. The defendant-respondent filed a separate Execution Petition No.21 of 2018 for the execution of the aforesaid compromise decree dated 14.07.2017 claiming himself to be the decree holder.

13. Accordingly, the defendant-respondent became the decree holder and the plaintiff-appellant became the judgment debtor.

14. The Executing Court in Execution Petition No.21 of 2018 of the defendant-respondent passed an order on 19.07.2021 and issued certain directions, modifying the area of land allotted to the parties in the final compromise decree, to the Court Commissioner to execute the decree. The aforesaid modifications were made in the area allotted to the parties *inter alia* for the reason that the permanent constructions made to the extreme western side of the plot were not as per the sanctioned plan and, therefore, it was not practicable to allot that area to the defendant-respondent. It was also not considered to be practicable to allot the portion towards the extreme western side to the defendant-respondent as it was likely to cause inconvenience to her in future and that the area of 10R of the suit plot towards the extreme western side had already been sold by plaintiff-appellant to the third party.

15. In short, the Executing Court varied the area allotted to the parties under the compromise decree and allotted them some different portions, thus in effect modifying the compromise decree.

16. The defendant-respondent was not satisfied and filed a review petition seeking further modification of the above order passed by the Executing Court. The aforesaid review petition was allowed by the order dated 26.08.2021 and the modifications made by the Executing Court in the original compromise decree were further modified.

17. Aggrieved by the aforesaid judgment and order allowing the review petition, plaintiff-appellant filed a writ petition before the High Court challenging the orders passed by the Executing Court dated 19.07.2021, order passed on review petition dated 26.08.2021 as well as the order dated 11.10.2021 directing the delivery of possession. Finally, the writ petition was dismissed on 21.04.2022. Thus, the orders passed by the Executing Court were upheld.

18. The plaintiff-appellant has thus preferred this appeal.

19. It is in this background that we have heard Shri Shoeb Alam, senior counsel for the plaintiff-appellant and Shri Gopal Jha, counsel for the defendant-respondent.

20. The primary argument of the plaintiff-appellant is that the Executing Court cannot go beyond the decree and has to execute the decree as it stands without making any modifications therein. Therefore, the Executing Court manifestly erred in passing the order dated 19.07.2021 and the order dated 26.08.2021 on review petition.

21. From the side of the defendant-respondent, it is submitted that the Executing Court has rightly interpreted the decree and in view of the peculiar facts and circumstances of the case, respondent rightly allotted portions so that the decree does not become inexecutable. The Executing Court, in the facts and circumstances of the case, had correctly passed the orders dated 19.07.2021 and 26.08.2021.

22. The counsel for the defendant-respondent relied upon a three judges bench decision in the case of **Jai Narain Ram Lundia v. Kedar Nath Khetan and Ors.**¹ to contend that the Executing Court is not powerless to ensure that the parties are given the very thing that the decree directs and if there is any dispute in this regard, it is for the Executing Court to decide it and as such, there was no error on part of the Executing Court in passing the order dated 19.07.2021 or 26.08.2021

23. In order to address the controversy arising in this appeal, it would be profitable to first place Section 47 of Code of Civil Procedure² which provides for the questions to be determined by the Executing Court. The aforesaid Section 47 CPC is reproduced hereinbelow: -

“47. Questions to be determined by the Court executing decree: -

(1) *All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*

(2) * * * * (omitted)

(3) *Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.”*

¹ (1956) 1 SCC 75

² In short 'CPC'

24. A plain reading of the aforesaid provision makes it clear that the Executing Court is empowered to decide questions relating to execution, discharge or satisfaction of the decree and has no jurisdiction to go beyond the decree sought to be executed. In other words, it has to execute the decree as it is without changing the same. It is settled in law that the jurisdiction of Executing Court is limited to give effect to the decree as passed and not to assume the role of a trial court so as to substitute its own view in place of that expressed under the decree.

25. In **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Ors.**³, it has been held as under: -

“6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.”

26. The aforesaid view has been reiterated and fortified by the Supreme Court in **Sunder Dass v. Ram Prakash**⁴. The relevant portion is reproduced hereinbelow: -

“3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be decree at all. Vide Kiran Singh v. Chaman Paswan [AIR 1954 SC 340 and Seth Hiralal Patni v. Sri Kali Nath [AIR 1962 SC 199]. It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent.”

27. In view of the above case laws, the Executing Court has to strictly conform to the decree under execution and if the decree provides for reciprocal obligations, it must ensure compliance of those conditions by both the parties in pith and substance, unless the decree is a nullity which is not the case herein.

28. In so far as the case relied upon by the defendant-respondent i.e. **Jai Narain Ram Lundia** (supra), it cuts no ice in her favour. The aforesaid decision simply states that if there are reciprocal obligations under the decree which are interlinked, the court must ensure compliance of reciprocal obligations. It further states that the Executing Court has power to determine that one party gives the very thing to the other party which the decree directs and in case any dispute in this regard arises it can be decided by the Executing Court, otherwise the Executing Court must execute the decree as it stands and cannot go beyond the decree and vary its term.

29. The above decision in clear terms states that the Executing Court has no jurisdiction to vary the terms of the decree. It is only where the dispute as to the identity of the land

³ (1970) 1 SCC 670

⁴ (1977) 2 SCC 662

which has to be given as part of the obligation to the other side arises, the court can decide the same.

30. In the instant case, there is no dispute of identity of the land falling into the shares of both the parties. The compromise decree clearly describes the portions of land falling into the shares of the parties. Therefore, the Executing Court has to ensure that both the parties fulfil their obligations and exchange the land as per the decree and to see that the sale deed is executed as directed. Merely for the reasons that exchange of some portions of the land may not be practicable for the reason that constructions on it are not as per the sanctioned map or that part of it has been sold off, are all immaterial. Since the Executing Court in passing the orders dated 19.07.2021 and 26.08.2021 has gone beyond its jurisdiction and instead of directing for the execution of the decree as it stands, has altered its terms by changing certain portions of the land allotted to the parties, the same are unsustainable in law. Accordingly, both the above orders dated 19.07.2021 and 26.08.2021 and the consequential order dated 11.10.2021 are hereby set aside.

31. The appeal is allowed and the Execution Court is directed to execute the decree in its terms and tenor.

32. Pending application(s), if any, stands disposed of.

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