



HIGH COURT OF JUDICATURE AT ALLAHABAD
MATTERS UNDER ARTICLE 227 No. - 12386 of 2026

Jaipal

.....Petitioner(s)

Versus

Anil Kumar and 6 others

.....Respondent(s)

Counsel for Petitioner(s)	:	Sri Prakash, Sudhanshu Kumar
Counsel for Respondent(s)	:	

A.F.R.

Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

1. Heard Sri Shri Prakash, learned counsel for the petitioner and perused the record.
2. The present petition under Article 227 of the Constitution of India assails the order dated 26.05.2025 passed by the Additional Chief Judicial Magistrate/Additional Civil Judge (Senior Division), Court No. 2, Ghaziabad in Execution Case No. 01 of 2023, Anil Kumar and others v. Jaipal and others, whereby the amendment application, Paper No.19-Ga, was allowed and the objections filed thereto were rejected. The petitioner also assails the order dated 22.08.2026 passed by the Additional District Judge, Ghaziabad in SCC Revision No. 50 of 2025, Jaipal and another v. Anil Kumar and others, whereby the revision preferred against the aforesaid order was dismissed.
3. The controversy arises out of SCC Suit No. 19 of 2003 instituted by Vinod Kumar and Anil Kumar, both sons of Damodar Das, against Jaipal, Smt. Manju, Rakesh Kumar and Damodardas, seeking their

ejectment from the disputed property. Jaipal disputed the relationship of landlord and tenant between himself and the plaintiffs and asserted that Smt. Manju was his landlord. Smt. Manju, on the other hand, claimed ownership over the disputed property and asserted that Jaipal was her tenant.

4. The suit was decreed by judgment and decree dated 05.07.2014. Jaipal preferred SCC Revision No. 84 of 2014, whereas Smt. Manju preferred SCC Revision No. 85 of 2014. During the pendency of the revisions, Vinod Kumar died and his wife, Smt. Neeta Devi, and son, Ayush Kumar, were substituted in his place. Both revisions were thereafter dismissed by a common order dated 09.05.2023.

5. Execution Case No. 01 of 2023 was instituted on 20.10.2023 for enforcement of the decree. In the execution application, however, the names of both the original decree-holders continued to be shown, notwithstanding the fact that Vinod Kumar had already died. The judgment-debtors raised objections to the maintainability of the execution proceedings on that ground. It was also asserted that an interest in the disputed property had been transferred in favour of Sanjay Kumar Verma.

6. During the pendency of the execution proceedings, the executing court passed an order dated 04.01.2025 directing that Sanjay Kumar Verma be added to the array of parties. Thereafter, amendment application Paper No. 19-Ga was filed on 28.02.2025 seeking correction of the array of parties in view of the death of Vinod Kumar and the subsequent proceedings concerning the alleged transferee.

7. Objections to the aforesaid amendment application were filed on 04.04.2025 as Paper No. 22-Ga. The executing court, by order dated 26.05.2025, allowed the amendment application. The revision preferred against the said order was thereafter dismissed by the Additional District Judge by order dated 22.08.2026.

8. Learned counsel for the petitioner submits that, on the date of institution of the execution case, Vinod Kumar had already died and,

consequently, his name could not have been shown as a decree-holder in the execution application. It is contended that a proceeding instituted in the name of a person who was already dead is a nullity and that such a defect cannot be cured by a subsequent amendment.

9. It is further submitted that Vinod Kumar had died during the pendency of the revisions and that his legal representatives had already been substituted therein. According to learned counsel, notwithstanding such substitution, the execution application was subsequently instituted showing the deceased as one of the decree-holders, which rendered the execution proceeding fundamentally defective.

10. Learned counsel also places reliance upon alleged transfer in favour of Sanjay Kumar Verma and submits that, upon such transfer, the original decree-holder ceased to have any enforceable interest in the disputed property and, consequently, could not maintain the execution proceedings.

11. Lastly, it is submitted that the amendment application travelled beyond the order dated 04.01.2025 and that, at the time when the amendment application was filed, the alleged transferee had not yet been formally impleaded. Reliance has been placed upon **C. Muttu v. Bharath Match Works**,¹; **Smt. Johra Begam alias Johra Khatoon v. State of U.P.**,²; and **Smt. Jiwani v. Rajmata Basantika Devi**,³.

12. In view of the pleadings and the controversy involved in the present petition, the following questions fall for determination:

(i) Whether an execution proceeding is rendered a nullity merely because the name of a deceased joint decree-holder was also mentioned in the execution application, where the decree was jointly in favour of more than one person and the execution was invoked by a surviving joint decree-holder competent to execute the decree.

1. AIR 1964 Mys 293

2. 2026:AHC-LKO:12168

3. AIR 1994 SC 1286

(ii) Whether, in such circumstances, the executing court could permit correction of the array of decree-holders in the pending execution proceeding.

(iii) Whether the alleged transfer in favour of the transferee, by itself, extinguished the right of the surviving joint decree-holder to execute the decree, or whether the nature and legal effect of such transfer are matters to be determined in the execution proceedings in accordance with Order XXI Rule 16 of the Code of Civil Procedure⁴ and the other applicable provisions of law.

13. The principal objection raised on behalf of the petitioner proceeds on the premise that a proceeding instituted by or against a person who had already died before its institution is a nullity from its inception and that such a defect cannot be cured by subsequently bringing the legal representatives of the deceased on record. Considerable reliance has been placed upon **C. Muttu, Smt. Johra Begam alias Johra Khatoon and Jiwani**.

14. There can be no quarrel with the general proposition that a proceeding instituted against a person who had already died stands on a fundamentally different footing from a proceeding in which a party dies during the pendency of the proceeding. Order XXII of CPC contemplates death occurring during the pendency of a proceeding and provides for bringing the legal representatives of the deceased on record. Where, however, the death has preceded the institution of the proceeding, there is, in the eye of law, no subsisting proceeding against the deceased in which his legal representatives can be substituted under Order XXII.

15. The decision in **C. Muttu** arose in circumstances where the suit had been instituted against a person who had already died and who was the sole defendant. Upon discovering the death, the plaintiff sought to substitute another person in place of the deceased defendant. The Court, after considering the earlier authorities, held that the suit was a nullity

⁴ CPC

from its inception and that a person could not be substituted in place of a deceased sole defendant so as to bring into existence, by subsequent proceedings, a suit which had never validly commenced against a living defendant.

16. The ratio of **C. Muttu**, however, has to be understood in the factual setting in which it was rendered. The Court itself noticed the distinction between a case where the deceased was the sole defendant and a case where there were several defendants and only one of them had died before institution. In the latter situation, the proceeding was held to remain valid insofar as the living defendants were concerned, and the legal representatives of the deceased defendant could, subject to limitation and other applicable considerations, be brought on record. The decision, therefore, cannot be read as laying down an inflexible proposition that the mere presence of a deceased person in the array necessarily renders the entire proceeding a nullity, irrespective of the existence of other living and competent parties.

17. The judgment in **Smt. Johra Begam alias Johra Khatoon** proceeds upon the same foundational distinction. In that case, the appeal had been instituted against a sole respondent who had already died before the appeal was filed. An application was thereafter made under Order XXII Rule 4 CPC for bringing his legal representatives on record. It was held that Order XXII Rule 4 was not attracted since the death had preceded the institution of the appeal. The Court further declined to invoke Order I Rule 10 CPC for bringing the legal representatives on record in an appeal which was itself a nullity from its inception. The decision was thus concerned with a proceeding in which, on the date of its institution, there was no living respondent against whom the appellate jurisdiction could operate.

18. The distinction between the aforesaid authorities and the case at hand is material. In **C. Muttu**, the deceased was the sole defendant; in **Smt. Johra Begam**, the deceased was the sole respondent. In each case, therefore, the proceeding, at its inception, was directed against a person

who was already dead, and there was no other living party occupying the relevant position upon whom the proceeding could operate. The present case stands on a materially different footing. The execution proceeding was instituted in respect of a decree passed jointly in favour of two persons, and one of the joint decree-holders, namely, Anil Kumar, was alive and competent to invoke the jurisdiction of the executing court. The death of the other joint decree-holder did not, by itself, extinguish or render ineffective the independent right of the surviving joint decree-holder to seek execution of the decree.

19. The question, therefore, cannot be answered merely by asking whether the deceased decree-holder was alive on the date on which the execution application was filed. Plainly, he was not, and no execution application could have been instituted by him after his death. The material question is whether the mere inclusion of his name, along with that of the surviving joint decree-holder, in the execution application renders the entire execution proceeding a nullity notwithstanding the independent right of the surviving joint decree-holder to execute the decree. That question must necessarily be examined in the light of the specific statutory provision governing execution by joint decree-holders.

20. Order XXI Rule 15 CPC expressly deals with execution by joint decree-holders and provides:

“15. Application for execution by Joint decree-holder.—(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interest of the persons who have not joined in the application.”

21. The language of Rule 15 is significant. The provision expressly contemplates the death of one of several joint decree-holders and

nevertheless permits any one or more of the joint decree-holders to apply for execution of the whole decree, including, where one of them has died, for the benefit of the survivors and the legal representatives of the deceased. The statutory scheme thus recognises the right of a surviving joint decree-holder to invoke execution while simultaneously requiring the executing court, where necessary, to protect the interests of persons who have not joined in the execution application. The death of one joint decree-holder, therefore, does not extinguish the right of another joint decree-holder to seek execution of the decree.

22. The aforesaid statutory position finds support in the judgment of the Supreme Court in **Jagdish Dutt and another v. Dharam Pal and others**⁵. While considering the effect of a joint decree and the right of a joint decree-holder to execute the same, the Supreme Court observed that Order XXI, Rule 15, CPC enables a joint decree holder to execute a decree in its entirety. The Court further explained the manner in which a joint decree may be executed, having regard to the nature of the rights and interests of the decree-holders. The principle relevant for the present controversy is that the right of one joint decree-holder to invoke execution of the decree is not made conditional upon the continued participation of every other person in whose favour the decree was passed.

23. This principle is also consistent with the decision of the Supreme Court in **V. Uthirapathi v. Ashrab Ali and others**⁶. In that case, the execution petition had been validly instituted during the lifetime of the decree-holder, who thereafter died during its pendency. The Supreme Court held that the execution petition did not abate on the death of the decree-holder and that his legal representatives could be brought on record. The decision recognises the broader principle that the executable right embodied in a decree does not stand extinguished merely because the decree-holder dies during the execution proceedings.

5. (1999) 3 SCC 644

6. (1998) 3 SCC 148

24. The factual distinction in **V. Uthirapathi** is, however, material and cannot be overlooked. There, the death occurred after institution of the execution petition, whereas in the present case deceased joint decree-holder, Vinod Kumar, had died before the execution proceeding was instituted. The decision, therefore, cannot be regarded as directly governing the validity of the execution application in the present case. Its relevance lies in the broader principle that the death of a decree-holder does not, by itself, destroy the executable right embodied in a subsisting decree. In the present case, that principle operates with particular force in favour of the surviving joint decree-holder, whose right to execute the whole decree is expressly recognised by Order XXI Rule 15 CPC.

25. The reliance placed upon **Jiwani** (supra), also does not advance the case of the petitioner. In that case, the execution application had been prepared by a joint decree-holder during his lifetime but was presented before the executing court only after his death and, significantly, continued to bear his signatures and verification. The Supreme Court found that, on the date of its presentation, there was no duly signed and verified execution application before the Court, attracting the requirements of Order XXI Rules 11 and 17 CPC. The decision thus proceeded upon the foundational circumstance that the very application presented for execution had been signed and verified by a person who was no longer alive and that no other decree-holder had validly signed or verified the application at the relevant stage.

26. The factual foundation of **Jiwani** is materially absent in the present case. The execution proceeding here was invoked by a surviving joint decree-holder who was alive and competent to seek execution of the subsisting decree. The objection, therefore, is not that the execution application was signed or verified by the deceased decree-holder, but that his name continued to be mentioned in the array of decree-holders. The defect went to the existence of a duly instituted execution application itself. The present case, on the other hand, concerns the correctness of the description of the decree-holders in an execution

proceeding otherwise instituted by a person competent to execute the joint decree. The ratio, therefore, cannot be extended so as to invalidate the entire execution proceeding in the facts of the present case.

27. This conclusion is also consistent with the procedural history of the matter. Vinod Kumar had died during the pendency of the revisions arising out of the decree and his legal representatives had already been brought on record. The revisions were thereafter dismissed on 09.05.2023 and the decree consequently attained finality. The subsequent correction sought in the execution proceedings did not create a new right in favour of the legal representatives of Vinod Kumar, nor did it seek to revive a proceeding instituted by a dead person. It sought only to bring the description of the decree-holders in the execution record into conformity with the legal position which had already been recognised during the pendency of the revisions.

28. The objection founded upon **C. Muttu** and **Smt. Johra Begam** must, therefore, fail for want of factual parity. Those decisions concern the foundational defect arising where a proceeding is instituted solely against a person who was already dead and, consequently, there was no living party against whom the proceeding could operate at its inception. The present case concerns an execution proceeding instituted by a living and surviving joint decree-holder under an existing and final decree. The distinction is not merely procedural; it bears directly upon the existence of the substantive right to invoke execution at the inception of the proceeding.

29. Consequently, the mere inclusion of the name of the deceased joint decree-holder in the execution application cannot, in the circumstances of the present case, be treated as a circumstance which destroys the entire execution proceeding. At the highest, such inclusion constituted an incorrect description of the array of decree-holders requiring correction in view of the death of Vinod Kumar, which had already been recognised in the proceedings arising out of the decree. It

did not efface the independent right of the surviving joint decree-holder to seek execution of the decree under Order XXI Rule 15 CPC.

30. The next question concerns the alleged transfer in favour of the transferee, Sanjay Kumar Verma. The petitioner's case, in substance, is that the transfer of the disputed property by the decree-holder or decree-holders resulted in their being divested of the right to execute the decree and that, consequently, the transferee alone could proceed with the execution. Such a consequence cannot follow merely from an assertion that a transfer has taken place. The Code itself prescribes the manner in which a transferee claiming through a decree-holder, or claiming rights in the subject-matter of the suit, may seek execution and in which the effect of such transfer is to be worked out.

31. Order XXI Rule 16 and Section 146 CPC provide the relevant statutory framework:

“Order XXI Rule 16. Application for execution by transferee of decree.—

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Explanation.—Nothing in this rule shall affect the provisions of Section 146, and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.”

“Section 146. Proceedings by or against representatives.—Save as otherwise provided by this Code or by any law for the time being in force,

where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made by or against any person claiming under him.”

32. Rule 16 of Order XXI is significant for present purposes. It expressly contemplates a decree passed jointly in favour of two or more persons and the transfer of the interest of any decree-holder in the decree. The Explanation further preserves the operation of Section 146 CPC and recognises that a transferee of rights in the property which is the subject-matter of the suit may apply for execution without a separate assignment of the decree. The statutory consequence of a transfer is thus not the automatic nullification of the decree or of an execution proceeding already instituted by a competent decree-holder. The nature and legal effect of the transfer have to be examined within the statutory framework governing execution.

33. For a proper appreciation of the statutory position, reference may usefully be made to **Jugalkishore Saraf v. Raw Cotton Co. Ltd.**⁷. The Supreme Court, while considering the then existing Rule 16, observed that the normal rule was that a decree could be executed by the person in whose name it stood, while Rule 16 enabled a transferee of the decree to execute it in the same manner and subject to the same conditions. The decision is relevant in tracing the legal position as it existed prior to the subsequent legislative amendment of Rule 16.

34. The position considered in **Jugalkishore Saraf**, however, has to be read in the light of the subsequent amendment to Order XXI Rule 16 CPC. The Explanation was inserted by the Code of Civil Procedure (Amendment) Act, 1976 with effect from 01.02.1977. Its effect has been considered by the Supreme Court in **Vaishno Devi Construction through its Sole Proprietor (D) through LRs and another v. Union of India and others**⁸.

35. In **Vaishno Devi Construction**, the Supreme Court noticed that the Explanation to Order XXI Rule 16 was introduced pursuant to the

7. 1955 SCR (1) 1369

8. (2022) 2 SCC 290

recommendations of the Law Commission of India in its 54th Report, particularly against the backdrop of conflicting views as to whether a person who had succeeded to the rights of a decree-holder, but did not possess a separate written assignment of the decree, could invoke Section 146 CPC for execution. The amendment clarified that Rule 16 would not affect Section 146 and that a transferee of rights in the subject-matter of the suit could obtain execution without a separate assignment of the decree. The Supreme Court noticed that the object appeared to be to not have multifarious proceedings to determine the issue of assignment, but to have the issue of assignment determined in the execution proceedings itself.

36. The Supreme Court further held that the object of the 1976 amendment was to address the situation contemplated by the Explanation and, to that extent, to remove the distinction between an assignment made before the decree and an assignment made after the decree. The earlier position reflected in **Jugalkishore Saraf**, therefore, could not be treated as continuing to govern after the statutory amendment in cases to which the amended provision applied. The Explanation expressly preserves Section 146 CPC and enables a transferee of rights in the property which is the subject-matter of the suit to seek execution without a separate assignment of the decree.

37. Of particular significance is the further observation in **Vaishno Devi Construction** that the validity of the assignment document was a matter to be determined by the executing court. The Supreme Court declined to examine the validity of the alleged assignment at the threshold and recognised that such determination was within the province of the executing court. The decision thus makes it clear that the question whether a claimant has acquired the rights asserted by him can, in an appropriate case, be examined in the execution proceedings themselves.

38. The aforesaid principle has direct relevance to the objection raised in the present case. The question is not merely whether a transfer

is alleged to have taken place, but what is the legal nature and effect of such transfer and whether the transferee has, in fact, acquired an interest capable of affecting execution of the decree. The mere assertion of a transfer cannot, by itself, retrospectively render an otherwise competent execution proceeding *non-est*. The validity, nature and extent of the alleged transfer, insofar as they fall for determination by the executing court, are required to be examined in accordance with Order XXI Rule 16 CPC, Section 146 CPC and the other applicable provisions of law.

39. The position assumes greater significance because the decree in the present case was passed jointly in favour of two decree-holders. Order XXI Rule 16 itself expressly contemplates a situation in which the interest of any one of the joint decree-holders is transferred. Thus, even assuming that a valid transfer of some interest is ultimately established, its legal consequence must be determined with reference to the nature and extent of the interest transferred. The provision does not support the proposition that an alleged transfer by one joint decree-holder automatically renders the entire decree incapable of execution or, without further adjudication, extinguishes the independent rights of the other joint decree-holder.

40. The decision in **Jagdish Dutt** (supra) is also relevant in this context. The Supreme Court recognised that a joint decree may be executable as a whole at the instance of a joint decree-holder under Order XXI Rule 15 CPC, while the precise effect of a transaction concerning the interest of one decree-holder would depend upon the nature of the rights involved. The effect of such a transaction, therefore, cannot be presumed to extinguish the entire decree without determining what interest was actually transferred and what legal consequences flow from that transfer.

41. In the present case, the executing court had, by order dated 04.01.2025, directed that the alleged transferee be added to the array of parties. Once a claim of transfer was brought before the executing court, it was open to that court to bring the claimant before it and determine the

effect, if any, of the alleged transfer upon the execution of the decree. The order directing impleadment cannot, therefore, be construed as an adjudication that the alleged transaction had vested the entire decree exclusively in the transferee or had extinguished the rights of the surviving decree-holder.

42. The further objection that the amendment application was incompetent because the transferee had participated in the proceedings before the formal correction of the array also does not furnish a ground for interference. The amendment application was considered in the backdrop of the order dated 04.01.2025 and sought to bring the array of parties into conformity with the position emerging in the execution proceedings. Mere procedural participation by the alleged transferee before formal correction of the array cannot, by itself, invalidate an execution proceeding which was otherwise maintainable.

43. This Court is conscious of the well-settled principle that rules of procedure are intended to advance the cause of justice and not to defeat substantive rights on account of curable procedural irregularities. Procedure is ordinarily regarded as a handmaid of justice and, accordingly, a procedural provision governing execution proceedings ought not to be construed in a manner which places undue emphasis upon form at the cost of substantive rights flowing from a subsisting decree. Where an execution application has been instituted before the competent court and the defect complained of relates to the description, array or particulars of the persons entitled to participate in the execution proceedings, the court is required to examine whether such defect goes to the very foundation of the proceeding or is merely an irregularity capable of correction. In the latter situation, a liberal approach is warranted, particularly where the correction neither introduces a new decree nor alters the substance of the decree nor creates in favour of any party a substantive right which did not otherwise exist.

44. It is equally well settled that an amendment, once permitted, ordinarily takes effect from the date of institution of the original

proceeding. The doctrine of relation back rests upon the principle that an amendment permitted by the court is ordinarily regarded as a correction, clarification or adjustment of the existing proceeding, rather than as the institution of an entirely new proceeding. Consequently, where the amendment merely brings the record in conformity with facts or legal circumstances already existing and does not introduce a new and independent cause of action or a new substantive claim, the amended pleading or application ordinarily relates back to the date of the original institution. The mere fact that the formal correction is carried out at a subsequent stage cannot, by itself, lead to the conclusion that the proceeding came into existence only on the date on which the amendment was made.

45. The doctrine of relation back, however, cannot be applied mechanically or in a manner which retrospectively cures a defect going to the very existence or jurisdictional competence of the proceeding. The court must necessarily have regard to the nature of the amendment and the character of the defect sought to be rectified. An amendment which merely corrects the description of a party, brings the record in conformity with an already subsisting legal position, or incorporates a consequential change arising from an event which has already occurred, stands on a different footing from an amendment which seeks, for the first time, to introduce a person who alone possesses the substantive right to institute or continue the proceeding. The question whether an amendment operates by way of relation back, and the legal consequence flowing therefrom, must therefore depend upon the character of the defect and the nature of the right sought to be enforced.

46. The principle of liberal construction of procedural requirements cannot, however, be understood as permitting the court to disregard substantive limitations. A clear distinction has to be maintained between a defect which affects the very existence or competence of the proceeding and an irregularity which affects only the manner in which an otherwise competent proceeding has been presented. Where the substantive right to seek execution exists independently in a person who

has invoked the jurisdiction of the executing court, an error in the description or array of other persons entitled under the decree cannot, merely by reason of such error, be elevated to the status of a nullity affecting the entire proceeding. Whether a particular defect is of such a fundamental character has necessarily to be determined having regard to the nature of the decree, the persons in whose favour it was passed, the right asserted in execution and the nature and effect of the amendment actually sought.

47. The doctrine of relation back, therefore, assumes significance in the present matter only to the extent that the amendment, once validly allowed, operates in continuation of the execution proceeding which was already pending before the executing court. It does not follow that every defect can retrospectively be cured merely by describing an amendment as one operating by way of relation back. Conversely, where the proceeding was otherwise competent at its inception and the amendment merely corrects an erroneous description or brings the record in conformity with an existing legal position, the subsequent date of the amendment cannot, by itself, furnish a basis for contending that the execution proceeding must be treated as having commenced only from the date of such amendment. The determinative consideration is whether the original execution proceeding had a competent foundation and whether the amendment merely corrected or regularised that proceeding, or instead sought to create a right or proceeding which did not exist earlier.

48. The two principal objections raised by the petitioner thus operate in distinct fields. The first relates to the effect of the death of one of the joint decree-holders. That question is answered by the express language of Order XXI Rule 15 CPC, which preserves the right of a surviving joint decree-holder to execute the whole decree for the benefit of all persons entitled thereto. The second objection concerns the effect of the alleged transfer and is governed by Order XXI Rule 16 CPC, read with Section 146 CPC and the other applicable provisions of law. The mere

assertion of a transfer, however, does not, by itself, convert an otherwise maintainable execution proceeding into a nullity.

49. The legal principles emerging from the aforesaid discussion may, therefore, be summarised thus:

(i) where a decree has been passed jointly in favour of more than one decree-holder, a surviving joint decree-holder is competent, by virtue of Order XXI Rule 15 CPC, to execute the whole decree for the benefit of all persons entitled thereto;

(ii) the mere inclusion of the name of a deceased joint decree-holder in an execution application does not, where the execution is otherwise validly invoked by a surviving joint decree-holder, render the execution proceeding a nullity;

(iii) a subsequent correction of the array of decree-holders, where it merely brings the execution record in conformity with the existing legal position and does not create a new substantive right or a fresh executable claim, is a procedural correction and does not, merely on account of its subsequent date, amount to institution of a fresh execution proceeding; and

(iv) where a transfer in favour of a third person is alleged, its existence, nature, validity and legal effect, including the rights, if any, flowing therefrom in the execution proceedings, are matters to be determined in accordance with Order XXI Rule 16 CPC, Section 146 CPC and the other applicable provisions of law.

The governing consideration, in each case, is whether the original execution proceeding had a competent substantive foundation or whether the defect complained of goes to its very existence or jurisdictional competence.

50. The expression “nullity” must, in these circumstances, be employed with precision. A proceeding instituted solely against a person who was already dead may stand on an entirely different footing, since there would have been no living person against whom the proceeding

could validly operate at its inception. The present execution proceeding, however, was instituted by a surviving joint decree-holder who possessed an independent and subsisting right under the decree to seek its execution for the benefit of the persons entitled thereto. The mere presence of the name of the deceased co-decree-holder in the original execution array could not, in law, extinguish or nullify the independent right of the surviving joint decree-holder to invoke the execution jurisdiction of the court.

51. Tested on the aforesaid principles, the amendment made in the present case cannot be considered in isolation from the execution proceeding as originally instituted or from the decree sought to be enforced. The amendment neither purported to substitute one decree for another nor altered the relief granted by the decree nor created a fresh executable right. Its object was to correct the description and array of the decree-holders and to bring the execution record in conformity with the legal position which had emerged during the pendency of the litigation. The subsequent correction of the array, therefore, cannot, by itself, be equated with the institution of a fresh execution proceeding, particularly when the execution had been invoked by a surviving joint decree-holder who himself was competent to seek enforcement of the decree.

52. The aforesaid conclusion also accords with the procedural history of the matter. One of the original decree-holders died during the pendency of the revisions, whereafter his legal representatives were brought on record. The challenge to the decree thereafter failed and the decree attained finality. The surviving joint decree-holder subsequently invoked the execution jurisdiction of the competent court. The executing court considered the objections raised with regard to the deceased decree-holder as well as the alleged transferee and permitted appropriate correction of the array. The revisional court thereafter examined the said exercise and found no ground warranting interference. Significantly, no fresh decree was brought into existence, nor was any substantive adjudication contained in the decree reopened by permitting the correction in the execution proceedings.

53. Accordingly, the first issue is answered against the petitioner. The execution proceeding was not rendered a nullity merely because the name of the deceased joint decree-holder was also mentioned in the original execution application. The surviving joint decree-holder was competent to invoke the jurisdiction of the executing court under Order XXI Rule 15 CPC and to seek execution of the whole decree for the benefit of the persons entitled thereto.

54. The second issue is also answered against the petitioner. The subsequent correction of the array of decree-holders did not amount either to the revival of a proceeding instituted by a dead person or to the institution of a fresh execution proceeding. The correction was procedural in nature and operated upon an execution proceeding which was otherwise maintainable at the instance of the surviving joint decree-holder. The mere fact that the correction was formally permitted at a subsequent stage cannot alter the character or commencement of the execution proceeding which had already been validly instituted.

55. The third issue is likewise answered against the petitioner. The alleged transfer, merely by reason of its assertion, did not extinguish the execution proceeding or automatically divest the surviving decree-holder of his right to seek execution of the decree. The precise legal effect of the transaction, including the nature and extent of any interest allegedly transferred and the rights, if any, acquired by the transferee, has to be worked out in accordance with Order XXI Rule 16 CPC, Section 146 CPC and the other applicable provisions of law. Such questions cannot, merely on the basis of the allegation of transfer, be treated as rendering the entire execution proceeding void or *non-est*.

56. In view of the discussion and the findings recorded hereinabove, the challenge to the order dated 26.05.2025 as well as the revisional order dated 22.08.2026 must fail. The courts below have proceeded on the basis of the subsisting decree and have considered the objections relating to the constitution and maintainability of the execution proceedings in the light of the applicable provisions of law. The findings

recorded by the courts below, as examined hereinabove, do not suffer from any jurisdictional error, patent illegality or perversity warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

57. The present petition is, accordingly, **dismissed**. The execution proceedings shall proceed in accordance with law. It is, however, clarified that this Court has not expressed any final opinion on the validity, nature or legal effect of the alleged transfer in favour of the transferee, Sanjay Kumar Verma. The executing court shall be at liberty, insofar as the matter falls within its jurisdiction, to determine the existence, validity and legal effect of the alleged transfer; the nature and extent of the interest, if any, acquired by the transferee thereunder; whether and to what extent such interest entitles the transferee to participate in or continue the execution proceedings; and the consequences, if any, of such transfer under Order XXI Rule 16 CPC, Section 146 CPC or any other applicable provision of law. Such questions shall be determined independently, in accordance with law and uninfluenced by any observation contained in this judgment.

(Dr. Yogendra Kumar Srivastava,J.)

October 07, 2026

Sushma