IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 95 of 2026
a/w CR No. : 60 of 2026
Reserved on : 03.09.2026
Decided on : 30.09.2026
Uploaded on : 30.09.2026

CMPMO No. 95 of 2026
Mast Ram ...Petitioner

Versus

Kishore Chand (deceased) through his LRs ...Respondents

.....

CR No. 60 of 2026
Kishore Chand (deceased) through his LRs ...Petitioners

Versus

Mast Ram ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] *Yes.*

CMPMO No. 95 of 2026

For the petitioner : Mr. Kush Sharma, Advocate.

For the respondents : Mr. Rajesh Prakash, Advocate.

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[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

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CR No. 60 of 2026

For the petitioners : Mr. Rajesh Prakash, Advocate.

For the respondent : Mr. Kush Sharma, Advocate.

Virender Singh, Judge.

The order of mine shall dispose of the above two petitions by this common judgment, as, both these petitions have been filed, by the parties to the *lis,* against the order, dated 12th December, 2025, passed by the Court of learned Civil Judge, Court No. II, Kangra (hereinafter referred to as 'the Executing Court'), in Execution Petition No. 4 of 2013, titled as Mast Ram versus Kishore Chand.

2. For the sake of convenience, parties to the petition, are hereinafter, referred to, in the same manner, in which, they were referred to, by the learned Executing Court.

3. Plaintiff-Mast Ram has filed Civil Suit No. 37 of 2003 before the Court of learned Civil Judge (Junior Division), Kangra, District Kangra, H.P. (hereinafter referred to as 'the trial Court') for declaration, with consequential relief of permanent prohibitory injunction, against defendant-Kishore Chand, by impleading Desh Raj

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and Balbir Singh as proforma defendants. The said suit was decreed by the learned trial Court vide judgment and decree, dated 28th November, 2006, by granting the following relief:

> *"In view of my findings and discussions on issues supra, the suit of the plaintiff is hereby decreed to the effect that the plaintiff has right of irrigation through 'challah' E.D. which extends from A.B.C.E. as shown in Mark 'X' commencing from Kuhal comprising Khasra No. 1092 leading to Khasra Nos. 1031, 1035 Khata No. 45 min, Khatauni No. 72 min, owned by the plaintiff alongwith other co-sharers, but exclusively possessed by plaintiff through Khasra No. 1026 owned by defendant No. 1 as well as proforma defendants situated at Mohal Behra Banjar, Mauza Amtrar, Tehsil and Distt. Kangra. The defendant No. 1 is hereby restrained from causing obstruction, damage and interference in the flow of water in the abovesaid challah E.D. There is no order as to costs. Decree-sheet be prepared accordingly. File be consigned to record-room."*

4. When the judgment and decree attained finality, the plaintiff has filed the Execution Application, with the prayer that the Judgment Debtors have willfully failed to obey the judgment and decree, dated 28th November, 2006 and have caused obstruction in the already existing sub-water channel, as shown in Mark X (now Ex. P3).

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5. In addition to this, it has also been pleaded that Judgment Debtor No. 1 dismantled the sub-water channel (challah) in dispute, when, the judgment and decree attained finality and now, they are threatening and exerting force against them, and not letting the decree holder to take water from sub-water channel (challah) ED, which extends from points ABCE, as shown in Mark 'X' (now Ex. P3), commencing from Kuhal comprising Khasra No. 1092, leading to Khasra Nos. 1031, 1035, Khata No. 45 min, Khatauni No. 72 min, owned by the Decree Holder alongwith his other co-sharers, but, exclusively possessed by Decree Holder, through Khasra No. 1026, owned by Judgment Debtors, as well as, proforma defendants.

6. When, put to notice, the Judgment Debtors had not bothered to put appearance and to file reply/objection. Consequently, on 14th June, 2016, the warrants of attachment were issued to attach the property of the Judgment Debtors. When their property was attached, thereafter, show cause notice was issued to the Judgment Debtors, upon which, they have again failed to put appearance, as such, their property was put to auction.

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Before auction on the spot was conducted, the Judgment Debtors have put appearance before the learned Executing Court. Thereafter, on the affidavit of Sharda Devi, the matter was referred to Lok Adalat, but, the matter could not be settled in the Lok Adalat.

7. The Execution Application has been contested by the Judgment Debtors, admitting the fact that the suit was filed, in which, judgment and decree, dated 28th November, 2006 was passed, which has attained finality. However, according to the Judgment Debtors, they have not disobeyed the judgment and decree, nor caused any obstruction in already existing sub-water channel (challah), as shown in Mark X, now Ex. P-3.

8. The allegations, with regard to dismantling the sub-water channel (challah), have also not been disputed, however, according to the Judgment Debtors, the Decree Holder, alongwith other co-sharers, has been irrigating the fields through khasra No. 1026. It is their further case that there is a common path between the land of the Judgment Debtors, Decree Holder and one Smt. Sharda Devi, widow of Megh Raj. From the sub-water channel

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(challah), the field of Sharda Devi was firstly irrigated through Khasra No. 1026, thereafter, the land of Decree Holder is irrigated and lastly, the land of Gian Chand and Pardeep Kumar is irrigated, on the spot.

9. From the stand, as taken by the Judgment Debtors, by way of reply, the learned Executing Court has framed the following issues on 5th December, 2019:

> *"1. Whether the JDs have willfully disobeyed the judgment and decree dated 28.11.2006 and have caused destruction in already existing "challa' as shown in Mark-X (Now Ex. P-3), as alleged? OPA*
>
> *2. Final Order."*

10. Thereafter, the evidence was led and on 12th December, 2025, the learned Executing Court has disposed of the Execution Application, by passing the following order:

> *"Accordingly the property of the Judgment debtor shall stand attached for a period of three moths from the date of actual attachment by concerned authority. List of property filed by the DH however if he intends to take steps, steps be taken in 15 days. Let warrant of attachment be issued against the JD and the report of the same be called for 18.02.2026. Executing petition stand disposed off. File after due completion be consigned to record room."*

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11. Being aggrieved, Decree Holder-Mast Ram has filed **CMPMO No. 95 of 2026**, assailing the order, dated 12th December, 2025, passed by the learned Executing Court, by virtue of which, the learned Executing Court has refused to issue any order for restoration of sub-water channel (challah).

12. The said order has been assailed by Decree Holder-Mast Ram, on the ground, that the learned Executing Court has failed to take into consideration the fact that if the Judgment Debtors are not directed to restore the sub-water channel (challah), then, the very purpose of passing the judgment and decree would be defeated.

13. According to Decree Holder-Mast Ram, the learned Executing Court has wrongly held that there was no decree for mandatory injunction, as such, restoration cannot be ordered, whereas, it has been proved that the sub-water channel (challah) was dismantled by the Judgment Debtors, after passing of the judgment and decree. In such situation, according to the Decree Holder, mandatory injunction is required to be issued by the

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learned Executing Court, by restoring the sub-water channel (challah).

14. The Judgment Debtors have filed **Civil Revision No. 60 of 2026**, challenging the order, dated 12th December, 2025, passed by the learned Executing Court, by virtue of which, their property was ordered to be attached for a period of three months, from the date of actual attachment.

15. The said order has been assailed, by the Judgment Debtors, on the ground, that the learned Executing Court has not taken into consideration the evidence adduced before it and wrongly attached the property. According to the Judgment Debtors, the Decree Holder has failed to prove that the Judgment Debtors had disobeyed the judgment and decree passed by the Court.

16. Re-asserting their stand, as taken in their reply, the Judgment Debtors have prayed that the order, by virtue of which, their property has been ordered to be attached for three months, may kindly be set aside.

17. In this factual background, this Court would now proceed further to determine as to whether the order

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passed by the learned Executing Court is sustainable in the eyes of law or the same requires any modification, by this Court.

18. It is the specific case of the Decree Holder that despite the judgment and decree, passed in his favour, the Judgment Debtors have failed to obey the same and they have caused obstruction in the already existing sub-water channel (challah), as shown in Mark-X (now Ex. P-3). In addition to this, the Decree Holder has also pleaded that defendant No. 1 has dismantled the sub-water channel (challah), after passing of the judgment and decree and not permitting the Decree Holder to irrigate his field from the sub-water channel (challah - E.D.) The Judgment Debtors, in their reply, have taken the stand that as per the judgment and decree, passed by the learned trial Court, in which, it has also been mentioned that the plaintiff has right of irrigation through challah E.D., which extends from A.B.C.E., as shown in Mark-X, commencing from kuhal, comprising of khasra No. 1092, leading to khasra Nos. 1031, 1035, Khata No. 45 min, Khatauni No.

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72 min, owned by Judgment Debtor No. 1, as well as, proforma defendants.

19. One thing is not in dispute, in the present case, that, when the judgment and decree, sought to be executed, has attained finality, it does not lie in the mouth of the Judgment Debtors that there was no sub-water channel (challah), existing on the spot. Although, the Decree Holder has alleged, in the Execution Application, that after the dismissal of the appeal, the Judgment Debtors have dismantled the sub-water channel (challah), except the oral statement of Decree Holder-Mast Ram, there is no other evidence to prove the fact that the sub-water channel (challah) has been dismantled.

20. Since, the decree, in the present case, has attained finality, as such, the learned Executing Court was duty bound to get the same executed and in case, the Decree Holder has alleged the destruction/dismantling of the sub-water channel (challah), then, it was incumbent upon the learned Executing Court to appoint some revenue agency to ascertain the said fact. The learned Executing Court has failed to do so and thus, wrongly held that the

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mandatory injunction cannot be issued against the Judgment Debtors.

21. The powers of the Executing Court, under Order 21 Rule 32 of the CPC have elaborately been discussed by the Hon'ble Supreme Court in **Bhudev Mallick alias Bhudeb Mallick & anr. versus Ranajit Goshal & ors., 2025 INSC 175.** Relevant paras-40 to 46 of the said judgment, are reproduced, as under:

> *40. The High Court of Punjab and Haryana in the case of Dilbagh Singh and Others v. Harpal Singh Alias Harpal Singh Chela and Others reported in 2020 Supreme (P&H) 944, has held as under:-*
>
> > *"6. Although learned counsel for the petitioners has laid much stress on the fact that to seek execution of the decree, qua the restoration of the possession in his favour, the decree holder was supposed to plead specifically as to when and in what manner he has been dispossessed. This Court finds this argument to be noted only to be rejected. The provisions of sub Rule (5) Rule 32 of Order 21 CPC do not prescribe any such condition. Rather, Order 21 Rule 32 CPC prescribes that for execution of a decree if any act is required to be done by the judgment debtor, the Executing Court can order that such an act be done by the judgment debtor; as claimed. Sub Rule (5) Rule 32 of Order 21 CPC has been interpreted by the Supreme Court in various judgments viz. "Samee Khan vs. Bindu Khan, 1998(4) RCR(Civil) 125 (SC)" to mean that in an execution*

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proceedings of a decree for injunction, if it is found that the decree holder has been dispossessed after the date of decree, the restoration of possession can also be ordered by the Executing Court. Hence, it is no more res-integra that in execution of a decree for injunction, even restoration of possession can be ordered by the Executing Court. This view has also been taken by this court in 'Kapoor Singh vs. Om Parkash, 2009(4) PLR 178'. Hence, no fault can be found, per-se, with the action of the Executing Court in issuing warrants of possession in the execution proceedings."

(Emphasis supplied)

41. Having regard to the dictum of law as laid in the aforesaid decisions, there is no force in the argument of the learned counsel appearing for the appellants that the execution case could not have been instituted by the respondents herein after a period of 40 years from the date of passing of the decree in the original Title Suit. The decree for permanent injunction can be enforced or becomes enforceable when the judgment debtor tries to disturb the peaceful possession of the decree holder or tries to dispossess the decree holder in some manner or the other or creates obstruction in the peaceful enjoyment of the property over which he has a declaration of title from the civil court in the form of a decree.

42. In the aforesaid context, we may refer to Article 136 of the Limitation Act, 1963 which reads thus:-

	For the execution of any decree		*When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment*

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136	*(other than a decree granting a mandatory injunction) or order of any civil court*	*Twelve years*	*of money or the delivery of any property to be made at a certain date of at recurring periods, when default in making the payment or delivery in respect of which execution is sought, take place:* *<u>Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.</u>*

(Emphasis supplied)

43. The proviso to Section 136 of the Limitation Act referred to above makes it further clear that for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

44. Imprisonment of a judgment-debtor is no doubt a drastic step and would prevent him from moving anywhere he likes, but once it is proved that he had wilfully and with impunity disobeyed an order of injunction, the court owes it to itself to make the judgment-debtor realise that it does not pay to defy a decree of a court. Failure to exercise this power in appropriate cases might verily undermine the respect for judicial institutions in the eyes of litigants. The court's power under Order 21, Rule 32 is no more than a procedural aid to the harried decree-holder.

45. Where the judgment-debtor disobeys a decree of injunction, he can be dealt with under this rule by his imprisonment or by attachment of his property or by both. But the court has to record a finding that the

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> *judgment-debtor wilfully disobeyed or failed to comply with the decree in spite of opportunity afforded to him. Absence of such finding is a serious infirmity vitiating the order.*
>
> *46. Each breach of injunction is independent and actionable in law making the judgment-debtor answerable. Where there are successive breaches of decree, the judgment-debtor can be dealt with on every such breach and the doctrine of res judicata has no application. The court is expected to take strict view and stern action. (See : Code of Civil Procedure, 1908 by Justice C.K. Thakker, 2009 Edn.)*

22. The facts and circumstances of the present case, if judged in light of the decision of the Hon'ble Supreme Court, as referred to above, then, in the considered opinion of this Court, the learned Executing Court is bound to restore the situation, which existed on the spot, at the time of passing of the decree, by the learned trial Court and the attachment of the property of the Judgment Debtors would not restore the situation, which existed on the spot, at the time of passing of the decree.

23. In such situation, both the petitions filed by the parties to the Execution Application, are allowed by setting aside the order passed by the learned Executing Court and

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the matter is remanded back to the learned Executing Court with a direction to appoint a Local Commissioner to ascertain the situation, existing over the spot, i.e. with regard to dismantling of the sub-water channel (challah), as alleged by the Decree Holder and thereafter, proceed further, in accordance with law, especially in view of the decision of the Hon'ble Supreme Court in **Bhudev Mallick's** case (supra).

24. With these observations, both the petitions are disposed of.

25. Parties, through their respective counsel, are directed to appear before the learned Executing Court, on **16th October, 2026,** at 10.00 a.m.

26. Keeping in view the fact that the Decree Holder is a senior citizen, it is expected that the learned Executing Court will decide the Execution Application afresh within a period of four months from today, i.e. by or before 31st January, 2027.

27. Pending applications, if any, are also disposed of accordingly.

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28. Send down the record forthwith.

(Virender Singh)
Judge

September 30, 2026
(rajni)

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