

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CR No. 10/2025
CM No. 2437/2025

***Reserved on:- 26.09.2025.
Pronounced on:-10.10.2025***

Ghulam Haider and anr.

.....Appellants

Through: Mr. P.N Goja, Sr. Advocate with
Mr. Abhinav Jamwal, Advocate

Vs

Kamlesh Singh and ors.

..... Respondents

Through: Mr. Rohit Kohli, Sr. Advocate with
Mr. Raghav Gaind, Advocate

CORAM: HON'BLE MR.JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioners through the medium of present revision petition have challenged order dated 19.03.2025 passed by the learned Sub Judge, Batote (hereinafter referred to as "Executing Court") whereby objections filed by them to the execution petition filed by respondent Nos. 1 & 2 (hereinafter referred to as "decree holders") have been rejected.

2. It appears that a civil suit seeking permanent prohibitory injunction came to be filed by respondent Nos. 1 & 2 (decree holders) against Mst. Janu, mother of the petitioners (hereinafter referred to as "judgment debtors") and one Sain Mohd, the predecessor-in-interest of respondent No. 3. Vide judgment dated 30.04.1993 passed by learned Sub Judge, Batote, suit of the decree holders came to be decreed in their favour and they were

held entitled to decree of permanent prohibitory injunction restraining the defendants from encroaching upon the suit land measuring 05 kanals 19 marlas falling in khasra No. 1089/609, land measuring 08 kanals 08 marlas falling in khasra No. 109/609 and land measuring 10 kanals 09 marlas falling in khasra No. 610 situated at Amrit Chasime, Patwari Halqa, Champa, Batote. The petitioners (judgment debtors) happen to be the sons of defendant No. 1 in the suit namely Mst. Janu from her first husband, Late Ali Khan whereas, defendant No. 2 in the suit happened to be the second husband of Mst. Janu and respondent No. 3 herein happens to be son of the said defendant.

3. It appears that after passing of judgment/decreed dated 30.01.1993 by the learned Sub Judge, Batote, Mst. Janu, the mother of petitioners (judgment debtors) passed away. After death of Mst. Janu, the petitioners (judgment debtors) who also happen to be her legal heirs filed an application before the learned trial Court for setting aside the judgment/decreed dated 30.04.1993 on the grounds that the summons of the suit were never served upon the defendants and that the counsel who had appeared on their behalf before the trial Court had forged the signatures of the defendants. Since the judgment of the trial Court dated 30.04.1993 was not ex-parte in nature, therefore, learned trial Court dismissed the application of the petitioners (judgment debtors).

4. The decree holders thereafter filed the execution petition before the learned Executing Court alleging therein that the petitioners, who are the legal heirs of original judgment debtor Smt. Janu, are interfering in their possession over the suit land and that judgment debtor No. 2 Sain Mohd, the predecessor-in-interest of respondent No. 3, is also in league with the legal heirs of Mst. Janu.

5. The petitioners (judgment debtors) filed objections to the execution petition in which they took a stand that Mohd. Khan S/o Siraj Din, who happened to be brother of Ali Khan, the husband of Mst. Janu and father of petitioners (judgment debtors) was a protected tenant of the suit land which is recorded in the revenue record right from the year, 1971, Rabi and the record of rights for the year, 1969-70. It was further pleaded that said Sh. Mohd. Khan, uncle of the judgment debtors had died in the year, 1973 leaving behind the petitioners/ judgment debtors as the only male lineal descendants (sons of his brother Ali Khan) as such, right of succession as protected tenants in favour of petitioners/ judgment debtors opened on death of their uncle Mohd. Khan in terms of Section 67, 68 & 68-A of the J&K Tenancy Act. Thus, the petitioners/ judgment debtors claimed that they have acquired title of protected tenants in respect of the suit land. It was further pleaded that the decree holders/plaintiffs deliberately did not make the petitioners (judgment debtors) as

parties to the suit and that the plaintiffs/decreed holders have manipulated an entry in the revenue record relating to the land in question. It was contended that the land in question is in possession of the petitioners (judgment debtors) continuously for the last several years in their own right and not as legal heirs of Mst. Janu. Therefore, the decree passed by the learned trial Court cannot be executed against them.

6. The learned trial Court vide impugned order dated 19.03.2025 rejected the objections of the petitioners/ judgment debtors primarily on the ground that the Executing Court cannot go beyond the decree. It has been observed by the learned Executing Court that the question whether the petitioners/ judgment debtors are in possession of land in their capacity as male lineal descendants of Mohd. Khan cannot be decided by the Executing Court particularly when they have not challenged the order passed by the trial Court whereby their application for setting aside judgment dated 30.04.1993 has been dismissed.

7. The petitioners/judgment debtors have challenged the impugned order passed by the learned Executing Court on the grounds that it was bounden duty of the learned Executing Court to determine the merits of the claim raised by the petitioners/ judgment debtors as they were claiming their right to the suit property not in the capacity of legal heirs of judgment debtor Mst. Janu but they were doing so in their independent capacity. It has

been contended that the learned executing Court has failed to exercise its jurisdiction in accordance with the provisions contained in Section 47 of the CPC read with Section 50 of the CPC, thereby leaving the petitioners/ judgment debtors remediless.

8. I have heard learned counsel for the parties and perused the record of the case including the trial Court record.

9. As already stated, the petitioners/ judgment debtors claim that they have inherited the tenancy rights in respect of the land in question from Mohd. Khan who happened to be their paternal uncle. It has been contended that Mst. Janu had given birth to the petitioners/ judgment debtors through her first husband Ali Khan who was brother of Mohd. Khan. The claim of the petitioners/ judgment debtors is that Mohd. Khan was protected tenant in respect of the land in question and because he had died issueless as such, the only male lineal descendants left behind by him are the petitioners who upon his death in the year, 1973, inherited the tenancy rights in respect of the land in question, in accordance with the provisions contained in J&K Tenancy Act.

10. The suit that was decreed in favour of the decree holders/respondent Nos. 1 & 2 was filed against Mst. Janu and Sain Mohd who happened to be her second husband. Mst. Janu passed away after the suit was decreed against her whereafter,

the petitioners (judgment debtors) were impleaded as judgment debtors in her place in the execution proceedings. The petitioners (judgment debtors) are claiming their right to the suit property not through their mother Mst. Janu who was a defendant in the suit that was decreed against her but they are claiming their right to the suit property independent of their status as legal representatives of Mst. Janu. The question that arises for determination is as to whether the Executing Court was obliged to determine the merits of the claim projected by the petitioners/ judgment debtors during the execution proceedings.

11. In the above context, it would be appropriate to notice the provisions contained in Section 47 of CPC which provides the guidelines as to what type of questions are to be determined by an executing Court. It reads as under:-

“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.

(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.”

12. From a perusal of the aforesaid provision, it is clear that all questions that arise between parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree have to be determined by the Executing Court. It further clarifies that no

separate suit can be filed to determine these questions. Even a question whether any person is or is not the representative of a party is also to be determined by the Executing Court.

13. Section 50 of the CPC is also relevant for determination of the issue at hand. It reads as under:-

“50. Legal representative.—(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased. (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.”

14. From a perusal of the aforesaid provision, it is clear that when a decree is executed against legal representative, he is liable only to the extent of the property of the deceased judgment debtor which has come to his hands and has not been duly disposed of. The Supreme Court has in its various precedents after interpreting the provisions contained in Sections, 47, 50 and Order 21 of the CPC, laid down the legal position as regards the powers and obligations of an executing Court, while dealing with objections to the execution of decree that may be raised by legal representatives of the judgment debtor or by any third party. It

would be appropriate to take note of some of these precedents so as to understand the legal position on the issue at hand.

15. The Supreme Court has, in the case of **Bhanwar Lal Vs. Satyanarain and anr.; (1995) 1 Supreme Court Cases 6**, has, while considering the duties of an Executing Court while dealing with the objections filed by an objector made the following observations:-

“The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102. A reading of order 21, Rule 97 CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.”

16. Recently, in the case of **Jini Dhanrajgir and anr. Vs. Shibu Mathew and anr.; (2023) 20 SCC 76** the Supreme Court has, after considering its previous precedents on the issue and

after taking note of the provision contained in Section 47 of the CPC, held as under:-

“29. Section 47 of the CPC, being one of the most important provisions relating to execution of decrees, mandates that the court executing the decree shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit. What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree. Should there be any resistance offered or obstruction raised impeding due execution of a decree made by a court of competent jurisdiction, the provisions of Rules 97, 101 and 98 of Order XXI enable the executing court to adjudicate the inter se claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits. No wonder, the provisions contained in Rules 97 to 106 of Order XXI of the CPC under the sub-heading “Resistance to delivery of possession to decree-holder or

purchaser” have been held by this Court to be a complete code in itself in Brahmdeo Chaudhary (1997) 3 SCC 694 as well as in a decision of recent origin in Asgar vs. Mohan Verma (2020) 16 SCC 230. In the latter decision, it has been noted that Rules 97 to 103 of Order XXI provide the sole remedy both to parties to a suit as well as to a stranger to the decree put to execution.”

17. From the above analysis of legal position, it is clear that the Executing Court is bound to adjudicate upon the claim of an objector and record a finding allowing or rejecting the said claim even if the objector was neither a party to the earlier proceedings nor the decree was passed against him. However, it has to be noted that the Executing Court has to decide only those questions which are relating to the execution/discharge or satisfaction of the decree and it is also a settled legal position that a decree of permanent prohibitory injunction against a judgment debtor can be executed against his legal heirs upon the death of the judgment debtor. (Refer **Prabhakara Adiga Vs. Gowri and ors; 2017 (4) SCC 97**).

18. In the light of aforesaid legal position, let us now advert the facts of the present case. The petitioners/judgment debtors are not only the legal heirs of judgment debtor Mst. Janu but they also claim an independent right in respect of the suit property in

their capacity as male lineal descendants of Mohd. Khan, who as per the revenue record relating to the suit land, was a protected tenant. Section 50 of the CPC clearly provides that where decree is executed against a legal representative, he is liable only to the extent of property of the deceased judgment debtor which has come to his hands. The claim of the petitioners/judgment debtors is that suit property has come to their hands not in their capacity as legal representative of Mst. Janu but in their independent capacity being male lineal descendants of protected tenant Mohd. Khan. This claim raised by the petitioners/ judgment debtors was, therefore, required to be determined by the learned Executing Court as this is a question which relates to execution, discharge or satisfaction of the decree sought to be executed.

19. The learned trial Court while passing the impugned order has declined to go into the aforesaid questions on the ground that the Executing Court cannot go behind the decree and that it was for the petitioners/ judgment debtors to get their rights determined through appropriate forum. The course adopted by the learned trial Court is not in accordance with law because Section 47 of the CPC clearly bars filing of a separate suit in relation to questions arising between the parties to the suit or their representatives pertaining to execution, discharge or satisfaction of the decree. Merely because the petitioners (judgment debtors) have failed to get the judgment/decreed dated

30.04.1993 set aside, rightly so because the said decree was not ex-parte in nature, the petitioners/ judgment debtors who were not party to the suit are well within their rights to agitate their claim relating to the suit property not in their capacity as legal representatives of Mst. Janu but in their independent capacity and their said claim was required to be determined by the learned Executing Court. Having abdicated its duty to determine the said question, the learned Executing Court has failed to exercise the jurisdiction vested with it.

20. For the foregoing reasons, the revision petition is allowed and the impugned order dated 19.03.2025 passed by the learned Executing Court is set aside. The matter is remanded to the Executing Court for deciding the claim projected by the petitioners/ judgment debtors in their objections to the execution petition, on its merits after hearing the parties.

(SANJAY DHAR)
JUDGE

JAMMU
10.10.2025

Tarun/PS

Whether the judgment is speaking?	Yes
Whether the judgment is reportable?	Yes