

EXECUTION OF DECREES

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EXECUTION OF MONEY DECREE: -

INTRODUCTION:

The term "execution" refers to carrying out, enforcing, or giving effect to a court of justice order or verdict. In layman's terms, "execution" refers to the process of executing or giving effect to a Court's decree or judgment by requiring the judgment-debtor to carry out the decree or order's command and allowing the decree-holder to reclaim the object awarded to him by judgment. The decree is the part or element of the judgment that works or operates, and it must be consistent with the judgment. The decree is followed by judgment, according to Section 33 of the CPC of 1908.

As per Rule 2 (e) of Civil Rules of Practice "Execution Petition" means the Petition to the court for the execution of any decree or order.

As per Rule 2 (f) of Civil Rules of Practice "Execution application" means an application to the court made in a pending Execution Petition and includes an application for transfer, of a decree.

Procedure in execution

Section 51 CPC: Powers of Court to enforce execution: -

Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree -

- by delivery of any property specifically decreed;
- by attachment and sale or by the sale without attachment of any property;
- by arrest and detention in prison (for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under Section
- by appointing a receiver; or

- in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied -

- that the judgment debtor, with the object or effect of obstructing or delaying the execution of the decree, -
 - is likely to abscond or leave the local limits of the jurisdiction of the Court; or
 - has, after the institution of the suit in which the decree was passed, or dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof refuses or neglects or has refused or neglected to pay the same; or
- that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account.

Explanation: -

In the calculation of the means of the judgment debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

Section 52 deals with a case where the decree is passed against the legal representative of the judgment-debtor.

Section 52 (1) empowers a creditor to execute his decree against the property of deceased in the hands of legal representative so long as it remains in his hand. For application of this clause the decree should have passed against the party as the legal representative of the deceased person, and it should be for the payment of money out of the property of the deceased.

Section 52 (2) empowers a creditor to execute his decree against the legal representative personally if he fails to account for the properties received by him from deceased person.

Exception to section 52:

- Court can implement the decree against the personal property of the legal representative provided if he is avoiding, neglecting or evading to make the payment from the property of deceased.
- Where he has mis-utilized the property of deceased and where the legal representative has alienated the property of the deceased person.

Section 53: Liability of ancestral property.

This provision has become redundant consequent to Amendment to the Hindu Succession Act in the year 2005, diluting the concept of pious obligation. Hence, the same applies to debts/decrees prior to the said Amendment in 2005, which comes in to force on 09.09.2005.

No legal representative should be held personally accountable where the suit has been filed against a joint Hindu family unless he has received some property of joint Hindu family. Under pious obligation if he has received the property of joint Hindu family then will be held liable. Where the decree has been passed against Karta, no execution be made against the son under pious obligation if the decree is passed after partition. Even after partition a son can be held liable if suit was pending before partition. The son will be held accountable if after the death of Karta, the decree has been executed and son has distributed the property of Karta among themselves. The member of joint Hindu family will be held liable if Karta has taken debt for moral purpose or family purpose. The nature of suits determines how decree should be implemented.

Jurisdiction of the Court:-

Competency of the Court: - The general principle is that the judgment or decree of a Court which was not competent to entertain the proceedings in which such judgment or order has been made is not effective. **Tara Chand v. Misrimal, AIR 1970 Raj 53.**

Execution application can be filed in Court to which local area was transferred: -

It is settled law that the Court which actually passed the decree does not lose its jurisdiction to execute it, by reason of the subject matter thereof being transferred subsequently to the jurisdiction of another Court. However, having regard to the object and purpose of Sections 37 to 39 and construing Section 37 and 38 according to the language used therein, the Section empowers the decree holder to file an execution application either to the Court that actually passed the decree or to the Court that can effectively execute it and in the later case, it is not necessary to comply with the provisions of Section 39 of the Code. The Court to whose jurisdiction the subject matter of the decree is transferred acquires inherent jurisdiction over the same by reason of transfer and if it entertains the application with reference thereto, it would be proper exercise of its jurisdiction. **Hamir Singh v. Bhawani Shankar, AIR 1980 Raj 134.**

Section 38: Court by which decree may be executed: - A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Section 39: Determination of jurisdiction: - For the purpose of determining the jurisdiction of the Executing Court a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

Objection to the jurisdiction of the Court passing the decree: -

When the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record; where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the Executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

Questions relating to jurisdiction: -

When the decree was passed after deciding the question relating to the jurisdiction and that the decision has become final, the appellants cannot contend in execution proceedings that the decree was passed by an incompetent Court and that it is null and void. **Vassu Krishna v. Joao Baptista, AIR 1971 Goa 37.**

Powers of Executing Court to go behind decree: - Where a money decree was passed against both judgment-debtors and their liability was determined to be joint and several. The Executing Court had no jurisdiction to go behind the decree and apportion liability in the manner prayed for by the petitioner. **Raghunath Bedapanda v. Arakhit Sahu, AIR 1973 Ori 43 : (1973) 2 Cut WR 1192 : 38 Cut LT 812.**

Result of execution proceedings to be certified:-

The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

Where a decree was sent for execution such Court will have same powers while executing the decree as if the decree was made by the said Court. **(AIR 1956 SC 359).**

The expression “execution, discharge or satisfaction of the decree”:-

The executing Court can go into all the questions between the parties relating to the execution, discharge or satisfaction of the decree and as such the Court has no power to amend, modify or substitute a decree or in other words cannot go behind the decree. The same principle is applicable also in cases where a decree is a nullity or is unexecutable even if such a question is raised and decided or is deemed to have been decided on account of judgment being silent cannot exclude the executing Court to go into the question about the unexecutability of the decree or it having become nullity. This question would be covered within the expression “execution, discharge or satisfaction of the decree” used in Section 47 C.P.C. **Union of India v. S.B.Singh, AIR 1988 All 225 at p 232.**

The principle of the Section 47, C.P.C is that all questions relating to execution, discharge or satisfaction of a decree and arising between the parties to

the suit in which the decree is passed, shall be determined in the execution proceeding, and not by a separate suit; it follows as a corollary that a question relating to execution, discharge or satisfaction of a decree may be raised by the decree-holder or by the judgment-debtor in the execution department and that pendency of an application for execution by the decree-holder is not a condition of its exercise ground on which the executing Court dismissed the application is that a petition under Section 47 is not maintainable since the execution proceeding was not pending at the time of the filing of the petition. That this finding is without any substance.

It is thus clear that the petition under Section 47, C.P.C is maintainable.

Gopalkrishna Kammath v. R.Bhaskar Rao, 1989 Ker 251 at p 252.

Simultaneous execution: - The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor. **R. Savithri Naidu v. M/s The Cotton Corporation of India Ltd. & Anr., 2026 INSC 150, decided 12 February 2026.**

Execution of Decree for in Payment of Money:

Order XXI Rule 30 of Code of Civil Procedure

- By detention in civil prison of the judgment-debtor, or
- By attachment and sale of his property, or
- By both.

Arrest and Detention

- **General**
- One of the modes of executing a decree is arrest and detention of the judgment-debtor in a civil prison.
- Sections 55-59 and Rules 30-41 deals with arrest and detention of the judgment-debtor in a civil prison.

When arrest and detention may be ordered?

- Where the decree is for payment of money.
- Where the decree is for specific performance of the contract or for injunction.
- Where the decree is against a corporation.

Who cannot be arrested?

Sections 56, 58, 135, 135-A

The following classes of persons cannot be arrested or detained in civil prison:

- A woman;
- Judicial officers, while going to, presiding in, or returning from their courts;
- The parties, their pleaders, mukhtars, revenue agents and recognized agents and their witnesses acting in obedience to a summons, while going to, presiding in, or returning from their courts;
- Members of Legislative Bodies;
- Any person or class of persons, whose arrest according to the State Government, might be attended with danger or inconvenience to the public;
- A judgment-debtor, where the decretal amount does not exceed Rs.2000.

Notice: Order XXI Rules 37 and 40

Where the decree is for the payment of money and the application is made for the arrest and detention of the judgment-debtor, the Court shall instead of issuing a warrant for arrest, issue a notice calling upon the judgment-debtor to appear and show cause why he should not be committed to civil prison in execution of the decree. The purpose of issuing notice is to afford protection to the honest debtor's incapable of paying dues for reasons beyond their control. The provision for issuing notice and affording opportunity to the judgment-debtor to show cause recognizes a rule of natural justice that no person should be condemned unheard. (See: Jolly George Varghese v. Bank of Cochin, AIR 1980 SC 470)

The primary object of Rule 40 read with Rule 37 of Order XXI and Section 51 of the Code is to protect honest but indigent and poor judgment-debtors, who have no sufficient means to pay decretal dues.

Period of Detention: Section 58

The period of detention of the judgment-debtor in civil prison shall be up to three months, where the decretal amount exceeds Rs. 5000 and up to six weeks, where the decretal amount exceeds Rs. 2000 but does not exceed Rs. 5000. Where the decretal amount does not exceed Rs. 2000 no detention can be ordered.

Release of Judgment Debtor: Section 58-59

A judgment debtor may be released in the following cases.

- On the amount mentioned in the warrant being paid; or
- On the decree against him being otherwise fully satisfied; or
- On the request of the decree-holder; or
- On the omission by the decree-holder to pay the subsistence allowance (such release, however does not discharge the judgment debtor from his debt, but he cannot be rearrested on the same ground);
- On the ground of illness.

Re-arrest of Judgment-Debtor

Normally, a judgment-debtor once released, cannot be re-arrested in the execution of the same decree. But if a judgment-debtor is released because of the mistake of the jail authorities, he can be re-arrested. Similarly, where the judgment-debtor could not be sent to jail, due to non-payment of the subsistence allowance by the decree-holder, his re-arrest is not unlawful. Again, release of the judgment-debtor on the ground of illness does not debar his arrest. The total period of actual detention, however, cannot exceed the maximum prescribed in the Code.

“Section 51 and Order 21 Rule 37 to 40 of the Code of Civil Procedure deal with the Execution of the decree for arrest and detention of the Judgment Debtor in prison where arrest and detention are permissible. The Proviso to Section 51 provided that, where the decree is for the payment of money, execution by detention in civil prison shall not be ordered unless, after giving the Judgment Debtor an opportunity of showing cause why he should not be committed to prison and unless the Court, for reasons to be recorded in writing, is satisfied that the Judgment Debtor has or has had since the date of the decree the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same”

Attachments:

- Before Judgment Order 38, Rule 5 C.P.C.
- After the Judgment before filing of Execution Petition Section 46 C.P.C.
- In execution proceedings

The property that can be attached:

- Movable.
- Immovable.

In whose possession:

- J.Dr./Defendant.
- Third party.
- Garnishee

Case laws on attachments:-

Attachment or sale:- Section 60(1) of the Code contemplates both the case of attachment as well as sale. If there is no question of attachment then the sale under Section 60(1) cannot be said to be prohibited at all. When the word 'and' has been used in section 60(1), the Legislature will have to be credited with some wisdom and thus it will have to be held that the word “or” was intended by the Legislature to be “and”. In the case of a mortgage-decree there is no question of attachment at all. First a preliminary decree is passed calling upon the judgment-debtor to pay the money due under the decree by a particular time and failing which it is ordered that the property should be sold. **Laxman v. Subana, AIR 1988 Kant 40 : 1987 Bank J 332 : (1987) 2 CCC 818.**

Attachment in execution:- Residential house can be exempted from the attachment in execution a decree for recovery of rent of agricultural land. **Swaran Singh v. Financial Commissioner, AIR 1986 P & H 283 : 1986 (1) 89 Pun LR 342 : (1986) 1 Cur LJ 582.**

Attachment of salary – exemption:- All moneys payable under the policy of insurance on the life of the judgment-debtor and not moneys payable to the policy of insurance are exempt from attachment, monthly contributions made to the insurance cannot be excluded in reckoning the attachable portion of salary. **Sreedharan v. Krishnan : AIR 1986 Ker 195 : 1986 Ker LT 9 : 1985 Ker LJ 1010.**

Property liable to be attached and sold:- Mortgage decree is outside of the purview of the phrase “property liable to be attached and sold”, as there is no need for any attachment and sale of mortgage decree, which is a settled view by a long

line of decisions. **A.Nabisa Beevi v. Manager, Canara Bank, Nagarcoil, AIR 1984 Mad 249 : 1985 (1) Civil LJ 183.**

Attachment of bonus in execution of decree:- The Kerala High Court observed that so far as salaried persons are concerned in Section 60(1)(i) C.P.C., is the only provision which enables the Court to determine the limit of the attachability. There is no provision in the C.P.C which would enable the revision- petitioner to contend that his bonus cannot be attached. As the revision-petitioner gets monthly salary he cannot contend that the bonus due to him is not liable to be attached. So far as persons who get salary are concerned there is no provision which bars the Court from attaching the bonus due to him. **Shreedharan v. Krishnan, AIR 1986 Ker 235 : 1986 Lab IC 1145.**

Bonus can be attached:- Section 60(1)(i) is the only provision which enables the Court to determine the limit of the attach ability. Bonus can be attached. **Sreedharan Peethambaran v. Krishnan Sanku, 1986 (1) CCC 753 (Ker).**

SALE OF PROPERTY:-

A decree may be executed by attachment and sale or sale without attachment of any property. Section 65 to 73 and rules 64 to 94 of Order 21 deals with the subject relating to sale of movable and immovable property. Before ordering sale, the court has to decide whether it is necessary to bring entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and decree to be satisfied is small the court must bring to sale only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the decree holder.

(a)Properties which are liable to attachment and sale in execution of a decree :-

1. Lands 2. Houses or other buildings 3. Goods 4. Money 5. Banknotes 6. Cheques 7. Bills of exchange 8. Hundis 9. Promissory notes 10. Government securities 11. Bonds or other securities for money 12. Debts 13. Shares in corporation and 14. All other sellable property whether movable or immovable.

Attachment of decrees:- As per Order 21, R.53 decree for mesne profits if ascertained or unascertained, decree for arrears of rent, any order for restitution of

costs (however, a right to recover mesne profits by way of restitution by reason of reversal of the decree in appeal cannot be attached under this rule) which are held to be money decree and hence those decrees can be attached under this provision.

A decree for possession of immovable property, or a decree for foreclosure or a preliminary decree for partition, shall be attached under this provision. A decree for partition, mesne profits and costs comes within the purview of Order 21, Rule 53 (4). This rule makes a distinction, as to attachments, between decree for the payment of money or for sale in enforcement of a mortgage or charge, and other decrees. A mere order for attachment will not effect the attachment of a decree under this provision. Where an *ex parte* decree which has been attached in execution of another decree is set aside on the application of the J.Dr and a fresh decree in favour of the plaintiff is passed after trial on the merits, the original attachment must be taken to be revived as soon as a fresh decree on the merits is passed.

Attachment of immovable property:

As per Order 21, R.54 deals with attachment of immovable property and the directions as to the mode of attachment mentioned therein are not directory but mandatory. This provision deals with the word “attachment” mentioned in Or 21, Rule 64. Attachment before Judgment is actually not an attachment in execution as there is no decree in existence on the date of attachment. Yet, such attachment becomes an attachment in execution after the decree has been passed and after an application to execute such decree is made. An omission to have the drum beaten as required by the rule is material irregularity which will vitiate the execution sale. If a copy of proclamation order should be affixed on a conspicuous part of the property. If this is not done, it is also a ground to set aside sale, as it is a material irregularity. Any defect or error in the mode of attachment is only an irregularity which does not render the sale *ipso facto* void.

Removal of attachment after satisfaction of the decree:

As per Order 21, Rule 55, in the following circumstances, the attachment may be terminated:

When all the costs and charges of the decretal amount are paid into the Court. Satisfaction of the decree is otherwise made through the Court or certified to the Court. The decree is set aside. On furnishing the required security by the J.Dr. By compromise between the parties. By an express order withdrawing or putting an end to the attachment. By sale of the attached property in execution of the decree. By abandonment of the attachment by the decree-holder.

Attachment has been described as seizing another's property and involves the act or process of taking, apprehending or seizing the property and bringing the same in custody of the court. It is mainly used to seize the debtor's property in order to secure the claim of the creditor.

The orders of attachment if promptly passed may effectively prevent the judgment debtor from transferring his property and expedite the compliance of decree including payment of money.

As per the circular instructions of Honourable High Court of AP at Amaravathi vide ROC.No.1911/SO/2016, dt.21.07.2016 a copy of the Order of attachment of the immovable property shall be communicated to the concerned Sub-Registrar for making necessary entries in the Registers. After termination of proceedings also the fact of full satisfaction also shall be informed to raise the attachment.

EXECUTION OF INJUNCTION DECREES

Order XXI Rule 32

Order XXI Rule 32 is the principal provision.

It applies to:

- specific performance;
- restitution of conjugal rights; and
- injunction decrees.

For injunctions, where the judgment-debtor has had an opportunity to obey the decree and has **wilfully failed to obey**, execution may be enforced through:

- detention in civil prison;
- attachment of property; or

- both.

Rule 32(5) is particularly significant.

It enables the court, where practicable, to direct that the act required to be done may be performed by the decree-holder or another person appointed by the court at the cost of the judgment-debtor.

The 2002 amendment inserted an Explanation clarifying that "the act required to be done" includes **prohibitory as well as mandatory injunctions**.

Bhudev Mallick v. Ranajit Ghoshal 2025 INSC 175 — decided 17 January 2025

The case involved execution of a decree for permanent injunction after a substantial period of time.

The Supreme Court examined:

- Section 51 CPC;
- Section 58 CPC;
- Order XXI Rule 11-A;
- Order XXI Rule 32;
- Article 136 of the Limitation Act.

The Court stressed that arrest/detention cannot be ordered mechanically. The statutory safeguards must be observed, and wilful disobedience must be established.

The Court also reiterated that a permanent injunction decree is capable of execution and that continuing violation can give rise to execution proceedings.

Important proposition

A decree for permanent injunction is not rendered inexecutable merely because considerable time has elapsed.

Subsequent breaches of permanent injunction

Saraswati Devi v. Santosh Singh 2025 INSC 715

The Supreme Court held that satisfaction recorded in an earlier execution proceeding concerning one breach of a permanent injunction does not necessarily prevent execution proceedings for a **subsequent and distinct breach**.

The continuing nature of a permanent injunction means that a fresh violation may constitute a fresh cause for enforcement. This is highly relevant to the practical problem of repeated interference with possession after a permanent injunction decree.

Temporary injunction versus decree

An important distinction should be made between:

Temporary injunction during pendency of suit → Order XXXIX Rule 2-A CPC
and

Final injunction decree → Order XXI Rule 32 CPC.

Once the suit has culminated in a decree, the decree-holder ordinarily has to invoke the execution machinery applicable to the decree. This distinction has also been recognised in decisions of the Telangana High Court.

EXECUTION OF POSSESSION DECREES

Order XXI Rule 35

Where a decree is for delivery of immovable property, Order XXI Rule 35 provides for delivery of possession to the decree-holder.

Where necessary, the court may remove a person bound by the decree who refuses to vacate.

In a decree for joint possession, the prescribed procedure is different. The object is straightforward:

A decree for possession should culminate in actual possession.

RESISTANCE AND OBSTRUCTION TO POSSESSION

This is one of the most important contemporary areas of execution law.

Order XXI Rules 97–103

These provisions deal with:

- resistance by the judgment-debtor;
- obstruction by third parties;
- claims of independent title;
- adjudication of rights;
- orders directing delivery/restoration of possession.

Rule 101 requires questions relating to right, title or interest arising between the parties to be determined by the executing court in the appropriate proceedings.

Recent Supreme Court development

A significant recent Supreme Court decision considered the relationship between **Section 47 and Order XXI Rules 97 and 101.**

The Court explained that Section 47 is general, while Rules 97 and 101 specifically address resistance or obstruction to possession.

The executing court therefore has an important adjudicatory role in possession execution proceedings.

Important principle

Execution is not merely ministerial.

In appropriate cases the executing court must adjudicate the rights arising in execution instead of forcing the decree-holder into another round of litigation.

Key principles to be remembered:

- Execution of decrees for delivery of immovable property, including removal of persons bound by the decree. (Order 21, Rule 35 CPC).
- Execution of decrees for delivery of property occupied by tenants or other lawful occupants. (Order 21, Rule 36 CPC:)
- Application for adjudication on resistance or obstruction to possession. (Order 21, Rule 97 CPC:)
- Orders for removal of resistance or obstruction after adjudication. (Order 21, Rule 98 CPC)
- Application by third parties dispossessed by decree-holders for restoration of possession. (Order 21, Rule 99 CPC)

- Orders to be passed upon complaints of dispossession. (Order 21, Rule 100 CPC)
- Determination of questions relating to right, title, or interest in the property within execution proceedings. (Order 21, Rule 101 CPC)

Order 21, Rule 35 of CPC pertains to the execution of decrees for the delivery of immovable property. This provision outlines the procedures and powers of the civil court in ensuring that a decree-holder/D.Hr is placed in possession of the property as decreed by the court, a fortiori, there are numerous instances how the execution proceedings are being delayed.

- **Delivery of Possession to D.Hr:**

Order 21, Rule 35(1) provides that if the decree is for the delivery of any immovable property, the possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as the party may appoint to receive delivery on their behalf by removing any person bound by the decree who refuses to vacate the property. *Principles laid down in Ginni Ramarao Reddy Vs. Poosapati Sreedevi and anr, 2024 (3) ALT 640; Gaddipati Bullemma Vs. Thota Venkayamma (died) and ors., 2024 (3) ALT 483, K.V. Srinivasulu Naidu and others Vs. V. Bhaskar, 2023 (5) ALT 674; Nellore Sujanamma Vs. Desireddy Somasekhar Reddy, 2023 (4) ALT 384; and Hemalatha Vs. P. Kanaka Bhushnam and others, 2023 (3) ALT 679.*

- **Removal of Obstacles:**

Order 21, Rule 35(3) allows the court to remove any person who is bound by the decree and who refuses to vacate the property. This ensures that the decree-holder can obtain possession even if the judgment-debtor or any other person bound by the decree resists or obstructs the delivery of possession. To know the principles, see, *Valluru Samba Siva Rao and another Vs. Krishna Apartments Association rep. by its President, V. Mahendrnath and ors, 2019 (3) alt 298; Ghulam Yazdani and another Vs. Mumtaz Yarud Dowla Wakf, Malakpet, Hyderabad, rep., by its Hony. Secretary, Nawab Mahboob Alam Khan and Ors, 2020 (2) ALT 409; and Kilaru Ramakrishna Vs. Palla Prabhudas and anr, 2015 (4) ALT 236.*

- **Symbolic Possession:**

In cases where physical possession cannot be delivered immediately (for example, if it is impractical to physically remove the occupants), Order 21, Rule 35(2) provides for the delivery of symbolic possession. This means that the court officer can go to the property, proclaim the decree, and hand over possession symbolically by affixing a notice or in another manner prescribed by the court. What is 'Symbolic Possession? - **See. A. Yellappa Sastri v. Gunda Shankara Lingam (died) Per LRs and ors, 2010 (3) ALT 735. .**

- **Police Aid:**

If necessary, the court can involve the police to assist in the execution of the decree to ensure that possession is delivered to the decree-holder without undue delay or obstruction. When can Police aid be granted? See. **Rai Naramma and others Vs. State of Andhra Pradesh and others, 2021 (1) ALT 426; Syed Sadullah Hussaini and another Vs. Syed Waliullah and another, 2017 (1) ALT 553; and Bijiga Papa Rao and others Vs. Jonnalagadda Srinivasa Rao, 2015 (2) ALT 63.**

- **Court Officer's Role:**

The execution of the decree for possession is typically carried out by a court officer who is responsible for ensuring that the property is delivered to the decree-holder according to the terms of the decree. See. **Sha Sulthana (died) per Lrs. Vs. Anil Agarwal and another, 2012 (5) ALT 546; and Ganeshram Satyanarayana Pandya vs. Ayaneshwar Bijoria, 2000 (6) ALT 739 and Morusu Sreeramulu Reddy Vs. Kareppagari Eswaraiah, 2023 (1) ALT 511.**

- **Protection Against Unlawful Resistance:**

The rule provides a mechanism for the decree-holder to obtain possession of the property despite any unlawful resistance or obstruction by the judgment-debtor or others bound by the decree. See. Niramagadda Ramabrahma Sastri (died) and others Vs. Nimmagadda Lakshminarasimham, 1956 (1) ALT 492; and Pagidi Padmavathi and another v. Kanala Nagaraju and three ors, 2004 (1) ALT 413.

- **Role of Civil Judge/Court:**

The D.Hr can seek the court's intervention if resistance or obstruction is encountered. The civil court is empowered to take necessary steps, including the use of force, to remove the persons obstructing the delivery of possession. **See. Amina Bee (died) per LRs. and others Petitioners (Plaintiffs). vs.Asiha Khatoon and others Respondents (Defendants)., 1998 (1) ALT 160. and Nandru Ramesh @ Dasu and others Vs. Village Reconstruction Organisation (VRO), rep. by its Secretary, Dr. T. Nagender Swamy and ors, 2016 (3) ALT 442 (DB).**

Order XXI, Rule 35 CPC is a crucial provision for the enforcement of decrees for the delivery of immovable property. It ensures that the decree-holder can obtain possession in a manner prescribed by law, with the court's assistance in overcoming any resistance or obstruction. This provision is fundamental to upholding the rule of law and ensuring that judicial decrees are respected and enforced effectively. **See. Shivnarayan (D) by Lrs. Vs. Maniklal (D) thr. Lrs. and others, 2019 (2) ALT (SC) 35 (DB); Hemalatha Vs. P. Kanaka Bhushnam and ors, 2023 (3) ALT 679, Panda Venkata Rao (died) and others Vs. Padyala Venugopala Prasad , 2023 (1) ALT 363; Nune Munthala Rama Laxmi Vs. Canara Bank formerly Syndicate Bank, 2021 (5) ALT 272, (DB); and Seelam Mallaiah (died) per LRs.and others Vs. P. Narasinga Rao (died) per LRs. and others, 2017 (3) ALT 228.**

- **Useful citations:**

- Koppisetty Ramana and others Vs. Emani Ramanamma-, 2016 (4) ALT 214, U. DURGA PRASAD RAO, in a case based on title, Article 65 of Limitation Act is applicable It is suffice for the plaintiff to establish title Once the plaintiff establishes title to suit property, burden will be shifted to the defendant to prove the adverse possession claimed. See. Para 10 of this ruling.
- M/s. Kamakshi Builders, A Partnership firm, per Partner, Sri R.S. Rangadas Vs. Dr. Ambedkar Educational Society, rep. by its Secretary, Hyderabad , 2015 (5) ALT 246.
- K.R. Krishna Murthy v. M/s. Hyderabad Allwyn Ltd., Hyderabad rep. by General Power of Attorney, Mr. L.K. Singhvi, 2006 (3) ALT 50, (It was held that

transferee of a share of a building of undivided family who is not a member of family is not entitled to joint possession of property).

- Tanzeem-E-Safia Vs. Bibi Haliman and others, 2002 (6) ALT (D.N) (SC) 5.3 (DB), (On the point when the Executing court rejected the application under Or.21 r.97 CPC).
- Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and ors, 2009 (2) ALT (D.N) (SC) 30.3 (D.B0).
- RVE. Venkatachala Gounder Vs. Venkatesha Gupta and ors, 2002 (4) ALT (DN) (SC) 11.2 (DB),

Latest case-law:- **Shivnarayan (D) by Lrs. Vs. Maniklal (D) thr. Lrs. and others, 2019 (2) ALT (SC) 35 (DB); Hemalatha Vs. P. Kanaka Bhushnam and ors, 2023 (3) ALT 679, Panda Venkata Rao (died) and others Vs. Padyala Venugopala Prasad , 2023 (1) ALT 363; Nune Munthala Rama Laxmi Vs. Canara Bank formerly Syndicate Bank, 2021 (5) ALT 272, (DB); and Seelam Mallaiah (died) per LRs.and others Vs. P. Narasinga Rao (died) per LRs. and others, 2017 (3) ALT 228.**

Possession:

- Claim petition filed by a third party to suit for possession of property in execution of the decree by D.Hr. is maintainable under Order 21 Rule 97, CPC even if he is not in possession of the EP schedule property, see. T.N.V. Ravi Kumar Vs. Habeeb Aqeel Bin Mohd. Jamal Allail and others, 2015 (3) ALT 12.
- Arun Lal and others Vs. Union of India and others , 2011 (3) SCJ 778 (DB); (Sections 47 and 80 CPC and Sec.106 of Transfer of Property Act, 1882).
- Nakka Perumal Reddy and others v. Pandiripilli Lakshmi Prasad and Anr, 2009 (6) ALT 779. J.Drs. have no right to resist possession of property in execution of decree for eviction by filing an application under Order 21 Rule 97, CPC).
- Mohd. Ayub v. Mohd. Abdul Lateef Khan and another , 2006 (4) ALT 647, (It was held that Special Tribunal has no jurisdiction to entertain EP for execution of its order for delivery of possession and issue delivery warrant. Held that R.D.O. is the authority to implement its order).

Latest case-law: *Principles laid down in Ginni Ramarao Reddy Vs. Poosapati Sreedevi and anr, 2024 (3) ALT 640; Gaddipati Bullemma Vs. Thota Venkayamma (died) and ors., 2024 (3) ALT 483, K.V. Srinivasulu Naidu and others Vs. V. Bhaskar, 2023 (5) ALT 674; Nellore Sujanamma Vs. Desireddy Somasekhar Reddy, 2023 (4) ALT 384; and Hemalatha Vs. P. Kanaka Bhushnam and others, 2023 (3) ALT 679.*

- **Partition:**

- Dr. Chiranjil Lal (Died) by LRs. vs. Hari Das (Died) by Lrs., (2005) 2 SCC 261
- Shub Karan Bubna vs. Sita Saran Bubna, (2009) 9 SCC 689
- Hameed Joharan (Died) and Ors, vs. Abdul Salam, 2001 Supp (1) SCR 469
- Meenakshi vs. Soman Nadar (2023) Ker High Court Ruling
- Arunachala Gounder vs. Ponnusamy and Ors, (2022) 11 SCC 520
- V.Tulasamma and Ors vs. Sesha Reddy, (1977) SCC99
- Bai Vajia (dead) by Lrs vs. Thakorabhai Chelabhai and Ors, (1979) 3 SCC300.
- Eramma Vs. Veerupana and Ors, 1965 SCC Online SC 23.
- Sharab Subramanyan Vs Soumi Mazumdar and Ors, (2006) 8 SCC 91
- Vineetha Sharma vs. Rakesh Sharma and Ors, (2020) 9 SCC 1.

Sharada Sanghi v. Asha Agarwal 2026 INSC 292

- The Supreme Court recently considered third-party objections in execution proceedings arising from a specific-performance decree. The Court emphasized that execution cannot be used to reopen or relitigate issues which the party had already abandoned in earlier proceedings. The judgment is particularly important for the relationship between:
 - Order XXI Rules 97–101;
 - res judicata;
 - abuse of process; and
 - re-litigation.

The Court refused to permit a party to obtain through execution what it had failed to pursue in earlier independent proceedings.

Restitution Of Conjugal Rights and It's Execution:

Section 9 of The Hindu Marriage Act, 1955 unleashes the concept of restitution of conjugal rights. We shall look into what in reality it provides and how it is applied in the real life in this post. Section 9, can be called to be means of saving the sanctity of a marriage, it can be read as an extension of sub-sections (2) and (3) of section 23 which roots for reconciliation by the court.

Under Hindu Law, marriage is considered to be the most sacred ceremony. The ceremony of Saptapadi imposes certain rights and duties upon both the husband and the wife which they are bound to execute in their married life. These rights and duties are called conjugal rights such as to reside as husband and wife under the same roof, procreation, raising a family, among others.

The Section 9 of the act enshrines that when either the husband or the wife, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply for restitution of conjugal rights at their will. He can file a petition to the district court and if satisfied of the truth of the statements made in that petition and no legal ground exists as to why the application should not be granted, the district judge may pass a decree of restitution of conjugal rights.

After filing of the petition, a copy of the petition will be sent to the other party along with the hearing date; thereafter both the parties should appear before the court on the mentioned dates and will be sent for counselling sessions by the court. Usually, the court recommends three sessions every twenty days between sessions which continues for four months. The judge then finally passes a decree depending on the statement provided by the parties and on the counselling held. Restitution Of Conjugal In the case of **Sushila Bai v. Prem Narayan, AIR 1986 MP 225**, the court gave an order of restitution of conjugal rights and laid down certain situations which could be taken as a defence in a suit of restitution which is as follows: -

The respondent can claim a matrimonial relief against the suit.

The facts shown are proven that the petitioner is guilty of misconduct.

Due to certain acts or omissions, it becomes impossible for the spouses to live together.

Only under these the suit for restitution is vitiated and the court gives a decree for a judicial separation. Also, if the parties do not abide by the decree for cohabitation after the passing of this decree, for one year at a stretch, it becomes a ground for divorce under Section 13 of the Act.

The grounds for rejection can be summed as:

- Matrimonial misconduct
- Cruelty
- Remarriage of either spouse
- Delay of institution of proceedings for no legitimate cause

If the Court comes to a conclusion that one's own conduct debars him/her from seeking the relief of the company of their spouse; thereby the court can dismiss the petition with reference to section 23 of the Hindu Marriage Act. The court can also dismiss the petition if the petition is found to be untrue and filled with redundant statements. If Court finds that the spouse has reasonable excuse in withdrawing from society, or any other legal grounds even then the petition stands dismissed.

Coming to the burden of proof, it is on the aggrieved party who claims for the restitution, he needs to prove that the respondent has withdrawn from their society. After such statements are found to be true by the court, the onus shifts on the respondent to prove that there exists a reasonable excuse for the withdrawal as held in the case of **P. Rajesh kumar Bagmar v. Swathi Rajesh kumar Bagmar, (2008) 4 CTC 338. In the case of Saroj Rani v. Sudarshan Kumar Chadha, (1984) 4 SCC 9**, the Supreme Court validating the constitutionality of Section 9 of the Hindu Marriage Act dealing with restitution held that in cases of restitution of conjugal rights the respondent spouse becomes liable as per court's order should cohabit with the aggrieved petitioner and fulfil the marital obligations. By Section 9 of the Hindu Marriage Act, 1955 apart from carrying out of restitution of conjugal rights; in addition, provides for an opportunity for the petitioner to seek maintenance under Section 25 of the Act. Such maintenance under these provisions can be claimed in the cases where the action concerning maintenance remains pending. Thus, a wife who denies the disruption of her marriage can get maintenance from her husband within the umbrella of the aforementioned provision of law.

In the case of **Seema v. Rakesh Kumar, (2000) 9 SCC 271**, the Supreme Court held that for a claim of decree of restitution of conjugal rights, the petitioner is entitled to receive maintenance from the husband if they are living with each other and the wife is unable to live a decent life on her own.

Rina Kumari v. Dinesh Kumar Mahto — Supreme Court, 10 January 2025

The Supreme Court held that merely because a husband has obtained a decree for restitution of conjugal rights and the wife has not complied with it, that **does not automatically disentitle the wife from maintenance**. The circumstances for living separately and the statutory requirements have to be considered.

This is important because an RCR decree should not be treated as automatically determining all subsequent maintenance consequences.

5. The common thread in recent execution jurisprudence

The Supreme Court is increasingly stressing that the **executing court must make the decree effective**, while at the same time staying within the decree and the CPC. A particularly important case is **Jini Dhanrajgir v. Shibu Mathew, (2023) 20 SCC 76**, where the Court stressed the role of the executing court under **Section 47 CPC and Order XXI Rules 97–103** and the principle that execution proceedings should not be defeated by collateral litigation.

The 2026 Savithri Naidu judgment expressly relied upon this principle in stressing that a decree should not become a "paper tiger."

In **Jagdish Lal vs Smt. Shyama Madan And Ors., AIR 1966 All 150** the husband filed restitution of conjugal rights. The wife proved that the husband is impotent and so the court had rejected the restitution suit on reasonable ground.

Execution of Decree of Restitution of Conjugal Rights:

When any spouse obtains a decree from a trial court, his/her next step is to get the decree satisfied by filing its execution petition before the trial court. Execution is the proceeding by which Decree Holder moves to the trial court for the satisfaction of decree is called execution. Execution empowers the decree holder to recover the decretal amount or relief granted under the decree from the judgment debtor.

Order (21) rule (32) of C.P.C deals with execution of decree passed for restitution of conjugal rights. It reads as under:

“Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for an injunction, stay has been passed, has had an opportunity of obeying the decree and if he has wilfully failed to obey it, the decree may be enforced, in the case of a decree for restitution of conjugal rights”

- By the attachment of his property, or in the case of a decree for specific performance of a contract or for an injunction.
- By his detention in Civil Prison.
- By his detention in Civil Prison.
- By the attachment of his property.

Does non-compliance of RCR order lead to contempt of court order

Decree order cannot force judgment debtor to stay with him/her in the execution of decree of restitution of conjugal rights. It is the only remedy available with decree holder that in case despite the decree passed for the restitution of conjugal rights if spouse does not come back and not compliance the order then after one year decree holder may file the divorce petition against the judgment debtor. No any Contempt of Court is made out for the non-compliance of order.

Under clause (ii) of sub-sec. (1A) of S. 13 of Hindu Marriage Act either party to the marriage may present a petition for divorce on the ground that there has been no resumption of Conjugal Rights for a period of not less than one year after the passing of a decree to that effect. The court before granting a decree for divorce on this ground may be satisfied that the petitioner is not disentitled to this right by reason of any bar laid down in s. 23 of the Act After a decree for [restitution of conjugal rights](#) obtained by the wife under s.9 of the Act the husband is not entitled to the relief under s. 13(1A) of the Act if he fails to comply with the decree and also acts positively by ill-treating her and driving her away from the house.¹⁹ There are, however, conflicting decisions on the question of application of s. 23(1)(a) of the Act. The Punjab High Court, the Mysore High Court and the Bombay High Court’ were of the opinion that the petitioner in divorce proceedings cannot take the advantage of his or her own wrong for the purpose of this relief by non-compliance with the decree of restitution of conjugal rights.

A non-compliance with the decree for restitution of conjugal rights by the Spouse would not constitute 'wrong' within the meaning of s. 23(1)(a) of the Act. Judgment-debtor and the Decree-holder for making a petition under this provision have no bearing on the conduct of either party after the decree is passed but the court in divorce proceedings may consider the conduct of the parties not considered in the proceedings leading to the decree. It is submitted that the plain wordings of s. 13(1A) have made no distinction between the parties to the marriage and hence any contrary holding would impute super added idea in the intention of the Legislature making the amendment for insertion of sub-sec. (1A) of s. 13 of the Act. Further, where the language is plain and simple without any ambiguity, s. 13(1)(a) should not restrict and control the application of s. 13(1A) of the Act. In a case where a consent decree for restitution of conjugal rights was passed, it would form the basis for divorce for non-compliance. It is to be noted that if a decree for restitution of conjugal rights is complied with, there is no scope for a petition of divorce.

All the controversies on this issue have come to rest on the decision of *Saroj Rani v Sudarshan Kumar*, where it has been held by Hon'ble Supreme Court of India that after a decree for [restitution of conjugal rights](#) the husband is entitled for a decree of divorce under s. 13 of the Act and his failure to resume cohabitation would not amount to "wrong" within the meaning of s. 23(1)(a) of the Act. But where the husband has obtained a decree for [restitution of conjugal rights](#), only for the purpose of seeking a divorce under s. 13(1A)(ii) of the Act and preventing the wife from performing her conjugal duties by driving her away from the house, this constituted misconduct under s. 23(1)(a) of the Act as the husband was taking advantage of his own wrong and hence he was not entitled to any relief under s. 13(1A) of the Act.

Striking of RCR Provision from Hindu Marriage Act:

In the current year, in the month of January 2020, a Supreme Court bench took a response from the Attorney General, regarding a prayer to strike down the restitution of conjugal rights provision. There is a possibility that the provision may be quashed since the petition has been filed and reference has been sought; however, the matter still remains pending for further consideration by the Apex

Court. This if quashed shall be a turning point in the history of personal laws and will be worth the time to follow upon its advancements.

While concluding, it is noteworthy to mention here that the husband has the right to live with his wife and her to live with him wherever he chooses to reside. Having said that, there may be circumstances which further compel the spouses to live in different places. These circumstances be just for the wife to live at a different place. It is for the Court to adjudge as to whether the circumstances permit the wife to live at such place.

EXECUTION OF SPECIFIC-PERFORMANCE DECREE

Specific performance presents special execution problems because the decree frequently requires a positive act, such as execution and registration of a sale deed.

The relevant provisions include:

- Order XX Rule 12-A CPC;
- Order XXI Rule 32;
- Order XXI Rule 34;
- Sections 22 and 28 of the Specific Relief Act, 1963.

Effect of the Specific Relief (Amendment) Act, 2018

The Specific Relief (Amendment) Act, 2018 significantly changed the philosophy of specific-performance law. Section 10 was substituted so that specific performance became generally enforceable, subject to statutory exceptions. The amendment also introduced important provisions concerning substituted performance and infrastructure-related contracts.

For execution jurisprudence, the importance of the amendment is that the court must now consider the post-2018 statutory framework while dealing with decrees for specific performance.

Ram Lal v. Jarnail Singh 2025 INSC 301 — decided 25 February 2025

This is an important recent Supreme Court authority.

The Supreme Court dealt with:

- execution of a specific-performance decree;
- deposit of balance sale consideration;
- Order XX Rule 12-A;
- Section 28 of the Specific Relief Act;
- doctrine of merger.

The Court held that once an appellate court affirms the trial court's decree, the trial decree merges with the appellate decree and the appellate decree becomes executable.

The Court also clarified that the decree-holder cannot simply act at his own convenience indefinitely; where the appellate decree does not prescribe a period, payment must be made within a reasonable period. At the same time, Section 28 gives the court continuing control over the specific-performance decree and permits extension of time in appropriate circumstances.

Major proposition

A decree for specific performance is not necessarily a dead or final instrument immediately upon pronouncement. The court retains jurisdiction under Section 28 of the Specific Relief Act until the transaction contemplated by the decree is completed.

10. RULE 32(5) AND SPECIFIC PERFORMANCE

Rule 32(5) is particularly important.

Where a judgment-debtor refuses to perform the act directed by the decree, the court may, where practicable:

- permit the decree-holder to perform the act;
- appoint another person to perform it;
- recover the expenses from the judgment-debtor.

This provision prevents a judgment-debtor from frustrating a decree merely by refusing to sign or perform the required act. It represents an important shift from **punishment for disobedience** towards **actual fulfilment of the decree**.

CONCLUSION:

From the above discussion it clearly appears that execution is the enforcement of decrees and orders by the process of court, so as to enable the decree-holder to realise the fruits of the decree. The execution is complete when the judgment-creditor or decree-holder gets money or other thing awarded to him by the judgment, decree or order. Order 21 of the code contain elaborate and exhaustive provision for execution of decrees and order, take care of different type of situation and provide effective remedies not only to the decree-holder and judgment- debtors but also to the objectors and third parties. A decree can be executed by various modes which include delivery of possession, arrest and detention of the judgment-debtor, attachment of the property, by sale, by appointment of receiver, partition, cross-decrees and cross-claims, payment of money etc. On exceptional situation, where provisions are rendered ineffective or incapable of giving relief to an aggrieved party, he can file suit in civil court.
