

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA****Civil Revision No.193 of 2022****Decided on: 15th May, 2026**

Sita Ram (deceased) through LRs and Ors. ...**Petitioners**

Versus

Ram Rakha(deceased) through LRs and Ors. ...**Respondents**

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioners: Dr. Lalit Kumar Sharma, Advocate.

For the respondents: Mr. Mohinder Verma, Advocate,
vice Mr. B.C. Verma, Advocate.

Jiya Lal Bhardwaj, Judge *(Oral)*

The petitioners have laid challenge to the order dated 28.06.2022, passed by the Civil Judge, Jhandutta, District Bilaspur, H.P., in **Execution No.33-10 of 2021/14**, titled, ***Sita Ram and others vs. Ram Rakha***, whereby the execution petition filed by the petitioners/Decree Holder has been held to be not maintainable and the same was dismissed.

2. The undisputed facts are that the predecessor-in-interest of the petitioners/decree holders (hereinafter

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*



referred to as “the petitioners”) along with other co-sharers had filed a Civil Suit for declaration qua the land measuring 18.14 bighas comprised in Khasra No.90, 109, 122 Khata/Katauni No.178 min/188, situated in Village Gangloh, Pargna Baseh, Teh. Jhandutta, District Bilaspur, H.P. (hereinafter referred to as “suit land”) vide missal haquait for the year of 1983-84, which land is now measuring 19.14 bighas, against Ram Rakha, whose legal heirs are now on record as respondents/judgment-debtors (hereinafter referred to as “the respondents”). The said suit was dismissed by the learned trial Court on 10.06.1986.

3. The predecessor-in-interest of the petitioners, feeling aggrieved by the said judgment passed by the learned trial Court on 10.06.1986, had preferred an appeal before the learned District Judge Bilaspur, H.P. which was registered as **Civil Appeal No.334 of 1986**, titled, ***Sohnu and others vs. Ram Rakha***. The learned District Judge had allowed the appeal on 31.03.1994 and set aside the judgment passed by the learned trial Court was and the predecessor-in-interest of the petitioners and proforma respondents were granted



decree for possession of the suit land as joint owners, minus the share of one Sohnu. The appeal of Sohnu was dismissed.

4. The predecessor-in-interest of the respondents had carried an appeal before this Court. However, the same was dismissed on 14.11.2002. The predecessor-in-interest of the respondents, feeling aggrieved by the judgment passed by this Court had preferred a Special Leave Petition before the Hon'ble Supreme Court and vide interim order dated 13.12.2004, the parties were directed to maintain status quo, as far as possession is concerned till the decision of the appeal. The appeal preferred by the predecessor-in-interest of the respondents was ultimately dismissed on 18.07.2013.

5. After dismissal of the appeal preferred by the predecessor-in-interest of the respondents, the petitioners, filed execution petition under Order 21, Rule 35 of the Code of Civil Procedure (for short "CPC") for execution of the decree passed by the District Judge, Bilaspur, in **Civil Appeal No.334 of 1986**, titled, ***Sohnu and others vs. Ram Rakha***, before the Executing Court on 22.05.2014.

6. The respondents preferred the objections to the



execution petition, raising preliminary objections qua maintainability; petition is highly time barred; the predecessor-in-interest of the of the petitioners had fraudulently obtained the decree from the learned District Judge and the execution petition is bad for non-joinder and mis-joinder of the necessary parties etc. On merits, it was pleaded that late Smt. Shyami in the Civil Suit had wrongly and illegally by amending the plaint mentioned the total land 19.14 bighas (out of which, land measuring 14.1 bighas of Sh. Lakhu and remaining land measuring 5.13 bighas of Sh. Ram Rakha JD, which comes to him from one Sh. Gujja), which was recorded in the name of JD Ram Rakha vide mutation No.348 dated 31.05.1982. The will executed was set aside and as such the petitioners are only entitled to 14.1 bighas except the share of Smt. Sohnu.

7. The learned Executing Court after hearing the arguments raised by the learned counsel for the parties, came to the conclusion that the execution is not maintainable because the decree passed by the learned District Judge on 31.03.1994 is on record and there is no stay against the said



judgment and decree as such, the execution petition, which has been instituted on 22.05.2014, is barred by limitation.

8. The Executing Court had also returned the findings that the execution petition is not maintainable in view of the fact that necessary party has not been arrayed and in absence of whom the decree cannot be executed. While placing reliance upon the judgment passed by this Court in ***Rajesh Vats and another vs. Chaman Lal and others, 2020 (1) Shim. L.C 100***, it is recorded by the Executing Court that the execution petition is time barred. Further, the petitioners had obtained the decree of total land measuring 19.4 bighas and claimed adverse possession over the land measuring 5.13 bighas in the written statement, thus it is held that they cannot take contradictory pleas.

9. The petitioners have challenged the impugned order on the ground that the findings returned by the Executing Court are palpably wrong. The learned Executing Court has wrongly come to the conclusion that the execution petition filed by the petitioners was time barred, unnoticed of the fact that the judgment and decree sought to be executed



was stayed by the Hon'ble Apex Court. Further the Executing Court has also returned wrong findings that the execution petition is not maintainable since the necessary party has not been arrayed and in absence of whom the aforesaid decree cannot be executed. It is further submitted that other Decree Holders, who were party in the Civil Suit and appeal had bequeathed their share in favour of Mr. Ram Rakha/judgment-debtor, predecessor-in-interest of the respondents in the Hon'ble Supreme Court. The finding recorded by the Executing Court that the petitioners had taken contradictory claim in the written statement to the counter claim preferred by the respondents is also wrong. The Executing Court cannot go beyond the decree and, therefore, the said findings are contrary to the record.

10. Mr. Mohinder Verma, learned vice counsel for the respondents has supported the order passed by the learned Executing Court.

11. I have heard the learned counsel for the parties and also perused the record carefully.

12. It is evident from a perusal of the record that the



judgment passed by this Court in **RSA No.140 of 1994**, titled, ***Ram Rakha vs. Sohnu and others***, was assailed by predecessor-in-interest of the respondents before the Hon'ble Supreme Court and the Hon'ble Supreme Court had been pleased to pass the status quo order on 13.12.2004 and the appeal instituted by the predecessor-in-interest of the respondents was dismissed on 18.07.2013. If the said period is excluded when there was stay with respect to the execution of the decree, the execution petition preferred by the petitioners is well within time and the learned Executing Court has erred while returning the findings that the same is time barred, recording therein that there was no stay against the judgment debtors passed by the learned District Judge and as such the impugned order is bad in law and held not to be sustainable.

13. Another ground, which had weighed with the learned Executing Court to hold the execution petition not maintainable in view of the fact that the necessary party has not been arrayed as parties in absence of whom the aforesaid decree, cannot be executed, is also not sustainable



in view of the fact that the other decree holders had bequeathed their share in favour of predecessor-in-interest of the respondents except the share of one Smt. Sohnu. Once the other decree holders had bequeathed their share, which finds mention in the order dated 08.12.2012 passed by the Hon'ble Supreme Court, which fact is not disputed by the learned counsel for the respondents, the learned Executing Court has wrongly come to the conclusion that the Execution Petition is not maintainable since the necessary party has not been arrayed as parties in the Execution Petition.

14. The finding given by the Executing Court that the petitioners had taken contradictory claims in the written statement to the counter claim is also bad in view of the fact that the Executing Court cannot go beyond the decree. The executing Court has only to execute the decree and not to find the fault in the pleas raised by the decree holders and, thus, this finding is also bad in law.

15. Learned counsel representing the respondents has vehemently argued that in respect of other persons, the share has been bequeathed in favour of the respondents.



Once, the predecessor-in-interest of the respondents had only preferred the Special Leave Petition against the judgment passed by the learned District Judge, which had been affirmed by this Court, the petitioners were only bound to execute the decree against the predecessor-in-interest of the respondents and now against the respondents and as such the findings recorded by the Executing Court to that extent are also liable to be quashed and set aside.

16. This Court has only quashed and set aside the order passed by the Executing Court on the findings given by it with respect to limitation and maintainability of the execution petition. This Court is not venturing into the execution of the decree, which is otherwise the job of the Executing Court. The Executing Court has wrongly placed reliance upon the judgment passed by this Court in **Rajesh Vats** (*supra*), wherein, the Court had only come to the conclusion that filing of appeal or second appeal would not condone the delay or restrict the period of limitation for the purpose of filing an execution petition, until or unless the execution of the judgment and decree, under challenge,



stood expressly stayed by the Apex Court. But in the present case, as mentioned above, the Hon'ble Supreme Court had initially passed an order to maintain status quo as far as possession is concerned on 13.12.2004 and the said order had remained in force till the dismissal of the appeal preferred by the predecessor-in-interest of the respondents on 18.07.2013. If the said period is excluded, the petitioners had filed the execution petition well within the period of limitation prescribed to execute the decree under law. Thus, the order under challenge passed by the Executing Court is not sustainable in law and as such, the same is quashed with a direction to it to decide the execution petition strictly as per law and uninfluenced with the observation made by this Court.

17. Consequently, the present petition is allowed and the impugned order dated 28.06.2022, passed by the Civil Judge, Jhandutta, District Bilaspur, H.P., in **Execution No.33-10 of 2021/14**, titled, ***Sita Ram and others vs. Ram Rakha***, is quashed and set aside with a direction to the Executing Court to decide the execution afresh, ignoring the objection of



limitation, maintainability on the ground of non-joinder of necessary parties and taking of contradictory claims by the petitioners. The other objections raised by the respondents shall be dealt with by the learned Executing Court uninfluenced by the findings returned by this Court. Pending application(s), if any, shall also stand disposed of.

18. The parties through their counsel are directed to appear before the learned Executing Court on **22.06.2026**.

The record be sent down, so as to reach before the next date fixed.

15th May, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**