

(2025) 12 SHI CK 0009

Himachal Pradesh HC

Case No: Civil Revision No.252, 255 Of 2017

Municipal Council, Chamba And
Others Yogeshwar Lal Chopra &
Another

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 3, 2025

Acts Referred:

- Code Of Civil Procedure, 1908- Section 96, Order 21 Rule 32

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Avinash Jaryal, Aman Sood, Karan Sharma

Final Decision: Dismissed

Judgement

Satyen Vaidya, J

1. Both these petitions were heard and are being decided together as these have arisen from the same order and also involve common questions of facts and law.

2. Respondent Yogeshwar Lal Chopra is the holder of decree against the petitioners Parminder Singh Rana and Municipal Council, Chamba passed by learned Civil Judge (Senior Division), Chamba on 31.10.2009 in Civil Suit No 126 of 2005. The decree reads as under:

"This suit coming on this day or final disposal before me (Padam Singh Thakur, Civil Judge Senior Division Chamba) in the presence of Sh. V.K. Gupta Advocate and counsel for plaintiff, sh. S. S. Jandolia advocate Ld. counsel for defendant No. 1 and Sh. Jagdish Sharma Advocate learned counsel for defendant No. 2. It is ordered that the suit of the plaintiff is decreed with costs. Defendants are restrained from digging the land comprised in Khasra No.8423 which will cause damage to Khasra No. 8422 situated at Mohal Chamba town-I, Tehsil and District Chamba possessed by the plaintiff. The defendants are directed to repair the damage caused to the staircase of plaintiff and restore the passage for the access to his house."

3. Petitioners Parminder Singh Rana and Municipal Council, Chamba had separately assailed the aforesaid decree by taking recourse to Section 96 of the Code of Civil Procedure before learned District Judge, Chamba. The said appeals were registered as Civil Appeal Nos.33 of 2009 and 34 of 2009, respectively. Learned Additional District Judge, Fast Track Court, Chamba, decided both the appeals by a common judgment dated 15.01.2011. The judgment and decree passed by learned Civil Judge (Senior Division), Chamba in Civil Suit No.126 of 2005 was partially modified. The operative part of the judgment dated 15.01.2011 passed by learned Additional District Judge, Fast Track Court, Chamba, reads as under:

“34. The cumulative effect of above said discussion and findings is that appeal No.33 of 2009 filed by appellant Parminder Singh partly succeeds and modified to the extent that defendant No.2 Parminder Singh/appellant his agents, servants & assignees etc. shall not cause any digging on the land comprised in Khasra No. 8423/1 situated at Mohal Chamba I, Town I Chamba as depicted in Tatima Ex.DW-2/F which is a part of demarcation report Ex. DW-2/B and would not cause any damage in any manner to Khasra No. 8422 and stairs. Rest of the judgment and decree is affirmed and upheld. Appeal No.34 of 2009 filed by Municipal Council Chamba on the other hand fails and dismissed. Keeping in view the peculiar facts and circumstances of the case, the parties are left to bear their own costs.”

4. Respondent Yogeshwar Lal Chopra preferred application under Order 21 Rule 32 of the Code (CMA No.149 of 2011) before learned Civil Judge (Senior Division), Chamba, alleging violation of aforesaid decree by the petitioners Municipal Council, Chamba and Parminder Singh Rana. It was alleged that the Municipal Council, Chamba and Parminder Singh Rana had not restored the passage of decree holder Yogeshwar Lal Chopra as shown in Ext. PW-5/A and he stairs had also not been repaired as mandated in the decree. It was also alleged that on 09.09.2011, the judgment debtors Municipal Council, Chamba and Parminder Singh Rana had started excavation of the land comprised in Khasra Nos.8423 and 8423/1 in order to damage the existing passage of the decree holder.

5. The judgment debtors Municipal Council, Chamba, and Parminder Singh Rana filed their separate replies to CMA No.149 of 2011. None of the JDs specifically denied the allegation that the passage and stairs had not been restored by them in terms of the decree. Municipal Council, Chamba, mentioned in the reply that the passage was in use of the decree holder, respondents and general public and was in good condition. Parminder Singh Rana made a simple denial of the allegation qua non-restoration of passage and stairs in his reply.

6. As regards the allegation that the JDs had started excavation in land comprised Khasra No.8423/1, both the JDs had simply denied the same in their respective replies.

7. Learned Executing Court framed the following issues:

“1. Whether the respondents have had opportunity of obeying the decree dated 31.10.2009 passed in Civil Suit No.126 of 2005 by the Court of Civil Judge (Sr. Divn.), Chamba? OPP.

2. If issue No.1 is proved in the affirmative whether the respondents have willfully failed to obey the said decree? OPP

3. Final order.”

8. Both the issues have been decided in affirmative. The petitioners herein have been held to be in defiance and violation of the decree dated 31.10.2009 in Civil Suit No.126 of 2005, passed by learned Civil Judge (Senior Division), Chamba, and decree dated 15.01.2011 passed in Civil Appeal No.33 of 2009, passed by learned Additional District Judge, Fast Track Court, Chamba. The petitioners have been directed to make good the damage caused to the passage and repair the stairs of the respondent/decreed holder within three months from the date of passing of order, failing which both the petitioners/JDs have been ordered to suffer simple imprisonment for a period of one month each. The petitioners/JDs have further been directed to pay costs of the suit amounting to Rs.6741.50 to the respondent/decreed holder.

9. Aggrieved against the order dated 26.08.2017, passed by learned Civil Judge (Senior Division), Chamba, in CMA No.149 of 2011, both the petitioners/JDs have preferred the instant petitions.

10. I have heard learned counsel for the parties and have also gone through the records carefully.

11. Learned Executing Court has held that the petitioners/JDs had not restored the path and stairs in terms of the decree passed against them. This view has been formed by learned Executing Court on the basis of the pleadings of the parties and evidence led by them.

12. The decree passed by learned Civil Judge (Senior Division), Chamba, on 31.10.2009 in Civil Suit No.126 of 2005 was in two parts. Firstly, the petitioners/JDs were restrained from digging the land comprised in Khasra No.8423 and secondly, the petitioners/JDs were directed to repair the damage caused to the staircase of respondent/decreed holder and restore the passage for access to his house. In appeals filed by the petitioners/JDs, the decree passed by learned trial Court was modified only to the extent that the petitioners/JDs were restrained from carrying any digging on the land comprised in Khasra No.8423/1 as depicted in 'tatiya' Ext. DW-2/F forming part of demarcation report Ext. DW-2/B and also from causing any damage to Khasra No 8423 and the stairs. Rest of the judgment and decree in appeal was affirmed and upheld, meaning thereby that the decree directing the petitioners/JDs to repair the damage caused to staircase of plaintiff and to restore the passage for access to his house remained undisturbed.

13. The respondent/decreed holder had levelled a specific allegation that the petitioners/JDs had neither repaired the damage caused to the staircase nor restored the passage for access to the house of respondent/decreed holder. As noticed above, except for simple denial to the specific allegation, petitioners/JDs had nowhere stated that they had complied with the decree passed against them by carrying repairs to the staircase and restoration of the passage to the house of respondent/decreed holder.

14. Respondent/decreed holder in order to prove the issues framed by learned Executing Court had appeared as his own witness and reiterated the allegation.

15. On the other hand, petitioner/JD Municipal Council, Chamba, did not lead any evidence. Petitioner/JD Parminder Singh Rana, though, appeared as his own witness, but again did not state that the decree had been complied by restoration of staircase and passage.

16. Thus, the non-compliance with the decree had duly been proved on record. Learned Executing Court, while passing the impugned order, had taken into account the pleadings as well as the evidence on record. Since, the findings of fact recorded by learned Executing Court is borne from the material on record, I do not find any reason to interfere therewith.

17. The impugned order is justified as the disobedience to the decree by the petitioners/JDs is nothing but willful and intentional. Both the petitioners/JDs had sufficient time to obey the decree. The proceedings in CMA No.149 of 2011 remained pending for about six years, but the petitioners/JDs did not come forward to obey the decree during this period also. Even by way of impugned order, learned Executing Court had afforded period of three months to the petitioners/JDs to obey the decree, but instead of showing compliance, the petitioners/JDs have been successful in avoiding the outcome for another period of eight years. In such circumstances, no indulgence can be shown to the petitioners/JDs.

18. As regards the allegation that the petitioners/JDs had excavated the land comprised in Khasra No.8423/1 on 09.09.2011, learned Executing Court has not returned any specific finding. Still, learned Executing Court has found disobedience to the decree by petitioners/JDs insofar as direction was to repair and restore the staircase and passage and, on this count, alone the impugned order is justified.

19. No illegality or perversity could be pointed out in the impugned order by learned counsel for the petitioners/JDs.

20. In result, there is no merit in the petitions and the same are dismissed with costs of Rs.20,000/- to be shared in equal proportion by both the petitioners/JDs i.e. the Municipal Council, Chamba and Parminder Singh Rana. Costs shall be paid to the respondent/decreed holder.

21. Record be sent forthwith.

22. Pending application(s), if any, shall also stand disposed of.