
(2025) 12 SHI CK 0010

Himachal Pradesh HC

Case No: Civil Revision No. 40 Of 2018

Pradeep Kumar Chopra & Anr

APPELLANT

Vs

Municipal Council Chamba & Ors

RESPONDENT

Date of Decision: Dec. 3, 2025

Acts Referred:

- Code Of Civil Procedure, 1908-Section 47, 115, Order 21 Rule 97, Order 21 Rule 101

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Karan Sharma, Avinash Jaryal, Aman Sood

Final Decision: Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, the petitioners have invoked the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure (for short "the Code") to assail order dated 08.12. 2017 passed by the learned Senior Civil Judge, Chamba H.P. in Execution Petition No. 5 of 2014, whereby the application of the petitioners under Order 21, Rule 97 of the Code has been dismissed.

2. Execution petition No.5 of 2014, was filed before the learned Senior Civil Judge, Chamba to execute the decree dated 30.11.2012 passed in Civil Suit No. 9 of 2007. Respondents No.2 and 3 herein are the decree holders in terms of the aforesaid decree and respondent No.4 is one of the judgment debtors.

3. Decree dated 30.11.2012 passed by the learned Civil Judge, (Senior Division) Chamba in Civil Suit No. 9 of 2007 reads as under: -

"It is ordered that the suit of the plaintiffs decreed for possession of land comprised in Khewat Khatauni No. 494/625, Khasra No. 8423/1 measuring 09-07-00 square yards situated at Mohal Chamba Town- 1st Pargana Panjla, Tehsil and District Chamba, H.P. in favour of the plaintiffs

and against the defendants. Suit is decreed with Costs. Demarcation report Ex.PW4/B and Tatima Ex.PW4/C are also made the part of the decree.”

4. Judgment debtors had preferred objections under Section 47 of the Code to the executability of the decree. During the pendency of the objections filed by the JDs, the petitioners herein, besides others, approached the Executing Court by filing an application under Order 21 Rule 97 of the Code with a prayer to dismiss the execution petition.

5. The petitioners had raised objections on the round that they were successors of late Shri Ram Murti, who was co-owner in possession of land comprised in Khasra numbers 8422, 8426, 8420, 8421, 8425 and 8427 to the extent of $\frac{1}{2}$ share and the other $\frac{1}{2}$ share was owned by the JDs. As per the petitioners, they had succeeded to the $\frac{1}{2}$ share of late Shri Ram Murti. Land comprised in Khasra No.8422 was stated to be a passage leading to their house situated in Khasra No. 8427. As regards land in Khasra No. 8423/1, which was subject matter of decree in Civil Suit No. 9 of 2007, the petitioners claimed a right of passage through the said piece of land by way of easement. It was contended that the decree holders were aware about the correct factual position but they had omitted to implead the petitioners as party to the Civil Suit No. 9 of 2007. On such premise, the petitioners, asserted their right over land comprised in Khasra No. 8423/1

6. Application of the petitioners was contested by the decree holders. Learned Executing Court has dismissed the application vide impugned order, hence, this petition.

7. I have heard learned counsel for the parties and have also gone through the entire record carefully.

8. Learned Executing Court has found no substance in the objections raised by the petitioners under Rule 97 of Order 21 of the Code and has also not found any merit in their plea to frame issues for determination of questions raised by them.

9. As is evident from the contents of the objection petition filed by the petitioners, they have nowhere asserted their possession on the land comprised in Khasra No. 8423/1. They have claimed merely a right of passage through the said land to their house, that too, by way of easement. Thus, the objections filed by the resisters were meritless being not maintainable under Order 21, Rule 97 of the Code. The said provisions can be invoked only by a person asserting his possession on the decretal land/property in his own independent right to protect such possession. In view of the plea raised by the petitioners, as noticed above, learned Executing Court was not obliged to deal with the issue and thus, the objection petition of the petitioners has rightly been dismissed.

10. The right of passage by way of easement over the land comprised in Khasra No. 8423/1, as alleged by the petitioners, requires a declaration to that effect by a Civil Court, which can be decided in an independent proceeding initiated by the petitioners, if required. Since, the question posed by the petitioners before the Executing Court did not fall within the ambit of Order 21 Rules 97 and 101 of the Code, no interference is required in the impugned order by this Court in exercise of revisional jurisdiction.

11. Accordingly, there is no merit in the instant petition and the same is accordingly dismissed. It is clarified that this order shall not preclude the petitioners from invoking the jurisdiction of appropriate forum in accordance with law for redressal of its alleged grievance.

12. The petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

13. Records be sent back forthwith.