

A paper on Execution of Decrees.

(Prepared by Chandrashekhara .U District Judge, Presently
working as Senior Faculty Member, KJA, updated on
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PAPER ON EXECUTION OF DECREES

**(Paper prepared by Chandrashekhar U. Senior Faculty Member, KJA
updated on 31-05-2022)**

1. How many types of decrees are there?

There are money decrees, decrees for Specific performance of the contract, decrees for mandatory injunction and permanent injunction, decrees for restitution of conjugal rights in case of Muslims, decrees in partition suits, decrees for possession etc. Decree may be preliminary or final, partly preliminary and partly final. To understand the scope of execution of decrees, it is necessary to know the definition of decree, order and judgment as contained in CPC.

Sec. 2(2) defines 'decree' as the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Sec. 144, but shall not include-

- a) any adjudication from which an appeal lies as an appeal from an order, or
- b) any order of dismissal for default.

Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

Classes of decrees

- i. Preliminary
- ii. Final decree; and
- iii. Partly preliminary and partly final decree

Refer the decision in the case of **Shankar vs. Chandrakant**, reported in **(1995) 3 SCC 413= AIR 1995 SC 1211**

Preliminary decree is one which decides the rights of the parties but does not completely dispose of the suit. Final decree is one which completely and finally adjudicates the right.

The code provides for passing of preliminary decree in the following cases;

1. Suits for possession and mesne profits;
2. Administration suits;
3. Suits for pre-emption;
4. Dissolution of partnership;
5. Suits for accounts between principal and agent;
6. Suits for partition and separate possession;

7. Suits for foreclosure of a mortgage;
8. Suits for sale of mortgaged property;
9. Suits for redemption of a mortgage.

Deemed decree.

The term “deemed” is generally used to create a statutory fiction for the purpose of extending the meaning which it does not expressly cover. Refer the decision in the case of **Hira H Advani vs. State of Maharashtra**, reported in **(1969) 2 SCC 662**.

Sec. 2(9) defines ‘judgment’ as the statement given by the Judge on the grounds of a decree or order.

Sec. 2 (14) defines ‘order’ as the formal expression of any decision of a Civil Court which is not a decree.

2. Which Court can execute the decree?

Decree can be executed by the Court which has passed the decree or the Court to which a decree is transferred (See Ss. 36 and 39 of CPC).

2A) How may preliminary and final decrees can be passed?

In a suit for partition, the Court may pass final decree at the first instance relating to urban properties and as far as Agricultural properties, preliminary decree may be passed. Like wise, in a suit for partition, any number of preliminary or

final decrees can be passed to avoid multiplicity of suits. (For eg. Death of the party after passing final decree)

3. What is the duty of the Court when an Execution Petition is filed?

The Court has to see whether the decree sought to be executed is in time i.e., 12 years is the time to file an execution petition from the date of decree. If installments are granted with default clause, the time till default will have to be excluded while computing 12 years. The Court has to register it by giving number. Execution EP 1/08. If the Execution Petition is within 2 years, steps like attachment of property and salary can be ordered straight away. If the Execution petition is filed more than 2 years from the date of decree, a show cause notice as to why the execution of decree should not be ordered (See Order 21 Rule 22 CPC). In respect of decree for mandatory injunction, 3 years is the limitation (See Article 135 of the Limitation Act. In respect of execution of decree for **permanent injunction**, there is no limitation (See proviso to Art. 136 of Limitation Act)

3A. Whether pensionary benefits converted into fixed deposit by JDR can be attached?

No. Even if it is converted as fixed deposit. Refer the decision reported in **AIR 2009 SUPREME COURT 930 – Radhey**

Shyam Gupta vs. Punjab National Bank, wherein, it is held that

“Having considered the submissions made on behalf of the respective parties, we are inclined to accept Mr. Mehta's submission that the order impugned in the revision petition before the High Court did not attract the bar of the proviso to sub-section (1) of Section 115 of the Code as it sought to finally decide the manner in which the decree passed in Suit No. 66 of 1992 by the learned Additional District and Sessions Judge, Bayana, Rajasthan, was to be satisfied. However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a **jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank**. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the Trial Court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into Fixed Deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in the Jyoti Chit Fund case (supra) has been considerably watered down by later decisions which have been indicated in paragraphs 15 and 16 hereinbefore and it has been held that

gratuity payable would not be liable to attachment for satisfaction of a Court decree in view of proviso (g) to Section 60(1) of the Code.”

4. What is the effect of change of jurisdiction?

U/s.42 CPC the Court executing the decree upon transfer, has the same powers as if it had been passed by itself. Refer the decision reported in **AIR 1956 SUPREME COURT 359 Jai Narain Ram Lundia vs. Kedar Nath Khetan, AIR 1987 SUPREME COURT 1739 Binod Mills Co. Ltd., Ujjain vs. Suresh Chandra Mahaveer Prasad Mantri, Bombay and ILR 1991 Kar 4533.**

Upon an application by the decree holder, the Court which has passed the decree may issue a precept to any other Court which would be competent execute such decree attach any property belonging to the JDr u/s.46 of CPC. The Court to which the precept is issued shall have to attach the property forthwith. The attachment would continue for two months unless the Court which passes the decree, extends the period of attachment or the decree is transferred to the court which attached the properties for purposes of execution.

In the decision in the case of **Itel Industries (p) Ltd., Ind. solders and Alloys (p) Ltd., – 2008 SCC online Madras 975** it is held that the main object of Section 46 is to enable attachment of property of judgment letter within jurisdiction of

another Court so as to defer judgment letter from alienating or otherwise dealing with property till further proceedings. It does not affect the jurisdiction of the Court.

The Apex Court in the case of **Mohit Bharghava vs. Bharath Bhooshan Bharghava – (2007) 4 SCC 795** has held that the Court which executes the decree can send the decree to outside the jurisdiction of the Court by sending the order of attachment in respect of property outside the jurisdiction of the Court. But Section 136 clearly excludes execution of decrees from within its purview.

In the event of the Jdr. Dying during the execution proceedings and the decree is not satisfied, the legal representatives can be brought on record for prosecution of the execution subject only to the limitation of liability for satisfaction of the decree only to the extent of the assets of the deceased in the hands of the legal representatives. (See Sections 50, 52 of CPC) Refer the decision reported in **AIR 1952 SC 170 Pannalal vs. Naraini**. Also refer the latest decision in the case of **Sundaram Finance Limited vs. Abdul Samad And Anr** reported in **AIR 2018 SC 965**.

Our High Court in the case of **B.S.Ashok vs. Investment Trust of India Limited** reported in **(2010) 2 KCCR 822**, has held that in case of execution of Decree against Legal heirs, unless and until it is shown that the Judgment debtor is given

an opportunity of showing cause why he should not be committed to prison. In case if he is brought under arrest, the DHR has to satisfy the Court about commit in the JDR to prison by showing the means to pay this amount. **(Officers to read the decision without fail)**

A well considered order has been passed by the executing court that when a person disobeys the interim order during the pendency of the suit, it is always open to either move the court for contempt or to execute the interim order passed by the court. Refer the decision in the case of **Bhimshen Rao vs. Amba Rao** reported in **ILR 1998 KAR 4236, 1998 (5) KAR LJ 282.**

5. Whether decree for permanent injunction can be executed against the LRS of the Judgment debtor/defendant? If so, to what extent?

Yes. It can be executed against the LRS of deceased defendant. Refer the decision reported in **(2002) 9 SCC 28 – Government of Orissa vs. Ashok Transport Agency.** It is held in the above decision that though the decree for injunction does not run with the land, such a decree can be executed against the LRS of the deceased defendant. Any violation of the decree for injunction by the legal representatives can therefore be stopped by resorting to proceedings under Sec. 50 CPC. Such liability would be

limited to the attachment of property of the deceased in the hands of the legal representatives. The other relief of detention of the legal representatives under O 21 Rule 32 **cannot be resorted or enforced** against the legal representatives at all.

5A. Whether decree for mandatory and perpetual injunction can be executed against the judgment debtor for continued obstruction? Whether subsequent obstruction gives rise to take action under Sec. 22 of Easements Act?

Yes, it can be executed. After removal of obstruction by the Court, if there is any obstruction by the JDR, the same can be removed. It is not necessary to file another suit based on easement. Refer the decision reported in **AIR 1997 SUPREME COURT 3765 – Jai Dayal vs. Krishan Lal Garg.**

5B. Whether Police protection be granted to enforce the decree for Permanent injunction?

No. When there is decree, it has to be executed as per Or. 21 rule 32 CPC, by detention of JDR or attachment of property. Police protection cannot be granted to protect the possession of the DHR. Refer the decision reported in the case of **Chikkamuniyappa vs. Chikkappaiah** reported in **2003 TLKr 97.**

6. Whether the LRS of Decree holder, in a decree for possession are required to obtain succession certificate? If not when succession certificate is necessary?

No. For taking possession Succession certificate is not necessary. But, for recovery of money under money decree it is necessary. Refer the decision reported in **2001 AIHC 259**.

7. What is the procedure for the arrest of a public servant?

In case of arrest of public servant, 7 days notice shall be given to the immediate official superior of the person to be arrested (See Rule 110 of Civil Rules of Practice).

In case of decree against the Government or against a Public Officer, execution can be taken out only if the decree remains unsatisfied, for a period of 3 months from the date of the decree or award (See Sec. 82(2) CPC)

In case of arrest and detention in Civil Prison, the Decree Holder is liable to deposit the prescribed subsistence allowance before the Judgment debtor is committed to Civil Prison and has to continue to deposit the subsistence allowance to cover the period of detention. In the event of the subsistence allowance is exhausted, the Judgment Debtor gets released automatically.(See Rule 111 and 112 of Civil Rules of Practice) **Refer the decision reported in (1986) 2 MLJ 300.**

In case of immovable property, the Amin has to follow the procedure mentioned in Rule 115 of Civil Rules of Practice. He has to make special enquiry as to (a) the nature of soil and the cultivation, (b) whether the land is dry, wet or garden, (c) the number of wells or other means of irrigation, (d) the number and kind of trees, (e) the means of communication, (f) the vicinity of markets, (g) the estimated annual produce, and if leased, for how long on what terms and to whom, (h) in the case of a house, the material of which it is built, the extent of the compound and its rental if any, and (i) the estimated value. Above information shall be attested by Village Accountant and three respectable inhabitants.

In case of moveable property, list has to be furnished before issue of attachment warrant. (See Rule 116 of Civil Rules of Practice)

Under Rule 129 of Civil Rules of Practice the interest of JDr in property has to be mentioned by way of Affidavit and the Dhr has to furnish encumbrance certificate.

After filing of sale papers as per Order XXI Rule 68, the office has to make note of interest of JDr, encumbrance if any etc., over the property attached.

Under Rule 138 of Civil Rules of Practice spot sale & Court sale are mandatory – **ILR 1986 Kar. 3536 – Channabasappa vs. Nanjundappa..**

8. Whether Executing Court can go beyond the decree?

No. Refer the decision reported in **(1996) 5 SCC 728 – Rameshwar Gupta vs. State of Uttar Pradesh, (2003) 7 SCC 522 – Rajasthan Financial Corporation vs. Man Industrial Corporation Ltd.**

9. What are the questions that can be determined by the Court executing the decree?

Sec. 47 CPC deals with it. A question as to the title of the property in attachment and sale between the parties to the suit and their representatives are matters coming within Sec. 47. Refer the decision reported in **AIR 1952 SUPREME COURT 170 – Pannalal vs. Naraini.**

If there is any dispute regarding the identity or the substance of the subject matter of the decree, no other Court except Executing Court can decide it. Refer the decision reported in **AIR 1956 SC 359 – Jai Narain Ram Lundia vs. Kedar Nath Khetan.**

The question whether an award requires registration and stamping is within the ambit of Sect 47 of CPC and not

covered by Sec 34 of Arbitration Act. Refer the decision reported in **(2001) 10 SCC 432 – Municipal Board Kotdar vs. District Judge Pauri Garhwal.**

Whether a decree was completely satisfied and the Court became *functus officio* is a matter relating to execution, discharge or satisfaction of the decree and hence has to be enquired into by the Executing Court. Even redelivery can also be ordered. Refer the decision reported in **AIR 1961 SC 272 – B.V. Patankar vs. C.G. Sastry.**

If the execution proceedings are held violations of Rule 138 of the Karnataka Civil Rules of Practice, there is no sale at all and Sec. 47 is attracted. The dismissal of an application under Order 21, Rule 90 does not de-bar the judgment –debtor from resorting to Sec.47 of CPC. Refer decision reported in **ILR 1986 Kar 3536 – Channabasappa vs. Nanjundappa.**

Under Sec. 47 all questions relating to execution, discharge, or satisfaction of the decree should be determined by the executing Court alone. The pre-sale illegalities committed in the execution are amenable to the remedy under Sec. 47. Post sale illegalities or irregularities causing substantial injury to the judgment-debtor are covered O. 21 Rule 90 CPC. In such case, the applicant must prove substantial injury. Refer the decision reported in **(1994) 1 SCC 131 – Desh Bandhu Gupta vs. M.L. Anand & Rajinder Singh.**

The scope of Sec. 47 has been explained by the Apex Court in **AIR 1996 SC 1005 = (1996) 2 SCC 371 – Umashasnkar vs. Sarabjeet.**

In the decision in the case of **Sneh Lata Goel vs. Pushplata and Ors.**, reported in **AIR 2019 SC 824**, it is held that “objection to validity of decree for want of territorial jurisdiction, would not lie before Executing Court”.

The Apex Court has held that there is no conflict between Sec.47 and O. 21 Rule 2 in **Sultana Begum vs. Prem Chnd Jain, 1997 (1) SCC 373**. Even if there is any conflict, general provision contained in Sec. 47 must yield to the special provisions contained in O. 21 Rule 2 CPC.

Question whether decree was obtained by **collusion** having arisen for consideration. Supreme Court in **AIR 2006 SC 1706 – Mohammad Masthan vs. Society Congregation Bros, S. Heart** has held that such question did not and could not have arisen before the executing Court.

10. Whether question of tenancy can be decided by the executing Court?

No. Refer the decision reported in **(2005) 8 SCC 41 – TCI Finance Ltd vs. Culcutta Medical Centre Ltd.**

Order XXI Rule 1 provides for the mode of execution and recovery of the decretal amount (See Order XXI Rules 11A, 12, 13 and 17).

11. Whether a decree, which does not stipulate any direction to be complied with by the judgment-debtor, can be executed ?

No. Refer the decision reported in **ILR 1999 Kar 3896= 1999 (4) KCCR 2735**

Order XXI Rule 2 provides for recording of satisfaction of the Decree, out of Court and the Judgment Debtor or his surety, shall have to report such satisfaction within 30 days from the date of payment to the Court, failing which the settlement would not be recognized in law.

Notice to Show Cause against execution in certain cases is contemplated under Rule 22 of Order 21 before further proceedings are taken in execution of the Decree. (The relevant rule is to be seen and followed). But for reasons to be recorded, without issuing notice, execution is permissible if the Court finds that to prevent the ends of justice being defeated or to avoid unnecessary delay.

The requirement of O. 21 rule 2 is not confined to money decree alone. The provision would apply to other decrees. An application under O. 21 Rule 2 to record satisfaction is

governed by Article 174 of the Limitation Act. Refer the decision reported in **AIR 1963 Mys 79**.

Provisions of the Section are not applicable in case of a compromise decree and an executing Court cannot go behind a compromise decree to invoke the provisions of the Section. Refer the decision reported in **ILR 2000 Kar Sh.note page 173= 2000 (3) Kar LJ 195 - Sri. B.V.Basavaraj vs. N.R.Chandran**.

12. Whether the executing Court can recover the amount excess to its pecuniary jurisdiction?

Yes, provided the Court of Original jurisdiction must have had the pecuniary jurisdiction to pass the decree. Refer **(1994) 1 SCC 131 - Desh Bandhu Gupta vs. M.L. Anand & Rajinder Singh**.

12A: What is the limitation to execute the decree for possession of immovable property?

12 years from the date of judgment and decree and not from the date of engrossing of decree on the stamp paper, as it relates back to date of judgment and decree. Refer the decision reported in **AIR 2006 SC 2248 - Ram Bachan Rai vs. Ram Udar Rai**.

13. Whether the executing Court can implead a third party or amend the decree?

No. Refer the decision reported in **(1996) 4 SCC 469 – Ramesh Singh vs. State of Haryana.**

14. Is it necessary to state the grounds for arrest by way of affidavit?

Yes. O. 21 Rule 11A and refer the decision reported in **AIR 2007 SC 1349 – Manager ICICI Bank Ltd vs. Prakash Kaur.**

15. Whether decree can be assigned? If so, when and to whom it can be assigned or transferred.

15a. Who cannot be arrested?

1. A woman (Sec. 56)
2. Judicial officers, while going to, presiding in, or returning from their Courts; Sec.135(1)
3. The parties, their pleaders, mukthars, revenue agents and recognized agents and their witnesses acting in obedience to a summons, while going to or attending or returning from Court; Sec.135(2)
4. Members of legislative bodies; (Sec. 135A)
5. Any person or class of persons, whose arrest, according to the State govt., might be attended with danger or inconvenience to the public; (Sec.55(2))

6. A judgment debtor where the decretal amount does not exceed Rs. 2000/-

Yes. **Or. 21 Rule 16.** Refer the decision reported in **AIR 1955 SC 376 Jugalkishore Saraf vs. M/s. Raw Cotton Co. Ltd.** In the above decision, the doctrine of equitable assignment has been discussed. However the decree for permanent injunction cannot be assigned as it is personal. Refer **ILR 1974 Kar 1506.**

16. Whether succession certificate is necessary for the LRS of the deceased DHR to recover the debt?

Yes. Refer the decision reported in **ILR 1999 Kar 4411, AIR 2003 Kar 142 – Sangapp Mallappa Kuri vs. Special Land Acquisition Officer.** However, succession certificate is not necessary to execute a decree for possession.

17. Whether simultaneous execution petitions can be filed against the JDR by seeking attachment of immovable property and arrest?

Yes. **O. 21 Rule 30.** Refer the decision reported in **AIR 1969 SC 897 Padrauna Raj Krishna Sugar Works Ltd. vs. Land Reforms Commissioner, U.P. (para 10), AIR 1992 SC 1740 State Bank of India vs. Messrs. Index port Registered (para 22), 2000 AIHC 2181 (kant).** It is held in the above decision of the Apex Court that the observation of Supreme Court in

the earlier decision reported in AIR 1987 SC 1078 is contrary to law. Also refer the case in the case of **Pafco 2916 Inc. vs. Kingfisher Airlines Limited, Bengaluru**, reported in **AIR 2017 KARNATAKA 10**, wherein it is held that

“A decree holder would be entitled to file two petitions for realizing or recovering the decretal amount due from two judgement debtors, when judgment and decree passed against them is joint and several. As such, the reasoning adopted by the Executing Court either in holding that two petitions filed by the decree holder against the principal debtor and the guarantor is not maintainable or directing the decree holder to amend the petitions so as to conform the claim made in two petitions would not exceed the decretal amount put together cannot be sustained. **(Paras 20 21)**

The decree holder would be entitled under law to proceed against different judgment debtors simultaneously and in the instant case judgment debtors being separate and decrees being separate, two petitions filed by decree holder will necessarily have to be held as maintainable which is also finding given by executing Court. However direction issued to the decree holder to amend the petitions so that the amount claimed in the petitions filed against principal borrower and guarantor would result in claim being halved and same is impermissible. In the background of undertaking given by counsel appearing for decree holder on 07.04.2016 which is to the effect that in the event of decree holders were to realise any amounts from either of the judgment debtors amounts claimed in respective petitions would be given set off or deducted from the total claim deserve to be accepted for the purpose of holding petitions would be maintainable. Judgment debtors cannot be heard to contend that decree holder is required to restrict their claim in all these petitions to the extent of 50% only. However to allay the apprehension of judgment debtors that decree holder may suppress the fact of amounts realized, it would suffice if decree holder is directed

to file an affidavit of undertaking thereunder that as and when amounts are realised in any of the petitions i.e., filed against borrower or guarantor they would file memo indicating the amounts realized or received or recovered from the respective judgment debtors. As such the impugned orders cannot be sustained. **(Paras 18)**

However, rule 30 has no application for decree for specific performance. Refer the decision reported in **AIR 1994 SUPREME COURT 2256 – Amal Kumar Ghatak vs. United Bank of India.**

O. 21 Rule 32.

The Court executing a decree for specific performance is competent to give possession. Refer the decision reported in **AIR 1972 SC 1826 Hungerford Investment Trust Ltd. (In voluntary Liquidation) vs. Haridas Mundhra.**

In executing a decree for injunction property of the officer or official cannot be attached. Refer the decision reported in **(1992) 2 SCC 504-Yashpal Singh vs. VIII Addl. District Judge & others.**

Rule 32 of O. 21 authorizes correction of any error committed while drafting the sale deed in a decree for specific performance or when the measurements or boundaries are not delineated in the map, the same can be rectified by resorting to Sec. 47 of CPC. Refer the decision in **(2003) 2 SCC 330 – Prathibha Singh vs. Shanti Devi Prasad.**

The main object and purpose of Rule 32 is to see that the judgment debtor obeys and performs his obligation under the decree for injunction. If the conditions are fulfilled then only it is permissible for the Executing Court to grant compensation. Thus, an Executing Court cannot convert a decree for injunction into a decree for compensatory costs. The Court has to be satisfied about **willful disobedience**. Refer the decision reported in **ILR 1989 Kar 3371**.

Rule 35 presupposes the existence of lawful decree. **(2005) 7 SCC 791 – Harshad Chiman Lal Modi vs. DLF Universal Ltd.**

When decree holder put in possession of land it includes possession of standing crops and in such an event Decree holder is to be directed to give cost of the crop. Refer the decision reported in **(1982) 1 SCC 377 – Kamal Bai vs. Bhikchand Kishan Lal**.

Reaction of Apex Court to the delay in executing decree for eviction by Rent Control and Eviction Court is apparent in the decision reported in **(2007) 3 SCC 113 – Jagdish Prasad vs. Sampatraj**. The Supreme Court further directed in the following terms.

“Delivery of possession of the premises in question shall be affected in favour of the land used after

evicting the tenant therefrom any time after 31-12-2006 but not later than 31-1-2007. If for evicting delivery of possession, the executing Court requires any armed force to be deputed, the same shall be requisitioned from the Superintendent of Police concerned who shall depute the same within 48 hours from the date of the requisition is received. It is made clear that in case of any person other than the judgment debtor is found in possession of the subject matter, he shall also be evicted by the armed force”.

17A. Whether Court can direct the plaintiff in a suit for Specific Performance or any other suit to deposit or undertaking to deposit huge amount on the ground of heavy pendency and likelihood of delaying the proceedings?

No. Court cannot direct for such deposit as held in the case of **Vinod Seth vs. Devinder Bajaj** reported in **2010 TLPRE 380**.

18. Is it necessary to know about the ability of JDR to pay the decree amount before sending him to Civil Prison?

Yes. If it is shown that he has no means to pay the decretal amount, then he cannot be committed to Civil Prison. Enquiry can be done before issuing arrest warrant or when he is brought before the Court under Arrest warrant. Refer the decision reported in **AIR 2007 SC 1349 – ICICI Bank vs. Prakash Kaur.**

19. What is the liability of garnishee?

Whenever there is a notice of decree and pendency of execution petition, the garnishee cannot deal with the money. If Garnishee meddles with money, then he is liable to pay the amount as if the decree is passed against him. Refer the decision reported in **1988 (1) KLJ 379.**

‘Garnishee’ means a judgment debtor’s debtor. He is a person, who is liable to pay a debt to a judgment-debtor or to deliver any movable property to him.

If garnishee fails to make payment into the Court, nor appears and shows any cause in answer to the notice, the Court may order Garnishee to comply with such notice as if such order were a decree against him.

In respect of execution of Decrees of various kinds, the Presiding Officer will have to refer to the specific provisions under Order XXI CPC and act accordingly.

Where immovable property is attached under Order XXI Rule 54, the Court has to ensure service of the prohibitory order against alienation of the property attached, on the Judgment Debtor.

Rule 54 is for safeguarding the right of the decree holder as well as the JDR. By the notice the JDR is put on notice that his property is attached and would be sold unless he pays off his debt to the decree holder. Refer the decision reported in **(1993) 4 SCC 414 – Satyanarayana Bajora vs. Ramnarain Tibrewal.**

Order 21 Rule 58:

Where a claim is made by a third party that the property attached belongs to him and not liable for attachment, an enquiry as contemplated under **Order XXI Rule 58** has to be made. The decision taken is liable for challenge in a suit.

The Apex Court in the case of **Kancherla Lakshminarayana vs. Mattaparthi Syamala and others** reported in **(2008) 14 SCC 258** has held that in case of attachment of immovable property, a duty is cast executing Court to find out as to whether it is a collusive decree or not. It is essential consideration for adjudication.

In the case of **S.K. Gangadhara vs. Ramachandra – (2015) 3 KCCR 2449** it is held that where the transferee comes before the executing Court has objector under Order 21 Rule 58 CPC, it is enough if the decree holder invokes Section 53 of TP Act the way of defence and satisfies the ingredients to succeed in securing dismissal of the application though it is a summary proceedings.

If there is deliberate or unnecessary delay, then, claim cannot be entertained. Refer the decision reported in **(2001) 7 SCC 94 – Barnes Investments Ltd vs. Raj K. Gupta.**

An Order dismissing an application for raising attachment is a decree. It is appealable and not revisable **(AIR 2002 Kar 324)**

When a false claim is made under Order 21 Rule 58 based on fraudulent document then claim is not sustainable refer **Takur Dongar Singh vs. Ladli Prasad Bhargava (Dr), (1973) 2 SCC 263.**

20. Whether objection to attachment be filed even after auction Sale?

Yes, refer the decision reported in **2008 AIR SCW 2800 Kancherla Lakshminarayana vs. Mattaparthi Shyamala,** wherein, it is held that

“Mere holding of auction sale does not bar the raising of objection to attachment of property. The word "sold" in Clause

(a) of the proviso to Rule 58 has to be read meaning thereby a complete sale including the confirmation of the auction. In considering the "time factor" of challenging the sale, the "locus standi factor" on account of any prior interest of the objector in the suit property has also to be considered. The attachment cannot be free from the prior obligations. The necessary sequatur is that even after the factum of sale the objection would still lie before the sale is made absolute. AIR 1983 Pat 303, Overruled. AIR 1962 Pat 403, AIR 1937 Cal 390, AIR 1924 Pat 76, Held not good law."

O. 21 Rule 64

In case of sale of property, a portion which is sufficient to meet the claim has to be sold and not the entire property. Refer the decision reported in **AIR 1990 SUPREME COURT 119 Ambati Narasayya vs. M. Subba Rao, (1997) 4 SCC 356 and ILR 2001 Kar 2499 – Geetabai & others vs. State Bank of India and others.**

Sale of property on the basis of preliminary decree cannot be brought for sale in an execution case. Only final decree can be executed. Refer the decision reported in **(2007) 2 SCC 355 – Hashan Abbas Sayyad vs. Usman Abbas Sayyad.**

Under Order XXI Rule 66 all particulars regarding sale of immovable properties are to be furnished. It speaks about drawing of proclamation in the language of Court (Kannada),

place time and date of sale, extent of property to be sold, the revenue assessed on the property amount to be recovered, encumbrance if any, and any other thing which Court considers material. If attachment already is affected before the proclamation, then it is not necessary to give notice. The court has to estimate the value of property and fix the upset price in the proclamation.

The DHR has to file a **verified statement** to the said effect (Order XXI Rule 66).

21. Whether Court is required to put its valuation of the property brought for sale in the proclamation?

After amendment to CPC in the year 1976, now the Court is not required to put its valuation. However, the Court is required to put the value on the basis estimate given by both the parties.

Sale proclamation has to be done after giving notice to the DHR and JDR. The Proclamation should be in the language of the Court.

It is necessary to issue sale notice to the JDR about the proposed sale by way of proclamation and subsequent sale at spot and Court. Judgment debtor should be given an opportunity to give his estimate of property brought for sale. Refer the decision reported in **(1994) 1 SCC 131 – Desh**

Bandhu Gupta vs. N.L. Anand, (2005) 10 SCC 235 – S. Mariyappa vs. Siddappa.

Failure to comply with the requirement of Rule 67 is material irregularity rendering the sale voidable, furnishing a cause of action for filing an application under O. 21 Rule 90 CPC Refer **AIR 1964 SC 1300 – Dhirendra Nath Gorai vs. Sudhir Chandra Ghosh.**

The Court has to fix the time for spot sale and Court sale by giving two different dates. After bid at the spot and Court, the successful bidder has to deposit 25% of the purchase money on the same day and to pay the remaining amount within 30 days as per Rules 84 & 85 of Order XXI.

After auction and accepting the highest bid, it has to be called after 60 days for confirmation of sale. After 60 days, the sale has to be confirmed and auction purchaser is entitled to sale certificate on production of required stamp papers (non-judicial). (refer Order XXI Rule 94 CPC)

Order XXI Rule 90 deals with application for setting aside sale on the ground of irregularity or fraud.

1. Where any immovable property has been sold in execution of a decree the decree holder or the purchaser or any other person entitled to share in a rateable distribution of assets or whose interests are affected by the sale, may apply to

the Court who set aside the sale on the ground of material irregularity or fraud in publishing or conducting it.

2. No sale shall be set aside on the ground of fraud in publishing or conducting it unless, upon the facts proved the Court is satisfied that the applicant has sustained substantial injury. (O.21 90(2) of CPC,)

3. No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up. (O.21 rule 90(3) of CPC)

Explanation: The mere absence of, or defect in the attachment of the property sold shall not by itself, be a ground for setting aside a ground under this rule.

In case of attachment of salary of a Government Servant servant of a railway company or local authority or of a servant or a corporation engaged in any trade or industry, which is established by a Central, Provincial or State or a Government Company as defined in Sec. 617 of the Companies Act 1956 the attachment shall be effected in accordance with Rule 48 of Order XXI of the Code.

Under **O. 21 Rule 72**, the DHR can be permitted to participate in auction.

22. Salary means what?

In the decision reported in **AIR 1952 SC 227 – Union of India vs. Hira Devi**, it is stated that salary includes arrears but excludes PF deductions.

1964 (1) Mys.L.J. 166 – The question whether the sale would become void under prevention of Fragmentation Act and Consolidation of Holdings Act does not arise under Order XXI Rule 90.

AIR 1967 SC 608 – "Janak Raj vs. Gurdial Singh"– Where after sale but before confirmation, decree itself is set aside, the purchaser is nevertheless entitled to confirmation of sale.

Where no application is made under Rule 89, 90, 91 or if made and disallowed, then, the Court has to confirm the same. (refer Order XXI Rule 92 CPC)

If the claim is preferred, then Court has to wait till disposal of such claim or objection. Under sub-rule 2, if application is made under Rule 89 and allowed and if JDr makes payment within 60 days from the date of sale then Court has to set aside the sale.

If deposit is made within 60 days in all such cases whether the period of 30 days within which deposit has to be

made, has not expired before the commencement of Code of Civil Procedure (Amendment) Act, 2002.

In the decision reported in **1982 (1) KLJ 356 in the case of K.P. Krishnappa vs. B. Gangappa (dead) by LRS. & others**, it is held that if bid is not offered before the presiding officer, then bid is not valid.

If the judgment debtor does not insist for sale on spot, the Court should proceed to sell the property on the spot. Refer decision reported in **ILR 1986 Kar 912 – Manjamma vs. Suryanarayana Rao**. The purpose of Spot sale is to protect the interest of the judgment debtor.

AIR 1987 SC 1443 "Ganpat Singh vs. Kailash Shankar" speaks about Application of **Art 134 of Limitation Act**

AIR 1990 SC 1828 "Chinnamal vs. P. Arumugham" speaks about restitution.

Once sale becomes absolute, then sale certificate has to be issued. Refer **B. Aravind Kumar vs. Government of India (2007) 5 SCC 745**.

If there is mistake in number of plot in final decree for sale and sale certificate, it will not affect in identity of property sold when Khatha No. and boundary are given. Refer **Sheodhyan Singh vs. Sanichara Kuer, (1962) 2 SCR 753**.

The act of granting sale certificate is ministerial and not judicial – **AIR 1991 SC 1825 Sagar Mahila Vidyalaya, Sagar vs. Pandit Sadashiv Rao Harshe.**

Under Rule 93, where sale is set aside under Rule 92, the purchaser shall be entitled to an order of repayment of his purchase money with or without interest as the Court may direct against any person to whom it has been paid.

An objector can file objection to sale before its confirmation. Once the sale is made absolute, such objection cannot be entertained. In this regard, the decision reported in AIR 2008

AIR 1990 SUPREME COURT 2221 Hindi Pracharak Prakashan vs. M/s. G.K. Brothers – Compensation is granted with interest at 12% per annum payable by the JDr to purchaser.

Sale certificate need not be registered. Refer **2007 AIR SCW 4080B=2007-KCCR-2-1783=2007-AIRKarr-4-611-B.Arvind Kumar vs. Government of India.**

Auction purchaser is entitled to protection in case of setting aside sale, but not the DHr if he himself purchases – **AIR 1982 SC 989 Sardar Govindrao Mahadik vs. Devi Sahai.**

Rule 95 deals with delivery of property in occupancy of JDr and Rule 96 deals with delivery of property in occupancy of tenant.

In deciding an application under Rule 95 the executing Court cannot stay delivery of possession of immoveable property on the ground of JDr were to succeed in appeal – **1988 (3) KLJ 317.**

An auction purchaser who is not a decree holder can file an application under Order XXI Rule 95 or file a separate suit for possession or resort both, the suit for possession is not barred by dismissal of the application under Order XXI Rule 95.

ILR 1995 Kar. 2214, 1993 (3) SCC 644, is held that tenant acquiring title from lessor or any one claiming under him need not surrender possession.

Under Order XXI Rule 97 the decree holder or purchaser can file an application for removal of obstruction of any property sold in execution of decree by taking possession.

If an application is made under sub-rule 1 of Rule 97 of Order XXI the Court has to adjudicate upon the application in accordance with the provisions contained therein.

(2004) 2 SCC 511 – Nature and scope of Rule 97 is explained.

Though Order XXI Rule 97 empowers the DHr or the purchaser to file application for removal of obstruction, in view of Sec.47 CPC even a third party can also file application under the above provision. In this regard the decision of Apex Court in the case of **Brahmadeo Choudhary vs. Rishikesh Prasad Jaswal & another** reported in **AIR 1997 SC 856** and **AIR 1998 SC 754** in the case of **Silver line Forum Pvt. Ltd., vs. Raju Trust & another** are relevant.

Third person other than Judgment Debtor complained of its dispossession from suit property by decree holder or purchaser in execution of decree held can no longer be put back into possession merely on establishing there that it that is such Third party was in possession prior to being dispossessed from the suit property. All questions including right, title or interest in the property between the parties to the proceeding arising on the application under Rule 99 by such third person, are required to be adjudicated by executing Court itself dealing with application. Only thereafter question of possession of suit property can be decided no separate suit is required. Order of adjudicating Court shall be treated as decree. Refer **Shamsher Singh and another vs. Lieutenant Colonel Nahar Singh (dead) through and others, (2019) 17 SCC 279.**

Where obstruction to execution of decree being caused, held it is for decree holder to take appropriate steps under Order 21 Rule 97 for removal of obstruction and to have the rights of the parties including the obstructionist adjudicated under Order 21 Rule 101 of CPC. Refer **Anwarbi vs. Pramod D.A. Joshi, (2000) 10 SCC 405.**

In the case of Asgar Mohan Varma – (2020) 16 SCC 230 it is held that a stranger to a decree is entitled to agitate his/her grievance and claim for adjudication for an independent right, title and interest in the decretal property, even after being dispossessed in accordance with Order 21 Rule 99.

The frivolous objection to execution petition has to be dealt with scrupulously. Refer the edition in the case of **Bool Chand vs. Rabia reported in (2016) 14 SCC 270.**

Order XXI Rule 98 deals with orders after adjudication of questions referred to in Rule 101. Rule 101 deals with question which are determined in a proceeding on an application under Rule 97 or 99. No separate suit is maintainable. If any obstruction petition is made then the Court has to formulate points after enquiry and dispose of such claim or obstruction. Refer the decision in the case of **Har Vilas vs. Mahendranath, reported in (2011) 15 SCC 377.**

In case of independent title canvassed by the third party, then such claim has to be treated as a suit by framing issues.

Order XXI Rule 98, 100 don't apply in case of transfer pendente – lite.

If obstructer claims under the JDr on the ground of legal heirship, he cannot maintain petition under Order XXI Rule 97.

Order passed under Rule 98 or 100 to be treated as decrees.

In the decision reported in **AIR 2008 SC 225 Niyamat Ali Molla vs. Sonargon Hsg Co-op. Society Ltd.**, it is held that *“so far as the application for impleadment of the applicants are concerned, they being not parties to the suit are not bound by the decree. They would, thus, be entitled to take recourse to such remedies which are available to them in law including filing of an application under Order 21 Rules 97 and 99 of the Code of Civil Procedure, if any occasion arises therefor. As and when the said applicants take recourse to law, the same has to be determined in accordance with law”*.

In the decision reported in **AIR 2008 SC 1272 Barkat Ali vs. Badri Narain**, it is held that *“Order XXI, Rule 22, C.P.C. culminates in end of one stage before attachment of the property*

can take place in furtherance of execution of decree. The proceedings under Order XXI, Rule 23 can only be taken if the executing Court either finds that after issuing notice, under Order XXI Rule 21 the judgment debtor has not raised any objection or if such objection has been raised, the same has been decided by the executing Court. Sub-rule (1) as well as sub-rule (2) under Order XXI, Rule 22, operates simultaneously on the same field. Sub-rule (1) operates when no objection is filed. Then the Court proceeds and clears the way for going to the next stage of the proceedings, namely, attachment of the property and if the Court finds objections on record then it decides the objections in the first instance and thereafter clears the way for taking up the matter for attachment of the property if the objections have been overruled. Whether the order is made under sub-rule (1) or sub-rule (2), it has the effect of determining the preliminary stage before the attachment process is set in motion. In this background, the order of the Court to proceed with attachment on finding that no objection has been raised also operates as an order deciding the preliminary stage of the execution proceedings and operates as if the judgment debtor has no objection to file. If thereafter, the judgment debtor wants to raise an objection in the same proceedings in the absence of any modification of order passed under Order XXI, Rule 22, sub-rule (1) or (2), he has to take recourse to get rid of the order by way of appeal. There is no dispute and it has not been agitated that the order for proceeding by the judgment under

Order XXI, Rule 22 amounts to a decree under Section 47 of C.P.C. and it is appealable as a decree i.e. to say it is not an appeal against the interim order but an appeal against the decree which is provided against the final order. It means that at the different stages of the execution, orders passed by the executing Court have attained finality unless they are set aside by way of appeal before the higher forum. Otherwise they bind the parties at the subsequent stage of the execution proceedings so that the smooth progress of execution is not jeopardised and the stage which reached the finality by dint of various orders of the Order XXI, operates as res judicata for the subsequent stage of the proceedings, where a judgment debtor has an opportunity to raise an objection which he could have raised but failed to take and allowed the preliminary stage to come to an end for taking up the matter to the next stage for attachment of property and sale of the property under Order XXI Rule 23 which fell within the above principle, the judgment debtor thereafter cannot raise such objections subsequently and revert back to earlier stage of proceedings unless the order resulting in termination of preliminary stage which amounts to a decree is appealed against and order is set aside or modified. The principles of res judicata not only apply in respect of separate proceedings but the general principles also apply at the subsequent- stage of the same proceedings also”

In the decision reported in **AIR 2008 SC 1997 Usha Sinha vs. Dina Ram**, it is held that the purchaser pendete-lite, cannot raise objection to execution and execution cannot be stayed.

In the decision reported in **AIR 2008 SC 2061 – Mahakal Automobiles, M/s. vs. Kishan Swaroop Sharma**, it is held that notice should be given to the Judgment debtor at every stage of the execution petition.

The Officers are requested to read the decisions reported in **ILR 1991 Kar 254 – M/S. Paramount Industries vs. CM Malliga and ILR 2007 Kar 4396 – Gajanana vs. Jayamma and another** for better understanding.

SOME MODEL ORDERS

In case of arrest of JDR:

Sri. AB Advocate files EP for execution of decree in O.S.12/2007 passed by this Court. Decree is in time. Necessary court-fees paid. Hence for orders.

Sd/-

CMO

Date
DHR by
the

Issue cause notice to
JDR returnable by

Date
DHR by
For appearance
objection

Sri. K.K.Files Vak for JDR
And prays time for

Objection by.....

Date
DHR by
JDR by

Sri. K.K. files objection stating
that the JDR has no means to
pay the decretal amount. To
prove means by

Date
DHR by
JDR by

DHR is present. Files an
application for receiving
documents. Sri.K.K. Orally
opposes the application.
Heard. Application is allowed.
Enquiry by....

Date
DHR by
JDR by

DHR files his affidavit
evidence in lieu of
examination-in-chief. Ft chief
is over. Ex.P1 and 2 are
marked. DHR side is closed.
Evidence of JDR's evidence
by...

Date
DHR by
JDR by

JDR and his counsel is
absent. No representation.
Hence evidence on behalf of
JDr is taken as nil. To hear by

Date
DHR by
JDR by

....
Heard DHR and JDR orders
by...

Date

Orders pronounced vide

DHR by
JDR by

separate order. It is held that the JDR has got means to pay the decretal amount. For payment by..

Date
DHR by
JDR by

JDR is absent. Payment is not made. Issue A.W to JDR if P.F and subsistence allowances are paid by.....

Date
DHR by
JDR by

Jdr is brought under arrest warrant. Subsistence allowance is paid. JDR is not prepared to pay the decretal amount. Hence, he is committed to Civil Prison for 30 days. Call by.

In case of arrest of public servant a seven days notice should be given to the official superior to facilitate the arrest of the JDR.

In case of attachment of salary of JDR

Date
DHR by

Advocate for DHR prays for issue of attachment of salary of the JDR. For furnishing salara particulars by...

Date
DHR by
JDR by.

Adv for DHR files application under Sec.151 CPC for calling for salary particulars of JDR. Heard allowed. Call for salary particulars of JDR from his pay drawing officer by...

Date
DHR by
JDR by.

Salary certificate is received. Perused. Issue attachment warrant of salary of JDR to the tune of Rs. By...

Date DHR by JDR by.	Salary At/Wt executed. Await amount by...
Date DHR by JDR by.	Amount not received. Issue reminder and await amount by...
Date DHR by JDR by.	Amount not received. No reply submitted. Steps by...
Date DHR by JDR by.	Advocate for DHR files application under 151 CPC to take coercive steps against the pay drawing officer of the JDR. Heard, allowed. Issue show cause notice to the PDO why action should not be taken against him for disobedience of attachment order and that why the amount should not be recovered from him by...

Note: After recovering the amount, the amount shall be paid to the DHR upon an application submitted by him.

Attachment of immovable property.

Date DHR by JDR by.	Issue attachment of schedule property (if property is not already attached) by....
Date DHR by JDR by.	Attachment duly executed. JDR has not filed any objection. DHR to file Sale particulars as per O21 Rule 66 by....
Date DHR by	Sale papers with verified affidavit filed. Office to check

JDR by.
Date
DHR by
JDR by.

and put by...

Sale particulars filed by the JDR is in accordance with the Rule 66. There is no other charge as could be seen from EC. Hence issue sale notice to JDR by...

Date
DHR by
JDR by.

JDR is present. Objection not filed(if filed verify whether it is tenable). Hence issue proclamation and sale warrant for spot sale and Court sale by.... And....

Date
DHR by
JDR by.

Case called in the open Court. Bidders are present. Auction held in the open Court. XY offered highest bid. Bid offered by XY is accepted. He is directed to pay 25 % of sale amount to the Court today itself and balance within 15 days from today. Call on...(Note: post the case after 60 days, as the sale has to be confirmed after sixty days and JDR has got opportunity to file application for setting aside within the period of 60 days)

Date
DHR by
JDR by.

Case called. No application filed for setting aside sale. Hence sale held in favour of XY is made absolute. XY to furnish necessary NJ stamps for preparing Sale Certificate. Issue Sale Certificate.

Sufficient NJ stamp papers furnished.

Officers are requested to read relevant provisions of CPC and Civil Rules of Practice. As far as orders relating to means of JDR, there shall be a small speaking order.

