

## **PAPER PRESENTATION ON EXECUTION**

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ADDL.SENIOR CIVIL JUDGE,  
SRIKAKULAM,

### **Definition**

The word "**Execution**" is not defined in the Code of Civil Procedure. It simply means the process for enforcing the decree that is passed in favour of the decree-holder by a competent court.

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

As per Rule 2(f) 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.

### **The Relevant Provisions on Execution in Code of Civil Procedure and Civil Rules of Practice are:**

1. Sections 36 to 74, Sections 144, 146 & 148 Code of Civil Procedure and Order 21.
2. Chapter XVI Rules 205 to 285 of Civil Rules of Practice.
3. Articles: 125 to 129, 134 to 137 of Limitation Act

### **Jurisdiction**

As per Section 37 of Code of Civil Procedure, the decree can be executed by the court which passed the decree and as per section 38 of Code of Civil

Procedure the court to which the decree is transferred, have jurisdiction to entertain the Execution Petitions.

**Can the execution court go behind the decree?**

**No**, the execution court can not go behind the decree

See →

*Sunder Dass -Vs- Ram Prakash (AIR 1977 SC 1201)*

*Hira Lal Patni -Vs- Sri Kadi Nadh (AIR 1962 SC 199)*

*Vasydev Dhanjibhai Modi -Vs- Rajabhai-Abdul Rehman  
& Others (AIR 1970 SC 1475)*

**When there is a conflict between the judgment and decree, whether execution court can look into the judgment ?**

**Yes** ; when there is a conflict between the judgment and decree and if the decree is not properly / happily drafted, the executing court can look into the judgment to know the intention of the court.

See →

*G.Ramayya Vs. Y.Bayanna (1974 (2) An.W.R 14 (SN) –*

*(S.B.I, Petitioner Vs. Maa Sarada oil mills & others (A.I.R. 2003 Gau.22)*

**Whether The Executing Court can go through pleadings and proceedings upto decree to know the intention of the trial court in passing decree - Yes**

*Bhavan Vijaya and others Appellants Vs Solanki Hanuji  
Khodaji Mansang and another Respondent (AIR 1972 SC  
1371)*

If the trial court is not having inherent jurisdiction or if the decree is a nullity on the face of the record, the executing court can refuse to execute the decree.

No territorial or pecuniary jurisdiction, the decree is valid unless prejudice is caused.

*Hasham Abbas Sayyad -Vs- Usman Abbas Sayyad AIR 2007 SC 1077*

**If the property situated in different courts – Or.21 Rule 3**

**Please Refer:**

Mohit Bhargava Vs Bharat Bhushan Bhargava and other – (2007 (3) SCJ 735

**IV - Transfer of Decree**

Read Sec.39 C.P.C O.21 R.5 & 6 Procedure

Sec.39 (4) – Person and property outside the Jurisdictional court – cannot be executed.

Powers of the transferee courts Sec.42 C.P.C.

Form No.52 of Civil Rules of Practice Application Order Form-3

Appendix E of C.P.C

Rule 206 of Civil Rules of Practice (apart from sending the decree through a messenger, the copy of the decree and the decree transfer proceedings must be sent by post in confirmation of sending decree through a messenger)

Certificate of Non-satisfaction Form.no-4, Appendix.E of C.P.C

Certificate of Execution - Form no.5 of C.P.C

**V- Stay of Execution**

Order 21 Rule 26 to a **limited period** to facilitate the Judgement debtor to obtain necessary stay orders from the trial court, which passes the decree.

Meda Harikrishna –Vs- Akula Sehsmma

(2009 (1) ALT 846.)

A third party cannot file a petition to stay the execution U/O 21 R.26.

Order 21 Rule 29 grant of stay of execution under particular circumstances.

**VI- Whether Caveat petition U/Sec 148-A C.P.C is maintainable -?**

- No -

Eknath Kiva Akhadkar & Others -Vs- Administrative (A.I.R. 1984 Bom. 114)

Chloride India (L) -Vs- Ganesh Das Ramgopal (A.I.R 1986 Calcutta 74)

Kattil Vijalil Parkkum Kailoth -(Tribunal & D Etc )Moideen – Vs- Mannial Paadikayil Kadeesa Umma & Others (A.I.R. 1991 Ker. 411)

**VII – Precepts**

**S.46 Form No.2 Appendix – E CPC**

**VIII Can the Execution Court grant Instalments? No -**

As per Article 126 of Limitation Act, necessary application must be filed within 30 days from the date of the decree for grant of instalments.

**Please refer:**

2002 (1) ALD 169 (D.B)

Seelam Ramadevi Vs Gandhi Raju Yanadi Raju (2008 (4) ALD 366)

Khadar Baba Fancy Stores, Visakhapatnam Vs GPG Chit Funds Pvt. LTD and other (2008 (5) ALD 711)

**IX - Payment out of Court:**

- Please see Order 21 Rule 2 (2) CPC

- Article 125 of Indian Limitation Act

P. Narasaiah -Vs- P. Rajoo Reddy (AIR 1989 AP 264)

Somu Adinarayana -vs- Balanagu Subba Rao (died) per LR  
(2007 (2) ALT 638

*Adjustment in any other decree must also be recorded within one month.*

Padmaben Bansulal and another Vs Gogendra Rathod and  
other (AIR 2006 SC 2161)

### **Simultaneous Execution – See Order 21 Rule 21**

Gudivada Muneyamma -vs- Jawardhal (2006 (6) ALT 587)

Rapuolu Sudhar -vs- Govt. of A.P. (2007 (2) ALT 205)

**In a composite Decree whether DHR has to First exhaust  
his remedy against the property before proceedings against  
person – No**

**Please refer:**

State Bank of India Appellant Vs M/s Index port  
Register and other Respondent ( AIR 1992 SC 170)

CH.Sankar Reddy Vs Andhra Bank Rep. by its Manager  
Darga Mitta, Nellore and others (2006 (4) ALT 427)

### **Execution of different kinds of decrees**

- |                                       |                        |
|---------------------------------------|------------------------|
| <b>1) <u>Simple money suit</u> :-</b> | By arrest              |
| <b>2) <u>Mortgage Decree</u></b>      | By attachment and sale |
| <b>3) <u>Maintenance Decree</u></b>   |                        |

Limitation 12 years – Art.136 of Limitation Act

The decree cannot be executed against the Government within 3  
months from the date of decree under Sec.82 (2) C.P.C.

## Mode of Execution

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Arrest

Attachment & Sale

### Arrest

#### Whether there are any limitations:

Women are exempted from arrest in execution of money decree (Sec.56 C.P.C)

Certain class of persons are exempted from arrest (Sec.55 (2) CPC)

If the decree is for not more than Rs.2000/-, arrest cannot be ordered.

For **restrictions** on arrest read Sec. 135 and Sec.135-A C.P.C.

#### **Steps to be taken before ordering the detention of the J.Dr. in Civil prison.**

(a) issue notice under Order 21 Rule 37 – Form No.12/Appendix E of CPC

(b) If J.Dr. fails to appear in response to Rule 37 notice; then Rule 37 (2) warrant must be issued for production of the J.Dr. – Form No.13/Appendix E of CPC

(c) If J.Dr appears in response to Rule 37 notice or if the J.Dr is produced on Rule 37(2) Warrant of arrest, means enquiry must be conducted under Order 21 Rule 40 CPC.

The Court has to inform the JDR that he is at liberty to file insolvency proceedings – Sec.55 (3) CPC

If the JDR expresses his intention to file I.P within one month he can be released on security. Sec.55 (4) CPC

If the J.Dr is prepared to give security when he is produced under Rule 37(2) Warrant, he must be released.

**If the JDR obtains protection order U/s 23 of Provincial Insolvency Act the JDR must be released.**

If J.Dr has refused to give security, he can be kept under Court guard custody [O.21 R.40(2)] F/14A/Appendix E CPC and the Court should conduct **means** enquiry expeditiously.

The Court has to inform that the J Dr is at liberty to file insolvency proceedings.

(d) to order arrest of the J.Dr who is a Government Servant, a seven days prior notice must be given to the Head of the Institution. Rule 241 civil rules of practice

(e) The subsistence allowance must be paid by the D.Hr. see Rule O.21 R.39(1) of C.P.C.

(f) while conducting the means enquiry, Sec.60 of C.P.C. must also be taken into consideration

(g) enquiry as to means is necessary : read

R.V.J.Sastry Vs.Bank of India ( 1978 (2) A.L.T.335)

Kasi Subbaiah Mudali \_vs\_ Kasi Veraswamy Mudali & Others( 2002(3) A.L.T. 240)

K. Manoharan -vs- A.V.Subbanna (AIR 2002 Mad. 340)

K.Harikrishna Vs.Dr.L.Raghunatha Rao 2004 (5) ALT 52)

***No detailed enquiry is necessary as in a Civil suit. Please Read -***

(K.Munirathnam Vs. D.Bhaskar Naidu)2006 (4) ALT 169

Challa Sivakumar Reddy Vs Kudumula Surender (2008

(1) ALT 335) (Standard of Proof)

(h) The grounds to detain the JDR in civil prison See Sec.51 proviso

(i) The period of detention in civil prison – Sec Sec.58 (1) CPC. If the decretal amount is between Rs.2000/- to Rs.5000/-, upto 6 weeks and if the decretal amount is more than Rs.5000/-, upto 3 months (maximum period of detention in a civil prison must not be more than 3 months)

(k) Even before sending the J.Dr to civil prison, J.Dr can be released on furnishing security and also can be kept in court guard custody for not more than 15 days, to enable J.Dr to pay the decretal amount.

O.21 R.40(3) proviso :

Warrant of Committal – Form No.14A/Appendix E of CPC  
{A.P.Amendment}

#### **When can be released**

Read Sec.58 and Sec.59 release Order F/15/E/CPC

#### **To whom subsistence allowance must be paid**

Order 21 Rule 39 (2)

Order 21 Rule 39 (3)

Order 21 Rule 39 (4)

Under Sec.57 amount is to be fixed by the Government. If the scales are not fixed by the court - Order 21 Rule 39 (2)

J.Dr cannot be rearrested on release, for execution of the same decree.  
See Sec.58(2) C.P.C

Expenses can be taken as costs of the suit (Or.21 Rule 39 (5))

J.Dr can not be rearrested for recovery of the said sum.

#### **S.417 of Cr.P.C. --- J.D.R. is in Judicial Custody in Criminal Case.**

##### **ATTACHMENT AND SALE OF IMMOVABLE PROPERTY:**

i) The Court which can sell the immovable property – Small Causes Courts cannot sell the property, original courts only can sell the property.

If the decree of the Small Causes Court is to be executed by sale of the property, the same has to be transferred to the original court under Or.21 Rule 4 C.P.C.

ii) The property which cannot be sold in execution – See Sec.60 (1)

(c)



iii) The D.Hr can issue a notice to the J.Dr. to furnish the details of the property. The J.Dr can be examined. The J.Dr can be directed to file an affidavit in respect of his properties. If J.Dr. fails to file such an affidavit, he can be sent to civil prison upto three months.

Affidavit form No.16A – Apeendix E of CPC.

Such a notice can also be issued if the J.Dr is a corporation.

Read Order 21 Rule 41.

iv) Attachment - Fresh Attachment is not necessary if (a) the property is attached before the judgement (b) in the mortgage decree (c) the properties are charged properties.

**How an attachment can be made:**

Order 21 Rule 54 – A.P.Amendment, -FormNo.24/App.E/CPC

Order 21 Rule 55 – raising of attachment

As per Sec.64, sale is void during the subsistence of the attachment

Order 21 Rule 57- Order as to the raise of the attachment

**Sec.63 : Attachment by several Courts:**

Parachuri Veerayya -Vs- Yalavarti Veeraraghavayya (AIR 1961 AP 298)

**Claim petition:**

Order 21 Rule 58

See Rule 246, 247 of Civil Rules of Practice

Form No.66 of Civil Rules of Practice

As per Order 21 Rule 58 (2) C.P.C. the claim must be between the parties and their representatives and separate suit is not maintainable.

If the claim is rejected under the proviso of Order 21 Rule 58 (1), a separate suit is maintainable.

Claim petition is not maintainable if the decree sought to be executed is a mortgage decree since there is no attachment

T.Nabi Sab Vs G.Venkateswrlu and another  
2008 (4) ALD 770

**The claim petition must be filed before the sale.**

Pl.refer for meaning of "**Sold**"

M/s Magunta Mining co -vs- M. Kondaramireddy and antoher  
(AIR 1983 A.P. 335)

Kancherla Lakshminarayana -vs- Mattaparthi Shaymala &  
others (AIR 2008 S.C. 2069)

The attachment made before the judgment can be questioned in  
E.P Please refer

Alladi Eeswarappa Vs M.Krishna Reddy and another (1963 (2)  
An.W.R 348)

**Stay of Sale is under Order 21 Rule 59 under circumstances**

Along with the attachment, notice must be sent to J.Dr for his  
appearance as per Order 21 Rule 54 (1-A)

**Filing of the Petition – Rule 258 and Form No.67 of C.R.P.**

There must be **test** by Amin/bailiff if the properties are

- 1) Charged properties
- 2) Mortgaged properties &
- 3) Attached before judgment

**Order 21 Rule 66 – Rule 259 of C.R.P.**

Form No.30 of Appendix –E of C.P.C.

Mode of proclamation – Order 21 Rule 67, Rule 274 and Form No.70 of  
C.R.P.

Rule 272, Form No.68 of Civil Rules of Practice.

If the properties are mortgaged with L.M.Bank – See Rule 276

**Documents to be filed:**

- 1) Sale Affidavit
- 2) E.C. for 12 years
- 3) Arrears of Taxes
- 4) Sale papers

**Leave to bid by D.Hr.**

Order 21 Rule 72 (1) (3) C.P.C.

Order 21 Rule 72 A (1) (2) (in case of mortgage decree holder)

Rule 277 of Civil Rules of Practice

Upset price can be reduced – Dr.A.V. Natarajan & Others -vs- Indian Bank Madras (AIR 1981 Mad.151)

Even in Mortgage decree, upset price can be reduced (under certain circumstances) See Federal Bank Ltd -Vs- K. Sreedharan & Others (AIR 2003 Kerala 199)

Dr. Prabhakar Naidu -Vs- T. Raghava Reddy (2009 (1) ALD 76)

Mortgage Decree - Reduction of upset price.

Court cannot reduce the upset price – P. Rama Reddy -Vs- P. Sundara Rama Reddy & Others (AIR 1986 AP 29)

**Private Sale of Property by J.Dr to raise the amount**

Order 21 Rule 83 and its proviso

In case of mortgaged and charged property, the provision is not applicable.

Appendix -E, Form No.35 C.P.C.

**Adjournment of Sale**

Order 21 Rule 69

**Time of Sale**

Proclamation must be 15 days prior to the date of sale in case of immovable property and 7 days in case of movable property.

With the **written consent** of the J.Dr, the sale can be on earlier date under order 21 Rule 68.

Somisetti Ganga Raju -Vs- Dr. Ramalingam (AIR 2007 AP 198)

Proclamation not containing valuation of either party but only decree amount , such proclamation is not valid.

**Normal steps for sale are:**

Proclaim and sale call on	01-05-2009	Proclamation of sale
Further hearing date	08-05-2009	Form 29/App.E/CPC
Publish in <u>Janatha</u> Daily		

Sale Warrant preparation batta must be paid one week prior to the date of sale.

On the date of the sale, the sale must be knocked down in favour of highest bidder. If D.Hr is the auction purchaser, he is entitled for set off.

Immediately after the sale, 25% of the sale amount must be deposited under Order 21 Rule 84.

As per the Process Fee Rule III(5) a fee by way of poundage shall be levied on purchase money for each lot separately at the following rates

- (i) On the first Rs.500, Rs 0.10 paise in the rupee
- (ii) On the next Rs.500 Rs 0.05 paise in the rupee or part thereof
- (iii) On any sum exceeding Rs.1000 Rs 0.03 paise in the rupee

As per Rule 278 of Civil Rules of Practice the court officer who conducted the auction has to purchase court fee stamp for the value of the poundage.

Even if the D.Hr is the auction purchaser he has to pay the poundage. (These amounts can be taken as cost of E.P.)

**Payment made by cheque or bankers cheque is valid Akula Srinivasa Rao & Others petitioners Vs G.Venkateswara Sarma Respondent**

**– AIR 2003 AP 407**

The balance to be deposited within 15 days under Order 21 Rule 85 C.P.C. As per A.P. Amendment, the amount for purchase of the stamps must also be deposited.

Whether **the Court has power to extend the time for deposit of the balance amount and the amount for purchase of the stamps - No**

Please refer (Mudragada Satyanaraya Murthy Vs. Southern Agencies (AIR 1962 A.P. 271)

W. Veerabhadra Rao -vs- Nedungadi Bank Ltd Vijayawada and others (1998 (6) ALT 216)

(Kudiyala Ramana Vs. Vattikolla Somaraju) (AIR 2003 A.P. 215)

#### **If the mistake lies with the Court-**

**Please refer:**

*Ambati Raghavulu -vs- Mova Venkamma and others*  
(AIR 1962 AP 334)

Rosali V. Vs Taico Bank and others (AIR 2007 SC 998)

#### **Steps to be taken after the sale**

There must be Nazir's report vide Rule 276 of C.R.P. Form No.71 of C.R.P.

E.P. must be called on further hearing date.

In default of payment of balance amount, the amount paid shall be forfeited under Order 21 Rule 86. E.P. must be posted for fresh sale.

If the amount is paid, the E.P must be posted after 60 days for confirmation of sale.

#### **Retenable Distribution (S.73 CPC)**

**Pl.Refer**

Thummlapenta Dhana Lakshmi, Petitioner Vs Pulipati Subbarayudu Resondent (AIR 1954 Madras 581

Jagadish Vaisnav -Vs- Farpos Heading Cateror  
(2002 (4) ALT 718)

Kanakam Srinivasa Rao -Vs- Ganga Venkateswar Rao  
(2002 (6) ALT 201)

E.Subba Reddy -Vs- G. Dhanunjaya and Others

(2006 (6) ALD 244)

**Claim Petitions**

i) Under Order 21 Rule 89 C.P.C. payment can be made by J.Dr or other persons. He has to pay auction amount and another 5% of the amount.

Rule 278 and Form No.72 of Civil Rules of Practice.

As per Art.127 of the Limitation Act, a petition can be filed within 60 days and the deposit must be within 60 days from the date of the sale. O.21 R.92(2) CPC.

Please refer

P.K.Unani -vs- Nirmal Industries and others  
( AIR 1990 SC 933.)

ii) **Claim Petition under Order 21 Rule 90** on the ground of material irregularity – Form No.36 C.P.C. Appendix E CPC.

iii) **Claim petition can be filed under Order 21 Rule 91** by purchaser that J.Dr has no saleable interest – Form No.37 C.P.C. Appendix E CPC.

Sale shall not be set aside on the death of the J.Dr. before the sale, but after the service of proclamation of sale (O.21 R22-A).

**Confirmation of the Sale:**

The Bench Clerk has to put up a note that

- i) No application under Order. 21 Rule 89, under Order 21 Rule 90 or Order 21 Rule 91/ is filed and dismissed.
- ii) Balance sale consideration is paid
- iii) Money for purchase of stamps paid

Next step will be **sale is confirmed** :-Order 21 Rule 92

Issue sale certificate: Order 21 Rule 94

Appendix –E Form No.38 C.P.C.

Rule 282 of C.R.P.

U/s 17 (2) (XII) and U/s 89 of Registration Act,Registration of the Sale certificate is not compulsory registrable document. But, the document must be sent to Sub-Registrar for necessary entries.

**Delivery :**

O.21 R.95  
Order 21 Rule 96; tenant  
Appendix-E, Form No.39 C.P.C. - AP Amendment.

**Limitation**: one year (Art.134 of Limitation Act)  
(Patnam Khader Khan Vs. Patnam Sardar Khan) (1996 (5)  
SCC 48)

**Resistance**: **Order 21 Rule 97**, Form No. 40 Appendix E CPC  
Sec.74 CPC – 30 days imprisonment  
Order 21 Rule 98, Warrant; Form No.41/App.E/CPC  
Enquiry O.21, 99, 100 and 101.

**The properties that cannot be attached.**

Pl.Read Sec.60 CPC under which certain properties are exempted from attachment and sale.

**The properties that can be attached:**

**a) Immovable properties (O.21 R.54)**

**b) Movable properties:** Warrant of attachment – Form No.8/app.E/CPC  
Bond for safe custody of]  
Of movable properties ] - Form No.15 A/app.E/CPC  
attached ]

O.21 Rule 43

Rule 252 of CRP (procedure for attaching movables)

Rule 253 of CRP (attachment of cash and jewels) Sec.62 CPC

Rule 254 of CRP (custody of fire arms)

**c) Attachment of standing crops and agricultural produce Sec.61  
CPC**

Order 21 Rules 44 & 45

**d) Attachment of debt/share/other property not in possession of  
J.Dr.**

(Garnishee procedure) O.21 Rule 46, 46-A to 46-I

**e) Attachment of Decrees**

O.21 Rule 53 – Form 22/App.E/CPC – Notice u/Form 23/App.E/CPC

Rules 243, 244, 245 of C.R.P.

Form Nos.63, 64 & 65 of Civil Rules of Practice

**f) Attachment of salary:** Form 19/App.E/CPC

O.21 Rule 48 Government Servant

O.21 Rule 48-A Private Employee

Salary particulars must be called for – M.G.Brothers Finance Ltd  
–Vs- J.Badharinath & Others (2006(3) L.S.421)

O.21 R.48 (1) – Attachment of salary of Govt.Servant residing in another town – Attachment can be made in view of Sec.39 (4) CPC - Yes

**Please Refer:**

Selam Advocate Bar Association, Tamilnadu Vs Union of India (AIR 2005 SC 3353)

Janapathi Jaipal Reddy –Vs- Sunnihitha Chit Funds Pvt Ltd, rep.by its Foremen, Karimangar and others(2009 (5) ALT 17)

Amount payable under voluntary retirement scheme (VRS) is not exempt from attachment Repati Venkata Ramana –Vs- K.

Venakteswararao Patnayak {1993 (2) A.L.T. 393}

Pension amount deposited in the bank is liable for attachment

S.Nagappa –vs- KP Hanumappa {2004 (2) A.L.T. 364}

Pension and gratuity once reached the hands of employee concerned, the exemption ceases. Bandi Chinna Ramalinga Reddy @ Chinna

Ramalingaiah –Vs- Nellory Srinivasulu & others {2006 (3) A.L.T. 205}

**Please Refer:**

(Union of India Vs Jyothi Chit Funds and Finance and others (1976) 3 SCC 607)

Union of India Vs Wing Commandar R.R Hingorani (1987) 1 SCC 551



Radhe shyam Gupta Vs Punjab National Bank and another  
(2009 (1) ALD 79 (SC))

**Memo Dt.10-07-2009 issued by the Government**

**g). Negotiable instruments**

O.21 Rule 51 – Order in -Form No.20/App.E/CPC

**h). Decree for rent and future mesne profits**

O.21 Rule 42

**4) . Execution of Decree for possession of movable and immovable properties.**

O.21 Rule 31 – Possession of movables – Form 9/App.E/CPC

O.21 Rule 35 – Possession of Immovable properties - Form  
No.11/App.E/CPC

Delivery can be made even if there are constructions made during the  
pendency of the suit

**Please Refer:**

B.Gangadhar Petitioner Vs B.G.Rajalingam Respondent (AIR  
1996 SC 780)

Kotakadi Lakshmi Devi Vs Badam Nageswara Reddy (1999  
(3) ALT 278)

O.21 Rule 36 – Delivery of immovable property when in occupancy of  
Tenant.

**5) . Decree in partition suit**

In the first instance, a Preliminary Decree shall be passed. Later on  
application of either party, a Final Decree will be passed allotting  
particular property to a particular party.

Pl.Refer : Dr.Chiranjilal (D) by LRs Appellants -Vs- Hari Das  
(d) By LRs Respondents. (AIR 2005 SC 2564)

On the filing of E.P. the particular property that was allotted, will be  
delivered through the process of Court by issuing Delivery warrant.

## **6) Execution of Decree in simple injunction suit:**

- O.21 Rule 32
1. by attachment
  2. detention in Civil prison or
  3. by both

No limitation is prescribed U/Art. 136 of Limitation Act.

Issue attachment – the attachment can be from 3 months to one year –  
D.hr. has to apply for sale- Sale process must be paid towards  
compensation.

J.Dr. can be sent to civil prison.

Whether the Civil Court can grant Police Aid for execution of decree in a  
Suit of Permanent Injunction – No

### **Please Refer:**

Galikota Reddy Vs Gali Rajagopla Reddy (2000 (6) ALD 449)

Palavarapu Nagamani and others Vs Paruchuri Koteswara

Rao and other (2010 (2) ALD 41 (DB)

D.Tulijadevi and other Vs Margam Sankar and another (2010  
(2) ALD 732

Maximum period of civil imprisonment must not be more than 3 months  
(though no period is fixed under Order 21 Rule 32)

Refer

Dodda Narayana Vs. Velti Reddemme (AIR 1990 A.P. 147)

If J.Dr. is a corporation, then the decree can be executed by attachment  
and sale of the properties of the corporation. Further with the leave of  
the Court, the Directors and other principal officers can be detained in the  
civil prison.

## **7) Execution of the Decree for Mandatory Injunction.**

## **8) Execution of Decree for specific performance of Agreement of sale and endorsement.**

In execution of decree for specific performance of agreement of sale, whether I.A. is to be filed in the same suit u/Sec.28(3) of Specific Relief Act, 1963 ?

Or

An Execution petition to be filed u/O.21 Rule 34 CPC  
Execution Application is to be filed.

Please refer

Cherukuri Venkat Rao Vs. Brahmajoshula Bala Gangadhara  
Sarma & others (1987 (2) ALT 229)

Raman Kutti Guptan Vs. Joseph {AIR 1997 Ker.301}

Balasa Sarada Vs. Talluri Anasuyamma (died) & others  
(2007 (2) ALD 802)

Pratibha Sinh & another Vs. Shanti Devi Prasad & another  
(AIR 2003 SC 643)

**In the plaint the possession was not pleaded, no relief was granted. Whether the possession can be granted by the executing court – Yes**

Suluguri Vijaya and others Vs Pamuleti Manjula  
(2007 (3) ALD 657)

#### **O.21 Rule 34**

Rule 219, 220 of C.R.P & Forms 54 & 55 of C.R.P.

Whether the documents executed by the court is compulsorily attestable –

No – Sait General –Vs- Pachigolla China Ramaswamy (AIR  
1960 A.P. 465)

The sale deed executed by the Court must be presented before the Registrar for registration. Registration fee will be collected on the value of the property on the date of the presentation of the document.

Rule 221 (endorsement on negotiable instruments)

#### **Decree for cancellation of the document:**

Rule 149 of Civil Rules of Practice

#### **9) Execution of decree for restitution of conjugal rights:**

O.21 Rules 32 & 33 (The J.Dr. cannot be detained in civil prison)

#### **10) Execution of Decree under Rent Control Act:**

Sec.15 of A.P.Rent Control Act

Rule 23            Limitation 6 months  
                      Delay petition 23 proviso  
                      No notice is necessary to J.Dr.  
                      If against L.R. – notice is mandatory  
                      Enquiry on resistance Rule 23(7)  
                      Break open - Rule 23(6)

Execution of the orders under Sec.14(6), 21, 22 of Rent Control Act  
- By attachment & sale or by arrest.

**XV. Whether Sec.5 of the Limitation Act is applicable to the proceedings under Order 21 CPC?**

As per Sec.5 of the Limitation Act, the provision is not applicable to proceedings u/O.21 CPC.

- But there is an amendment in the year 1992 adding sub Rule 4 to Rule 106 of O.21 C.P.C. In view of the same, Sec.5 of Limitation Act is applicable to orders under O.21 Rule 105 C.P.C. and for the petitions filed u/O.21 Rule 58 C.P.C. also.

Please refer –

Sale Rangaswamy Vs. Spl.Collector-cum-Land Acquisition Officer SSP, Kurnool {2004 (3) ALD83}

State Bank of India Vs. Muffar Ali Khan & others  
{2004 (6) ALT 17}

Please also refer –

Damodaran Pillai Vs. South India Bank Limited (AIR 2005 SC 3460)

Thatipalli Vajramma Vs. Revuri Devayya & others  
{2008(1) ALT 442}

Habiba Babu -Vs- B. Choudesh (2009 (1) APLJ 369)

**The Law is finally settled by full bench of our Hon'ble High Court in**

Ch.Krishnaiah Vs Ch. Prasada Rao (2009 (6) ALT 82 FB)

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**EXECUTION PROCEEDINGS – LIMITATION PRESCRIBED UNDER THE LIMITATION ACT 1963**

<b>Art No.</b>	<b>Description of application</b>	<b>Period of limitation</b>	<b>Time from which period begins to run</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
124	For a review of judgment by a Court other than the Supreme Court.	Thirty days	The date of the decree or order.
125	To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126	For the payment of the amount of a decree by installments.	Thirty days	The date of the decree.
127	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Sixty days	The date of the sale.
128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession.
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
134	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
135	Mandatory Injunction	Three years	The date of the decree or where a date is fixed for performance, such date.
136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	(When) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place. Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues



# **EXECUTION**

**Sri Shaik Reyaz**  
Junior Civil Judge  
Pondur  
Srikakulam District

- I. Introduction
- II. Jurisdiction of the Courts
- III. Attachments
- IV. Claim Petitions
- V. Limitations for several applications during execution
- VI. Conclusion

## **I. INTRODUCTION**

Execution is the last stage of any civil litigation. There are three stages in litigation:

1. Institution of litigation.
2. Adjudication of litigation.
3. Implementation of litigation.

Implementation of litigation is also known as execution. A decree will come into existence where the civil litigation has been instituted with the presentment of plaint. Decree means operation or conclusiveness of judgement. Implementation of a decree will be done only when parties has filed application in that regard. A decree or order will be executed by court as facilitative and not as obligation. If a party is not approaching court, then the court has no obligation to implement it *suo-motto*. A decree will be executed by the court which has passed the judgement. In exceptional circumstances, the judgement will be implemented by other court which is having competency in that regard.

Execution is the medium by which a decree-holder compels the judgement-debtor to carry out the mandate of the decree or order as the case may be. It enables the decree-holder to recover the fruits of the judgement. The execution is complete when the judgement-creditor or decree-holder gets money or other thing awarded to him by judgement, decree or order.

**MEANING:** The term “execution” has not been defined in the code. The expression “execution” means enforcement or implementation or giving an



effect to the order or judgement passed by the court of justice. Simply “execution” means the process for enforcing or giving effect to the judgement of the court.

Supreme Court in *Ghanshyam Das v. Anant Kumar Sinha* [(1991) 4 SCC 379 = AIR 1991 SC 2251], dealing with provision of the code relating to execution of decree and orders, stated as follows:-

*“so far as the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all aspects. The numerous rules of Order 21 of the code take care of different situations providing effective remedies not only to judgement-debtors and decree-holders but also to claimant objectors, as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measures and appropriate time, the answer is a regular suit in the civil court.”*

## **PRINCIPLES WITH REGARD TO EXECUTION OF DECREE AND ORDER**

- Provision of CPC relating to execution of decree and order shall be made applicable to both Appeal and Suit.
- A decree may be executed by the court which passed the judgement and decree or by some other court which is having competency to implement the judgement passed by such other court.
- The court which passed the decree may send it for execution to other court either on application of the applicant (decree-holder) or by the court itself.
- A court may order for execution of decree on the application of decree holder (a) by delivery of any property which was in possession of judgement-debtor and decree has been specifically passed concerning such property (b) by attachment and sell of the property of the judgement-debtor (c) by arrest and detention (civil imprisonment) (d) by appointing a

receiver (e) in such other manner which depends upon nature of relief granted by the court.

- Upon the application of decree-holder, the court may issue “percept” to any other court which is competent in that regard.
- All questions arising between the parties to the suit in the decree shall be determined by the court while executing the decree and not by separate suit.
- Where a decree is passed against a party as the “legal representative” of a deceased person and decree is for payment of money out of the property of deceased person, it may be executed by attachment and sell of any such property.
- A judgement-debtor may be arrested at any time and on any date shall required to be brought before the court which has passed the decree and his detention may be in civil prison of the district where decree shall have to be executed.
- Where immovable property has been sold by the court in execution of a decree such sell shall be absolute. The property shall be deemed to be invested in the favour of purchaser, and the purchaser shall be deemed as a party to litigation.
- The court to which decree is sent for execution shall require certifying to the court which has passed decree stating the manner in which decree has been implementing concerning the fact of such execution.

## **PROCEDURE IN EXECUTION:**

Section 51 to 54 talks about procedure in execution or mode for execution:

- Section 51: this section gives the power to court to enforce the decree in general. This section defines the jurisdiction and power of the court to enforce execution. Application for execution of decree under this section may be either oral (order 21 rule 10) or written (order 21, rule 11). Party has to choose the mode of implementation of decree. Court may execute decree as per the choice prayed by the decree-holder or as court may thinks fit.
- Mode of executing decree under section 51: (a) By delivery of any property specifically decreed. Property may be movable or immovable (b) By attachment and sale of the property or by sale

without attachment of the property. (c) by arrest and detention. (d) by appointing a receiver. (e) is the residuary clause and comes into play only when the decree cannot be executed in any of the modes prescribed under clause (a) to (d).

- Section 52 deals with a case where the decree is passed against the legal representative of the judgement-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 accounts for the properties received by him from deceased person.
- Exception to section 52:
  1. 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.
  2. Where he has misutilized the property of deceased and where the legal representative has alienated the property of the deceased person.
- Section 53: Liability of ancestral property.

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 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. Event 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.

Illustration: a promissory note has been executed by the father for the purpose of borrowing money. After the death of father the creditor instituted proceeding against son.

Where suit is filed basing on promissory note first it will be seen that whether suit is maintainable or not- if it is filed within three year then the suit will be maintainable. General rule is that son will be held liable if they have received ancestral property.

Where the son is not having knowledge about execution of promissory note, in such case will not be held liable even though has received the ancestral property.

- Section 54: Partition of estate or separation of share.

Section 54 comes into play when a decree has been passed for partition, or for the separate possession of a share of an undivided state paying revenue to the government, that is the partition of the state or share will be made by the collector. However if the collector refuses to make the partition of the revenue paying property, the civil court can do so. To attract the provision of this section it is not necessary that the plaintiff should ask for the division of government revenue.

Section 54 deals with a case where though the civil court has the power to pass a decree yet it is not competent to execute the same. Under this section the execution of decree shall be made by collector.

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## **II. JURISDICTION**

Section 38 of the Code specifies that, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 37 defines the expression 'Court which passed a decree' while sections 39 to 45 provide for the transfer for execution of a decree by the Court which passed the decree to another Court, lay down conditions for such transfer and also deal with powers of executing Court.

U/s.37 the expression Court which passed the decree is explained. Primarily the Court which passed the decree or order is the executing Court. If order or decree is appealed against and the appellate Court passes a decree or order, even then the original Court which passed the decree or order continues to be treated as Court which passed decree. The Court which has passed the decree or order ceased to exist or ceased to have jurisdiction to execute the decree already passed, then the Court which will be having a jurisdiction upon that subject matter, when application of execution is made will be the competent Court to execute the decree.

Merely because the jurisdiction of the Court which has passed the decree is transferred to another Court due to transfer of territorial area, the jurisdiction to execute the decree passed by such a Court is not ceased. However, the Court to whom the transfer of territorial area is made, will also have a jurisdiction to conduct the execution of decree or order. (Sec.37). Sec. 38 contemplates that a decree may be executed either by the Court which passed it, or by the Court which it is sent for execution. However the execution on judgment debtor is criteria of executing Court of territorial jurisdiction.

As a general rule territorial jurisdiction is a condition precedent for a court to execute decree. Neither the court which passed the decree nor the court to which it is sent for execution can execute it in respect of property lying outside territorial jurisdiction. However if the bond is executed before a court it remains in operation till formally discharged by registrar of concerned court. Another important point is that a decree passed by court without jurisdiction is nullity and its invalidity can be set up whenever and wherever it is sought to be enforced even at the stage of execution. A defect of jurisdiction whether pecuniary or territorial strikes at the very authority of the court to pass a decree and such a defect cannot be cured even by consent of parties. Generally an executing court is not required to go behind the decree and it has to execute the decree as it is. It can however examine the issue whether the decree was passed by a court without jurisdiction and may not execute the decree if it finds so. The objection as to dispute on jurisdiction has to be taken at earlier stage and when the judgement debtor did not raise objection on receiving execution application, the execution can be proceeded with. From the point of view of delays the opportunity to challenge at the stage of execution sometimes opens another round of litigation. Objections as to such jurisdictions are raised in mechanical manner, which deprives the decree holder of the fruits of the decree. In respect of territorial jurisdiction, if it is lacking the decree cannot be executed. The court which passed a decree may on the application of the decree holder send it for execution to another court of competent jurisdiction under the provisions relating to transfer of decree.

## **TRANSFER OF DECREE**

Situations warrant that the decree may have to be transferred to some other court for the purpose of execution. The court which passes a decree may on application of a decree holder send it for execution to another court under following circumstances: -

1. If the person against whom the decree is passed actually and voluntarily resides or carries on business or personally works for gain within the jurisdiction of such other court.
2. If the person does not have property within the local limits of the jurisdiction of the court, which passed the decree sufficient to satisfy such decree and has property within local limits of jurisdiction of such other court.
3. If the decree directs the sale or delivery of immovable property situated outside the local limits of the jurisdiction of the court.
4. If the court which passed the decree considers for any other reason to be recorded in writing the decree should be executed by such other court.

The word Court means court of competent jurisdiction. The court to which decree is transferred for execution shall have same powers as the original court and persons disobeying or obstructing the execution of decree are punishable in the same manner. The transferee court however cannot travel beyond the decree. If the matter is transferred from one court to other for administrative reasons say from second court to fourth court both courts are competent.

When a decree is transferred by the Court which passed it to another Court for execution, the documents mentioned in Order XXI, Rule 6, must be sent to the latter Court. The work in connection with the

preparation of these documents should be done by Court officials holding permanent appointments, on payment, in the first instance, by the person applying for the transfer of the decree of a fee of Rs.1/-. The amount so recovered shall be credited to Government under the head "XXI-A—Law and Justice—Courts of Law—General Fees, Fines, and Forfeitures—Fees levied by Courts". A decree-holder, however, may at his option file with application a copy of his decree duly stamped in accordance with Article 7 of Schedule I, to the Court-fees Act, VII of 1870, and when he does so, he shall be exempted from the fee of Rs.1/-, prescribed in this paragraph, the remaining documents being prepared by the officials of the Court without further payment by the decree-holder.

Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed the decree, the Court passing the decree, shall send the same directly to the former Court. But, where the former Court is situate in a different district the Court, which passed the decree, shall send it to the District Court of the district in which the decree is to be executed. (Order XXI, Rule 5 of the Code).

Under Order XXI, Rule 8 of the Code of Civil Procedure, 1908, a decree sent under the provisions of Section 39 for execution to another district may be executed either by the District Court to which it is sent, or by any Subordinate Court of competent jurisdiction to which the District Court may refer it, and, under Section 42, the Court executing the decree has the same powers of execution as if the decree had been passed by itself. The execution files of such cases should remain with the record of the Court by which the decree is executed, and should not be returned to the Court by which the decree was passed.



A certificate showing the extent to which the decree has been executed is required, by Section 41 of the Code of Civil Procedure, 1908 to be sent to the Court which passed the decree, as to execution so certified, and the particulars should be entered in that Court's register of Civil suits under the head „Return of Execution“ in order to prevent a “double execution” being taken out in any other district.

To ensure compliance with order XXI, Rule 6 of the Code the High Court has prescribed a register in Form XXXVIII of part A-IV of High Court Rules and Order, Volume VI-A, Decrees transferred to other courts and those received by transfer are shown on the two sides of the same page in the register.

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### **III. ATTACHMENTS**

#### **Attachment of property:**

A decree may also be executed on the application of the decreeholder by attachment and sale, or only sale without attachment of property. Sale of property without attachment is not void and attachment is not a condition precedent for sale. The code recognizes the right of the decree-holder to attach the property of the judgment debtor in execution proceeding and lays down the procedure to effect attachment. Sections 60 to 64 and rules 41 to 57 of Order 21 deals with the subject of attachment of property. The code enumerates properties which are liable to be attached and sold in execution of a decree. It also specifies properties which are not liable to be attached or sold. It also prescribes the procedure where the same property is attached in execution of decrees by more than one court. The code also declares that a private alienation of property after attachment is void.

A decree may have to be executed by attachment and sale of JDr's property. Attachment of property in decree for injunction or specific performance is aimed at coercing the J.Dr. to comply with the decree, or to expose him to a penalty in case of disobedience. Attachment in a money decree is primarily for sale of property for eventual satisfaction of the decree out of sale proceeds. Before ordering attachment, the Court must satisfy itself that the J.Dr has attachable interest in the property, and that the property is not exempt from attachment. While ordering attachment of salary regard may be had to the portion of salary not liable to attachment. Certain allowances are exempt from attachment. In execution of a decree for maintenance one third of the salary of J.Dr. is

exempted from attachment. In other money decrees salary to the extent of first four hundred rupees and two third of the remainder are not liable to attachment. Thus, if the J.Dr. gets a salary of Rs. 1000/- the first Rs. 400/- plus two third of the remainder or two thirds of Rs. 600/- i.e. Rs. 400/- in all Rs. 800/- would be un-attachable, leaving only Rs. 200/- available for attachment. Pay and allowance of military men and wages of labourers and domestic servants are exempt from attachment. The Court must then determine the mode of attachment. Attachment can be made by seizure or by an order prohibiting the J.Dr. or other person from dealing with the property or by charging the debtor's interest in the property. When movable property other than agricultural produce is to be attached., it should be actually seized and kept in custody of the attaching officer, except when the property is subject to speedy and natural decay, in which case it may be sold at once. Property which cannot be conveniently removed may be left at the place of attachment in the custody of a respectable person.

### **Execution by attachment against the Agriculturist:**

Before ordering attachment in livestock, the D.H.R. should be asked to deposit sufficient sum for removal of property to Court premises or other place as the Court may direct and also for its maintenance and guarding. Property attached may be placed in custody of D.H.R. for removal and conveyance to the place appointed by the Court. Growing crop shall not be attached at any time less than 20 days before it is likely to be fit to be cut or gathered. When crop is attached warrant of attachment should be affixed on the land where the crop is growing, or if the crop has been cut or gathered, on the threshing floor, on the house in which the J.Dr. resides, and shall also be sent to the Collector. Order for

attachment of crop should specify the time at which the crop is likely to be fit to be cut or gathered. The J.Dr. may be allowed to cut and gather the crop and if he fails the D.Hr. may be allowed to do the needful. All objections to attachment, including questions of right, title and interest in the property attached, have to be decided by executing Court and not by a separate suit. When decree is satisfied the attachment is removed. When the execution application is for any reason dismissed the court has to indicate the period upto which the attachment shall continue. If the Court fails to pass such orders, attachment shall cease at the expiry of period of appeal.

### **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. 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 salable 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 exparte 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 merely 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 become an attachment in execution after the decree has been passed and after an application to

executed 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:

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

The modes in which various properties may be attached are as given below:-

<b>TYPE OF PROPERTY</b>	<b>MODE OF ATTACHMENT</b>
1. Movable property in possession of judgement debtor	by actual Seizure and sale if the property is subject to speedy and natural decay.
2. Movable property not in possession of judgement debtor	by order prohibiting person in possession from giving it to

	judgement debtor.
3. Negotiable instrument	by actual seizure and bringing it to court.
4. Debt not secured by a negotiable Instrument	By an order-prohibiting creditor from recovery of the debt and debtor from paying the debt with a directive to deposit the amount in court.
5. Share in a company	by an order prohibiting the holder from transferring it or receiving dividend.
6. Share or interest in movable property	by notice to the judgement debtor prohibiting him from transferring or charging it.
7. Salary or allowance of employee	by an order that amount shall be withheld from such salary or allowances.
8. Partnership property	by making an order of <ol style="list-style-type: none"> <li>1. Attaching the interest share of the partner and partnership.</li> <li>2. Appointing a receiver of the share.</li> <li>3. Directing production of accounts.</li> <li>4. Ordering sale of such interest.</li> </ol>
9. Property in custody of other court or officer	by notice requesting that such property may be held subject to order of the court
10. Decree for payment of money or Sale in enforcement of a mortgage or a charge.	By an order of such court.
11. Agricultural produce	By affixing copy of warrant on the land and on the house where judgement debtor resides.
12. Immovable property	By an order prohibiting judgement debtor from charging or transferring it.

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 judgement debtor from transferring his property and expedite the compliance of decree including payment of money.

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#### **IV. CLAIM PETITIONS**

As per Order 21, R.58, Where claim petition is filed, the sale may be postponed. The claimant or objector should satisfy the Court that at the date of the attachment, he had some interest in, or was possessed of, the property which has been attached. If the Court considers that the claim application was designedly or unnecessarily delayed, no such investigation shall be made. The order made under this rule shall have the same force as if it was a decree. If the property attached has already been sold, no such claim or objection shall be entertained. Under this rule, all questions (including questions relating to right, title or interest in the property attached) arising between the parties or their representatives, relevant to the adjudication of the claim or objection, shall be determined the Court with the claim or objection and not by separate suit. Useful rulings as to this provision. If the claim is rejected under the proviso of Order 21 Rule 58 (1), a separate suit is maintainable. Claim petition is not maintainable if the decree sought to be executed is a mortgage decree since there is no attachment.

Objection to attachment of property under Order XXI, Rule 58, are frequently responsible for great delay in the disposal of the execution cases. Such objections are at times collusive and should be scrutinised with care and disposed of promptly. Adjudication of such objections or claims should be confined to the points indicated in Rules 58 and 59 of Order XXI. Adjudication of any claim or objection is appealable like a decree. When the Court dismisses any claim or objection under Order 21 Rule 58(1), the party may file an application under Section 151 CPC for restoration and for re-investigation or he may also file a suit under Order 21 Rule 58(5) within one year from the

date of dismissal for default. It should be noted if an objection appears to have been "designedly or unnecessarily delayed" (or where, before the claim is preferred or objection is made, the property attached has already been sold), the Court has power to refuse (adjudicate) the claim and dismiss the petition and leave the petitioner to institute a suit under sub-rule (5) of Rule 58, Order 28 CPC for the purpose.

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## **V. LIMITATION**

### **EXECUTION PROCEEDINGS – LIMITATION PRESCRIBED UNDER THE LIMITATION ACT 1963**

Art No.	Description of application	Period of limitation	Time from which period begins to run
1	2	3	4
124	For a review of judgment by a Court other than the Supreme Court.	Thirty days	The date of the decree or order.
125	To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126	For the payment of the amount of a decree by installments.	Thirty days	The date of the decree.
127	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Sixty days	The date of the sale.
128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession.
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
134	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
135	Mandatory Injunction	Three years	The date of the decree or where a date is fixed for performance, such date.

136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	(When) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place. Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues

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## **VI. 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 judgement-creditor or decree-holder gets money or other thing awarded to him by the judgement, 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 judgement-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 judgement-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.

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Smt.B.Jyotsna. L.L.M,  
Junior Civil Judge  
Amadalavalasa.

## **EXECUTION- CLAIM PETITION**

### **INTRODUCTION:**

Execution has not been defined in the code the expression execution means enforcement or implementation or giving an effect to the order or judgment passed by the court of justice. The expression execution simply means the process for enforcing or giving effect to the judgment of the court.

The principles governing execution of decree and orders are dealt in Sections 36 to 74 and Order 21 of Civil Procedure Code.

Hon'ble Apex Court in Ghanshyam Das v.AnantKumar Sinha (AIR 1991 SC 2251) dealing with provision of the code relating to execution of decree and orders, observed in following words -

*“ so far as the question of execution of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all aspects. The numerous rules of Order 21 of the code take care of different situations providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors, as the case may be.”*

Order XXI of the CPC is the lengthiest order provides detailed provisions for making an application for execution and the manner that, how they are to be entertained and decided

### **PRINCIPLES WITH REGARD TO EXECUTION OF DECREE:**

Principles with regard to execution of decree and order can briefly be summarized as under -

- Provision of CPC relating to execution of decree and order are made applicable to both Appeal and Suit.

- A decree may be executed by the court which passed the judgment and decree or by some other court which is having competency to implement the judgment passed by such other court.
- The court which passed the decree may send it for execution to other court either on application of the applicant (decree-holder) or by the court itself.
- A court may order for execution of decree on the application of decree holder (a) by delivery of any property which was in possession of judgment-debtor and decree has been specifically passed concerning such property (b) by attachment and sell of the property of the judgment-debtor (c) by arrest and detention (d) by appointing a receiver (e) in such other manner which depends upon nature of relief granted by the court.
- Upon the application of decree-holder, the court may issue “percept” to any other court which is competent in that regard.
- All questions arising between the parties to the suit in the decree shall be determined by the court while executing the decree and not by separate suit.
- Where a decree is passed against a party as the “legal representative” of a deceased person and decree is for payment of money out of the property of deceased person, it may be executed by attachment and sell of any such property.
- Where immovable property has been sold by the court in execution of a decree such sale shall be absolute. The property shall be deemed to be invested in the favour of purchaser, and the purchaser shall be deemed as a party to litigation.
- The court to which decree is sent for execution shall require certifying to the court which has passed decree stating the manner in which decree has been implementing concerning the fact of such execution.

Section 38 of the Code specifies that, a decree may be executed either by the Court who passed it or by the Court to which it is sent for execution. Section 37 defines the expression ‘Court which passed a decree’ while sections 39 to 45 provide for the transfer for execution of a decree by the Court which passed the decree to another Court, lay down conditions for such transfer and also deal with powers of executing Court.

Section 38 lays down the general rule that, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. The executing Court has no power to entertain any objection as to the validity of the decree or as to the legality or correctness of the decree. The reason under line the above rule is that, although a decree may not be according to law, it is binding and conclusive as between the parties to the Suit, unless it is set aside in appeal or revision. It is for the same reason that, the Court executing a decree cannot alter, vary or add to the terms of the decree even with the consent of the parties.

In *Ramswami Vs T.N.V.Kailash Theyar* reported in AIR 1951 S.C,189(192), it was observed that, "the duty of an executing Court is to give effect to the terms of the decree. It has no power to go beyond its terms. Though, it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation ".

In *Topanmal Vs M/s Kundomal Gangaram* reported in AIR 1960, SC 388, it was held by the Supreme Court that, an executing Court must take the decree as it stands. An executing Court cannot go behind the decree. It can neither add something in the decree already passed, nor alter the decree.

Whereas an objection to attachment or claim to attach property if made by a third party, the objector may either proceed by an application under this rule before the executing Court or he may bring a suit to Establish his objection. His failure to proceed by an application under this Rule is no bar to a separate suit. The object of this rule is to give a speedy and summary remedy, but this rule does not deprive him of his remedy by Way of suit.

The claim petition is to be tried like a suit and the burden of proof lies on the claimant to lead evidence if the claim petitioner fail to lead evidence in support of his claim the court cannot be found fault with especially after the original and appellate court have also confirmed the dismissal.

In claim petition, the burden is on the claimant to prove that on the date of attachment, he has some right, title or interest or was in Possession of property attached. If the claimant is succeeded in proving that fact, then burden is shifted on decree-holder to prove that the objector was not the owner or holds any interest for judgment-debtor. In a suit filed by a third party to the litigation, burden of establishing right, title or interest in the property is upon the plaintiff.



The Honorable Apex Court in the case of BrahmdeoChoudhary V/s Rishikesh Prasad Jaiswal AIR 1997 SC 856 held that, it cannot be said that the only remedy available to the stranger to the decree for possession who has resisted its execution, to have his claim adjudicated is the one under R. 99 of O.21 after he has lost possession to the decree-holder and that he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceeding.

In the case of Silver line Forum Pvt Ltd. v. Rajiv Trust and another AIR 1998 SC 1754 held that, “ Resistance or obstruction made even by a third party to the execution of decree can be gone into under O.21 R.97. Rule 97 to 106 are substantial under the caption “ resistance to delivery of possession to decree-holder or purchaser.” Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by “ any person” in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub rule (2) makes it incumbent upon such complaint in accordance with procedure laid down. It is also held that all question arising between the parties to a proceeding on an application under R. 97 or R. 99 shall be determined by the executing court, if such question are relevant to the adjudication of the application.

## 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 realize the fruits of the decree. Order 21 contain elaborate and exhaustive provision for execution of decrees and order, by taking care of different type of situation, Courts have to provide effective remedies not only to the decree-holder and judgment-debtors but also to the objectors and third parties.

**Smt. K.Varalaxmi,  
Addl. Junior Civil Judge,  
Sompeta**

## **INTRODUCTION**

Execution is the last stage of any civil litigation. There are three stages in litigation- a. Institution of litigation, b. Adjudication of litigation, c. Implementation of litigation. Implementation of litigation is also known as execution. Decree means operation or conclusiveness of judgment. A

decree will be executed by the court which has passed the judgment. In exceptional circumstances, the judgment will be implemented by other court which is having competency in that regard. Execution enables the decree-holder to recover the fruits of the judgment.

## **EXECUTION- MEANING**

The term “execution” has not been defined in the code. The expression “execution” simply means the process for enforcing or giving effect to the judgment of the court. The principles governing execution of decree and orders are dealt with in Sections 36 to 74 and Order 21 of the Civil Procedure Code. Hon'ble Apex Court in Ghanshyam Das v. Anant Kumar Sinha (AIR 1991 SC 2251)

dealing with provision of the code relating to execution of decree and orders, observed in following words -

“so far as the question of executability of a decree is

concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all aspects. The numerous rules of Order 21 of the code take care of different situations providing effective remedies not

only to judgment- debtors and decree-holders but also to claimant objectors, as the case may be”

## **ATTACHMENT**

A decree may also be executed on the application of the decree-holder by attachment and sale, only sale without attachment of property. The code recognizes the right of the decree-holder to attach the property of the judgment debtor in execution proceeding and lays down the procedure to effect attachment. Sections 60 to 64 and rules 41 to 57 of Order 21 deals with the subject of attachment of property. The code enumerates properties which are liable to be attached and sold in execution of a decree. It also specifies properties which are not liable to be attached or sold. It also prescribes the procedure where the same property is attached in execution of decrees by more than one court. The code also declares that a private alienation of property after attachment is void.

A decree may have to be executed by attachment and sale of JD's property. Attachment of property in decree for injunction or specific performance is aimed at coercing the J.D. to comply with the decree, or to expose him to a penalty in case of disobedience.

Attachment in a money decree is primarily for sale of property for eventual satisfaction of the decree out of sale proceeds. Before ordering attachment, the Court must satisfy itself that the J.D. has attachable interest in the property, and that the property is not exempt from attachment. While ordering attachment of salary regard may be had to the portion of salary not liable to attachment. Certain allowances are exempt from attachment.

In execution of a decree for maintenance one third of the salary of J.D. is exempted from attachment. In other money decrees salary to the extent of

first four hundred rupees and two third of the remainder are not liable to attachment. Thus, if the J.D. gets a salary of Rs. 1000/- the first Rs. 400/- plus two third of the remainder or two thirds of Rs. 600/- i.e. Rs.400/- in all Rs. 800/- would be un-attachable, leaving only Rs. 200/- available for attachment. Pay and allowance of military men and wages of labourers and domestic servants are exempt from attachment.

### **The Court must then determine the mode of attachment.**

Attachment can be made by seizure or by an order prohibiting the J.D. or other person from dealing with the property or by charging the debtor's interest in the property. When movable property other than agricultural produce is to be attached., it should be actually seized and kept in custody of the attaching officer, except when the property is subject to speedy and natural decay, in which case it may be sold at once. Property which cannot be conveniently removed may be left at the place of attachment in the custody of a respectable person.

### **Execution against the Agriculturist**

Before ordering attachment in livestock, the the D.H. should be asked to deposit sufficient sum for removal of property to Court premises or other place as the Court may direct and also for its maintenance and guarding . Property attached may be placed in custody of D.H. for removal and conveyance to the place appointed by the Court.

Growing crop shall not be attached at any time less than 20

days before it is likely to be fit to be cut or gathered. When crop is attached warrant of attachment should be affixed on the land where the crop is growing, or if the crop has been cut or gathered, on the threshing floor, on the house in which the J.D. resides, and shall also be sent to the Collector.

Order for attachment of crop should specify the time at which the crop is likely to be fit to be cut or gathered. The J.D. may be allowed to cut and gather the crop and if he fails the D.H. may be allowed to do the needful.

All objections to attachment, including questions of right, title and interest in the property attached, have to be decided by executing Court and not by a separate suit.

### **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 salable property whether movable or immovable.

### **Objection of parties**

Whereas an objection to attachment or claim to attach property if made by a third party, the objector may either proceed by an application under this rule before the executing Court or he may bring a suit to establish his objection. His failure to proceed by an application under this rule is no bar to a separate suit. The object of this rule is to give a speedy and summary remedy, but this rule does not deprive him of his remedy by way of suit.

### **Custody and disposal of movable properties**

A decree may have to be executed by attachment and sale of J.D.'s property. The attachment of movable property, other than agricultural produce, in possession of judgment debtor is to be made as per provisions of O.21 R 43 of C.P.Code by actual seizure.

The attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof. However, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

When the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment debtor or of the decree holder or of any other

person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person as the “custodian

However, if the custodian fails, after due notice, to produce

such property at the place named by the court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the court, or if the property, though so produced or restored, is

not in the same condition as it was when it was entrusted to him,—

(a) the custodian shall be liable to pay compensation to the decree holder, judgment debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(b) such liability may be enforced—

(i) at the instance of the decree holder, as if the custodian were a surety under section 145;

(ii) at the instance of the judgment debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree. When the decree directs delivery of specific movable property, the court would have indicated the amount to be recovered as an alternative if delivery of specific movable property can not be effected. If delivery of

such property can not be effected by seizure or by detention of JD in civil prison or attachment of his other property, the court may award to the D.H. the amount indicated in the decree. If no such amount is indicated in the decree, the executing court would fix such compensation as it thinks fit and award to D.H.

### **Conclusion :**

From the above discussion it clearly appears that attachment is one of the mode for execution of a decree or order by the process of the court so as to enable the Decree holder to realize the fruits of the decree.