# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed



www.ijlra.com

ISSN: 2582-6433

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**ISSN: 2582-6433**

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ISSN: 2582-6433

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ISSN: 2582-6433

# LANDMARK AND RECENT JUDICIAL DEVELOPMENTS IN THE LAW OF EXECUTION UNDER THE CODE OF CIVIL PROCEDURE, 1908

AUTHORED BY - DR. G. VAISHNAV KUMAR
*Assistant Professor,*
*Pendekanti Law College, Affiliated to Osmania University, Hyderabad.*

## Abstract

*A civil court's authority is determined not by the nicety of its judgment but by the legal system's ability to convert that judgment into effective relief. Accordingly, viewing execution proceedings merely as the last stage of litigation is not entirely correct. Execution proceedings have a constitutional and institutional setting. Although the Code of Civil Procedure, 1908 provides an elaborate framework in Sections 36 to 74 and Order XXI, ambiguously worded decrees, incomplete disclosure of assets, mechanical notices, indiscriminate recording of evidence, repetitive objections, collusive transfers and weak supervision of the process-serving machinery have substantially distorted the working of that framework. As a result, Indian execution law has developed around three competing demands: fidelity to the decree, procedural fairness to persons actually affected by execution, and the expeditious realisation of the decree-holder's adjudicated right. This article examines the development of execution law with emphasis on landmark and recent cases. It outlines the classical rule that an executing court cannot travel behind the decree; the narrow exception for a decree that is a nullity; the proportionality mandate governing court sales; the constitutional safeguards applicable to civil imprisonment; and the post-1976 regime for third-party claims under Order XXI Rules 97 to 103. It then analyses the contemporary shift initiated by Satyawati v Rajinder Singh and crystallised in Rahul S. Shah v Jinendra Kumar Gandhi. The decisions in Periyammal v V. Rajamani and Ram Lal v Jarnail Singh demonstrate a growing trend in judicial approach. Previously, courts often took a passive approach to adjudication after issuance of a decree; recent cases, however, highlight more active judicial engagement with enforcement. Key among these recent cases are Saraswati Devi v Santosh Singh, Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale, Challani Ginning and Pressing Factory v Kamal and Jennifer Messias v Leonard G. Lobo. These cases reveal a judicial trend towards disclosure-based and*

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*time-bound enforcement. The article argues that execution must be regarded as an important part of effective civil justice, and not as an administrative afterthought.*

**Key Words:** Execution Petition, Decree-Holder, Judgment-Debtor, Order XXI CPC, Section 47 CPC, Attachment and Sale, Civil Imprisonment, Third-Party Obstruction, Execution Reform.

## I. Introduction

A decree is a promise that the law makes to the successful litigant. Whether the promise is kept depends on what follows the judgment. In the civil justice system, the litigant who has fought a suit through trial and appeal may find that the real contest begins only afterwards: the judgment-debtor conceals assets, an unrelated person appears claiming possession, an objection is raised that could have been raised years earlier, and each step is met by a notice, an adjournment and an appeal. The Supreme Court has repeatedly observed that the difficulties of litigants in this country begin in earnest once they have obtained a decree and cannot reap its fruits for years together.[1]

The Code of Civil Procedure, 1908 (the Code) contains a detailed scheme for the enforcement of decrees in Sections 36 to 74 and in Order XXI, which has more than a hundred rules. The scheme is comprehensive on paper. In practice, its operation depends upon the quality of the decree being executed, the diligence of the executing court, the honesty of the persons before it and the efficiency of the machinery that serves notices, attaches property and delivers possession.[2]

Indian execution law has developed around three demands that pull in different directions. The first is fidelity to the decree: the executing court must enforce what the decree says, and neither more nor less. The second is procedural fairness: persons who are genuinely affected by execution, such as a bona fide possessor who was not a party to the suit, must have a fair opportunity to be heard. The third is expedition: the decree-holder's right has already been adjudicated, and further delay is itself a denial of justice. The history of the subject can be read as a continuing effort to balance these demands.

This article traces that effort. Part II outlines the statutory architecture. Part III examines the classical principles, namely the rule against going behind the decree and its narrow

[1] See Periyammal (Dead) through LRs v V. Rajamani, 2025 INSC 329, [2025] 3 SCR 540 (SC, 6 March 2025), where the Court recalled the observation to this effect in Shreenath v Rajesh (1998) 4 SCC 543.
[2] The Code of Civil Procedure, 1908, ss 36–74 and Order XXI.

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exception, the proportionality mandate in court sales, the safeguards on civil imprisonment and the regime for third-party obstruction. Part IV considers the contemporary shift begun in Satyawati and consolidated in Rahul S. Shah, and its reinforcement in Periyammal and Ram Lal. Part V reviews recent decisions that illustrate the move towards disclosure-based and time-bound enforcement. Parts VI and VII offer a critical assessment and proposals for reform.

## II. The Statutory Architecture of Execution

### A. Sections 36 to 74 and Order XXI

The Code separates the substantive rules of execution, found in the body of the Code, from the procedure, found in Order XXI. Sections 36 to 74 deal with the courts by which decrees may be executed (including transfer to another court), the powers of the executing court, the modes of execution, the persons against whom a decree may be executed, the property liable to attachment and sale and the property exempted from it, and with the arrest and detention of the judgment-debtor. Order XXI then supplies the working rules: the application for execution, the issue of notice, the delivery of possession, the attachment of different kinds of property, the sale, the setting aside of sale and the adjudication of claims by third parties.[3]

### B. Section 47: Questions Arising in Execution

Section 47 is the keystone of the scheme. It provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, which relate to the execution, discharge or satisfaction of the decree, must be determined by the executing court and not by a separate suit.[4] The object is to prevent multiplicity of proceedings and to keep the dispute within the court that is best placed to decide it. The corresponding danger, which the case law has had to confront, is that the section becomes a convenient vehicle for objections that are in substance attempts to reopen the decree.

### C. Modes of Execution and Their Limits

A decree may be executed by delivery of the property specified in it, by attachment and sale of property, by arrest and detention in prison, by appointment of a receiver or in such other manner as the nature of the relief requires.[5] Each mode is subject to limits. Certain property,

[3] The Code of Civil Procedure, 1908, ss 36–74; Order XXI rr 10–106.
[4] The Code of Civil Procedure, 1908, s 47(1).
[5] The Code of Civil Procedure, 1908, s 51.

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such as the necessaries of life and the tools of a livelihood, is exempt from attachment.[6] Arrest and detention is subject to the proviso to Section 51 and to the limits on the period of detention in Section 58.[7] The executing court, in short, has wide powers, but the Code surrounds each of them with conditions, and the decisions discussed below turn largely upon those conditions.

## III. The Classical Principles

### A. The Executing Court Cannot Go Behind the Decree

The oldest and most frequently repeated rule of execution is that the executing court must take the decree as it finds it. In Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman, the Supreme Court held that an executing court cannot go behind the decree between the parties or their representatives, and that it must take the decree according to its tenor.[8] It has no power to enquire into the correctness of the decree, and it may not enlarge, vary or modify it. The rule rests on a division of function. The trial and appellate courts decide the rights of the parties; the executing court enforces them.

The rule has lost none of its force. In Maurice W. Innis v Lily Kazrooni, decided in April 2026, a compromise decree had divided a parcel of land into two shares and required the execution of a sale deed on payment of a stated sum. The executing court modified the allocation on grounds that included impracticability, unauthorised construction and a prior sale of part of the land. The Supreme Court set the orders aside, holding that the executing court had exceeded its jurisdiction, that it must execute the decree in its terms and tenor, and that the reasons given were immaterial to execution.[9] The decision is a reminder that the proper remedy for a decree that is difficult to implement is an application to the court that passed it, or an appeal, and not a variation made in execution.

### B. The Narrow Exception: A Decree That Is a Nullity

The only recognised exception is the decree that is a nullity, that is, one passed by a court that lacked inherent jurisdiction. In Sunder Dass v Ram Prakash, the Supreme Court explained that an executing court may refuse to execute a decree which is a nullity, because such a decree

[6] The Code of Civil Procedure, 1908, s 60.
[7] The Code of Civil Procedure, 1908, s 51 proviso; s 58 (period of detention); Order XXI rr 37–40.
[8] Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman (1970) 1 SCC 670.
[9] Maurice W. Innis v Lily Kazrooni @ Lily Arif Shaikh, 2026 SCC OnLine SC 554 (SC, 9 April 2026) (Pankaj Mithal and Prasanna B. Varale JJ), as reported in ‘Executing Court Bound to Execute Decree as Passed; Can’t Modify Its Terms: Supreme Court’ (SCC Online Blog, 12 April 2026). The Court treated the reliance of the executing court on Jai Narain Ram Lundia v Kedar Nath Khetan (1956) 1 SCC 75 as misplaced.

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has no legal existence, but that an error of law or fact, or an objection to jurisdiction that depends on facts which could have been raised in the suit, is not within the exception.[10] The distinction matters in practice. A judgment-debtor who has lost on the merits will frequently try to characterise a defect in the decree as one of jurisdiction; the courts have consistently required that the defect go to the inherent power of the court, and not to the correctness of its decision.

### C. Court Sales and the Proportionality Mandate

Execution by attachment and sale is the most intrusive mode in respect of property, and the Code regulates it with care. Order XXI Rule 64 empowers the court to order the sale of the attached property, or of such portion of it as seems necessary to satisfy the decree. In Ambati Narasayya v M. Subba Rao, the Supreme Court held that the executing court must apply its mind to whether the entire property, or only a part, should be sold, and that this is not a mere discretion but an obligation. Where a separable portion of the property can lawfully be sold and is sufficient, only that portion should be sold. In that case, a decree of about Rs 2,395 had been executed by the sale of ten acres for Rs 17,000, and the Court set aside the sale as a contravention of Rule 64.[11]

The principle is one of proportionality, although the case does not use that word. Execution is a means of satisfying the decree, and not an occasion for stripping the judgment-debtor of more than the decree requires. The principle also protects the decree-holder, because a sale that violates the Rule is open to challenge and can be set aside years after it was made. The Code further requires a proclamation of sale, a valuation and a fair opportunity for the judgment-debtor to bring the sale to an end by payment, and permits a sale to be set aside on proof of material irregularity resulting in substantial injury.[12]

### D. Civil Imprisonment and Constitutional Safeguards

Arrest and detention of a judgment-debtor is the mode of execution that most directly touches personal liberty. In Jolly George Varghese v Bank of Cochin, the Supreme Court (Krishna Iyer and Pathak JJ) held that the mere inability to pay a decretal debt does not justify imprisonment. The Court required an element of bad faith or wilful refusal, namely that the

[10] Sunder Dass v Ram Prakash (1977) 2 SCC 662. See also Rafique Bibi v Sayed Waliuddin (2004) 1 SCC 287.
[11] Ambati Narasayya v M. Subba Rao AIR 1990 SC 119, 1989 Supp (2) SCC 693 (Ahmadi and Shetty JJ); the Code of Civil Procedure, 1908, Order XXI r 64.
[12] The Code of Civil Procedure, 1908, Order XXI rr 66 (proclamation), 89 (application to set aside sale on deposit) and 90 (material irregularity or fraud).

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debtor has, or has had since the decree, the means to pay and refuses or neglects to do so, or has dishonestly disposed of property. It treated the deprivation of liberty for poverty as raising a question under Article 21 of the Constitution, and referred to Article 11 of the International Covenant on Civil and Political Rights as an aid to interpretation, while holding that the covenant does not itself become part of domestic law.[13]

The decision gives civil imprisonment its present character. It is a coercive process, to be used against the debtor who is able but unwilling to pay, and the court must make an inquiry into means before ordering it. The significance of this for the later developments is considerable. If the court is to distinguish the debtor who cannot pay from the one who will not, it must have reliable information about the debtor's assets, and the Code's provisions for examination of the judgment-debtor become central.[14]

**E. Third-Party Obstruction and the Post-1976 Regime**

Third-party claims are the largest single source of delay in the execution of decrees for possession. Before 1976, a person who obstructed execution and whose claim was rejected could, in many circumstances, institute a separate suit, so that the decree-holder was met with a second round of litigation. The Code of Civil Procedure (Amendment) Act, 1976 changed this. Order XXI Rules 97 to 103 now provide that where a decree-holder is resisted or obstructed in obtaining possession, he may apply to the executing court; that the court must adjudicate upon all questions arising on the application, including those of right, title or interest, and not leave them to a suit; and that the order made is to be treated as a decree, subject to appeal.[15]

The Supreme Court has repeatedly emphasised that the object of the amendment was to ensure the adjudication of such claims within the execution proceedings themselves. In Bhanwar Lal v Satyanarain, the Court held that an application filed under a wrong provision, such as Section 47, may be treated in substance as an application under Order XXI Rule 97, and in Brahmdeo Chaudhary v Rishikesh Prasad Jaiswal and Silverline Forum Pvt Ltd v Rajiv Trust, it explained that the executing court must decide the claim finally and not relegate the parties to a suit.[16] A transferee who acquired the property during the pendency of the suit has

[13] Jolly George Varghese v Bank of Cochin (1980) 2 SCC 360. The Court directed the executing court to examine the present means of the judgment-debtors.

[14] The Code of Civil Procedure, 1908, Order XXI r 41 (examination of judgment-debtor as to property).

[15] The Code of Civil Procedure (Amendment) Act, 1976; the Code of Civil Procedure, 1908, Order XXI rr 97–103. Rule 101 requires determination of all questions, including right, title and interest, by the executing court, and Rule 103 treats the order as a decree.

[16] Bhanwar Lal v Satyanarain (1995) 1 SCC 6; Brahmdeo Chaudhary v Rishikesh Prasad Jaiswal (1997) 3 SCC

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no independent right to resist, and Order XXI Rule 102 expressly denies resistance to such a person and to the one claiming under the judgment-debtor.[17]

## IV. The Contemporary Shift: From Passivity to Supervision

### A. Satyawati v Rajinder Singh (2013)

The classical rules were well settled by the second half of the twentieth century. What was lacking was an insistence on their practical operation. That insistence began with Satyawati v Rajinder Singh, decided in April 2013 by a three-Judge Bench, with Anil R. Dave J writing the judgment. The decree-holder had obtained a decree for possession of a small plot in 1996, and her execution petition was dismissed in 2009 on the ground that conflicting reports made the decree non-executable. The High Court upheld the dismissal. The Supreme Court allowed the appeal, held that the executing court should confine itself to the judgment and decree and to the commissioner's report and sketch that had identified the land at the trial stage, and directed it to proceed expeditiously.[18]

The importance of the decision lies in its observations. The Court noted that decree-holders in India continued to face the very difficulties that the courts had long criticised, that judgment-debtors obstructed execution by successive objections, and that the Code should be applied so as to secure the relief and not merely the decree. Success in a suit, it said in substance, means nothing to a party unless the relief is obtained.[19] It was the first of a series of decisions in which the Supreme Court treated the delay in execution not as an unfortunate feature of the system, but as a failure which the courts themselves could correct.

### B. Rahul S. Shah v Jinendra Kumar Gandhi (2021)

The development reached its culmination in Rahul S. Shah v Jinendra Kumar Gandhi. The appeal arose from execution proceedings that had been pending for more than fourteen years. A three-Judge Bench, instead of deciding the appeal alone, issued a set of directions to be followed by all courts until the High Courts amended their rules, and required the High Courts to do so within a year.[20] As reported, the directions include the following.

694; Silverline Forum Pvt Ltd v Rajiv Trust (1998) 3 SCC 723. These decisions are discussed in Periyammal (n 1).

[17] The Code of Civil Procedure, 1908, Order XXI r 102.

[18] Satyawati v Rajinder Singh (2013) 9 SCC 491 (Civil Appeal No 4176 of 2013, decided 29 April 2013) (Anil R. Dave, G.S. Singhvi and Ranjana Prakash Desai JJ).

[19] Satyawati (n 18), citing Shub Karan Bubna v Sita Saran Bubna (2009) 9 SCC 689.

[20] Rahul S. Shah v Jinendra Kumar Gandhi (2021) 6 SCC 418.

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The court should examine the parties on oath about third-party interests in the property and call for relevant documents, and in suits for possession should ensure that the decree describes the property unambiguously.

In money decrees, the judgment-debtor should be required to disclose his assets on oath, and security should be demanded where appropriate.

All necessary parties should be joined, so that multiple proceedings are avoided, and a Commissioner or Court Receiver should be appointed where possession is undisputed or the property is in dispute.

Notices on third-party claims should not be issued mechanically; repetitive or avoidable applications should be refused; and evidence should be recorded in execution only in rare cases, with a preference for Commissioners and for affidavits and electronic material.

Frivolous or mala fide objections should attract costs.

The words "in the name of the judgment-debtor" in Section 60 should be read broadly, so as to reach property held for the benefit of the debtor.

Execution should be disposed of within six months of filing, extended only for reasons recorded in writing; police assistance should be provided where needed and offences against officials executing decrees dealt with firmly; and judicial academies should prepare manuals and train the staff who execute orders.

Each of these directions addresses a distinct source of delay: unclear decrees, undisclosed assets, collusive or mechanical third-party claims, the conversion of execution into a trial, and the absence of any time limit. Together they treat execution as a matter of case management, which the court is responsible for supervising, and not as something that the parties are left to conduct as best they can.

**C. Making the Six-Month Rule Mandatory**

The Court has since insisted that the six-month direction is mandatory in spirit. In Bhoj Raj Garg v Goyal Educational and Welfare Society, decided in November 2022 by a bench of K.M. Joseph and Hrishikesh Roy JJ, the executing court had refused the decree-holder an early hearing of an execution petition pending since March 2019, and the High Court declined to intervene. The Supreme Court held that the direction in Rahul S. Shah was meant to be observed and that the executing court must record reasons in writing if it is unable to meet the

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six-month period.[21]

**D. Periyammal v V. Rajamani (2025)**

Periyammal (Dead) through LRs v V. Rajamani is the most important recent restatement. A decree for specific performance of a 1980 agreement had been passed in 1986. The decree-holders obtained a sale deed in 2007, but when they sought possession in 2008, persons claiming to be cultivating tenants since 1967, who had been impleaded in the suit but had not contested it, obstructed execution and filed an application under Section 47. The executing court allowed it in 2011 and the High Court affirmed in 2019.[22]

The Supreme Court allowed the appeals. It held that an application under Section 47 which is in substance a claim to possessory rights should be treated as an application under Order XXI Rule 97; that Section 47 is a general provision while Rules 97 and 101 address the specific case of resistance to a decree for possession; and that persons who knew of the suit and chose not to contest it could not raise their claims for the first time in execution. According to the headnote and reports of the judgment, the Court directed delivery of possession within two months with police assistance if necessary, and reiterated that all High Courts should ensure that pending execution petitions are decided within six months.[23]

**E. Ram Lal v Jarnail Singh (2025): A Decree That Can Be Executed**

Ram Lal v Jarnail Singh is a different kind of decision, but it belongs to the same line. A decree for specific performance required the buyer to deposit the balance consideration within two months. The sellers' appeal failed, and the buyer afterwards sought and obtained permission from the executing court to deposit the amount. The High Court set the order aside, holding that the delay had made the decree unexecutable. The Supreme Court (Pardiwala and Mahadevan JJ) restored the executing court's order. It held that an appellate court disposing of an appeal against a specific performance decree must itself fix a time for payment under Order XX Rule 12A, that failure to deposit within the trial court's period is not an abandonment of the contract, and that the decree does not lapse automatically on the expiry of the period without rescission being sought.[24]

[21] Bhoj Raj Garg v Goyal Educational and Welfare Society, SLP (C) 19654/2022 (SC, 18 November 2022) (K.M. Joseph and Hrishikesh Roy JJ), 2022 LiveLaw (SC) 976.
[22] Periyammal (n 1), Civil Appeals Nos 3640–3642 of 2025 (J.B. Pardiwala J).
[23] Periyammal (n 1), paras 52–53 on the relationship between s 47 and Order XXI rr 97 and 101, and, as summarised in the headnote, paras 70 and 75 on possession and the six-month direction. The concluding paragraphs should be checked against the full text of the judgment.
[24] Ram Lal v Jarnail Singh (Now Deceased) through LRs, 2025 INSC 301, [2025] 2 SCR 1745 (SC, February

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For the law of execution, the lesson is about the connection between the decree and its enforcement. An executable decree is one that states, with precision, what is to be done, by whom and by when, and the executing court should not be required to supply by inference what the court that passed the decree omitted to state.

## V. Recent Developments: Disclosure-Based and Time-Bound Enforcement

### A. Saraswati Devi v Santosh Singh: Repeated Breach of an Injunction

In Saraswati Devi v Santosh Singh, decided in May 2025, the decree was a permanent prohibitory injunction against interference with possession of agricultural land. In an earlier execution petition, in which neither side had appeared, the court had recorded satisfaction on the basis of a written undertaking by the judgment-debtor not to obstruct. When the decree-holders' heirs filed a fresh petition after a later interference, the executing court, the revisional court and the High Court held that the earlier satisfaction barred it.[25]

The Supreme Court set the orders aside. It held that a satisfaction recorded in one execution petition does not bar a further petition for a subsequent breach of the injunction, because a permanent injunction operates against the judgment-debtors and their successors for as long as it is in force, and that no period of limitation applies to the enforcement of a perpetual injunction. The petition was restored and remitted, the objection under Section 47 being left for the executing court, with the validity of the decree and of the proceedings for its cancellation reserved. The decision is significant because it refuses to let a mechanical recording of satisfaction, made without any inquiry, extinguish the decree-holder's continuing right.

### B. Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale: Transferees Pendente Lite

The decision in Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale arose from a suit for specific performance filed in 1986 on an agreement of 1973. During the suit, the judgment-debtor sold parts of the property to several transferees, and the appellants bought portions from them. After the decree and a sale deed executed through a Court Commissioner, the appellants obstructed delivery of possession. The executing court, the appellate court and the High Court in revision and second appeals all rejected their objections.[26]

2025) (J.B. Pardiwala and R. Mahadevan JJ), as reported in 'Supreme Court: Appellate Courts Must Comply With Order XX Rule 12A CPC' (Verdictum). The Court read Prem Jeevan v K.S. Venkata Raman (2017) as not requiring a different result.

[25] Saraswati Devi v Santosh Singh, 2025 INSC 715, 2025 LiveLaw (SC) 587 (SC, 16 May 2025) (K. Vinod Chandran and Sudhanshu Dhulia JJ).

[26] Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale, 2026 INSC 52 (SC, January 2026) (Manoj Misra and Ujjal Bhuyan JJ), as reported in 'Supreme Court: Section 19(b) Specific Relief Act Have To Give Way To

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The Supreme Court dismissed the appeals. It held that the protection which Section 19(b) of the Specific Relief Act, 1963 gives to a transferee without notice yields, where the transfer is made after the institution of the suit, to the doctrine of lis pendens in Section 52 of the Transfer of Property Act, 1882; that a transfer pendente lite is not void but is subject to the outcome of the suit; and that the executing court can decide whether an obstructor is bound by the decree and refuses to vacate. It directed the appellants to hand over actual physical possession by 15 February 2026 and directed that no further applications by them, by the judgment-debtor or by anyone claiming through them concerning the property should be entertained. The deadline and the bar on further applications are an example of the time-bound enforcement that Rahul S. Shah envisaged.

### C. Challani Ginning and Pressing Factory v Kamal: Belated Objections

In Challani Ginning and Pressing Factory v Kamal, the decree had been passed in 2017 and recovery of an amount of more than Rs 1.4 crore had been ordered against the first judgment-debtor. After attachment, auction and the rejection of several objections, the judgment-debtor's mother claimed a one-third share in the property and objected to its sale. The executing court and the first appellate court rejected the claim; the High Court reversed them in second appeal.[27]

The Supreme Court restored the executing court's order. It held that the High Court's reasoning rested on surmise and conjecture and raised no substantial question of law; that the objector, who was a director of the company that had been served with notice in the suit and had chosen not to appear, could not claim ignorance of the suit; that she had lived in the property throughout and could not claim ignorance of the attachment; and that a co-ownership claim first raised years into execution, when dispossession was threatened, was a deliberate attempt to stall recovery which did not require a trial because nothing prima facie supported it. The executing court was directed to see that the property was expeditiously vacated and handed over. The case applies the approach of Periyammal: an objector's earlier knowledge and silence are relevant facts, and the court need not embark upon an inquiry where the claim does not stand up on its face.

Doctrine Of Lis Pendens U/S 52 Transfer Of Property Act' (Verdictum, 13 January 2026).

[27] Challani Ginning and Pressing Factory v Kamal, 2026 INSC 426 (SC, April 2026) (Sanjay Kumar and K. Vinod Chandran JJ), as reported in 'Director Can't Feign Ignorance Of Specific Performance Suit When Notice Was Issued To Company That Chose Not To Appear' (Verdictum, 30 April 2026).

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**D. Jennifer Messias v Leonard G. Lobo: Substance Over Nomenclature**

Jennifer Messias v Leonard G. Lobo concerned the other side of the problem, namely the wrongful closing of an execution that should have proceeded. A preliminary decree for partition had been passed in 2012 in a suit between a separated wife and the person claiming under her late husband's will. When the executing court ordered a public auction under the partition provisions, the respondent obtained an order from the High Court terminating the execution on the footing that the proceedings were not executable.[28]

The Supreme Court allowed the appeals. It held that in certain circumstances an order under Sections 2 to 4 of the Partition Act, 1893 is a deemed decree under Section 2(2) of the Code and is executable; that the High Court had relied upon the label of the order without considering whether its executable portion could be enforced; and that, as the decree had determined the right to possession, mesne profits and the first option in working out the shares, no fresh application after a final decree was necessary. The execution was restored, an Advocate Commissioner was directed to conduct the auction and apportion the proceeds, and the trial court was directed to complete the proceedings within two months, having regard to the decree-holder's age. The decision insists that the executing court look at the substance of what has been decided and not at the name by which the order is called.

**E. Reading the Decisions Together**

Taken together, these decisions describe a method. The executing court begins with the decree and enforces it as it stands (Maurice W. Innis). It requires that the decree be precise, and treats the absence of precision as something to be cured at source (Ram Lal). It looks at the substance of the proceedings before it (Jennifer Messias), and it treats the repeated breach of a continuing decree as a reason to enforce and not to close the file (Saraswati Devi). It requires persons who resist to explain why they did not appear earlier, and to show a prima facie right (Periyammal, Challani). It holds transferees pendente lite to the decree (Alka Shrirang Chavan). And it fixes dates: two months, six months, a named day for possession. The common thread is a movement from the passive view of execution, in which the court responds to whatever the parties place before it, to a supervisory view, in which the court seeks the information it needs and requires that the proceedings be completed in time. That is what is meant here by disclosure-based and time-bound enforcement.

[28] Jennifer Messias v Leonard G. Lobo, 2026 INSC 502 (SC, May 2026) (K.V. Viswanathan and S.V.N. Bhatti JJ), as reported in 'Order Passed U/S.2 To 4 Of Partition Act Is Also Deemed Decree As Per Sec.2(2) Of CPC' (Verdictum, 19 May 2026).

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## VI. Critical Analysis and Need for Reformation

The decisions reviewed in this article are in the right direction, but they do not by themselves remedy the causes of delay, which are largely structural. Seven problems, in particular, continue to distort the working of the Code.

The first is the ambiguously worded decree. Many execution proceedings are prolonged for years because the decree does not describe the property with certainty, does not state the period within which an act is to be done, or leaves the manner of working out relief to be decided later. Satyawati and Ram Lal are both instances. The responsibility lies first with the court that passes the decree, and Order XX, which prescribes the form of decrees, deserves more attention in the trial court than it has received.

The second is the incomplete disclosure of assets. The scheme of Order XXI Rule 41 allows the judgment-debtor to be examined about his property, but in many courts this provision is invoked late, if at all, and the decree-holder is left to locate the debtor's property unaided. The direction in Rahul S. Shah for disclosure on oath, and the inquiry into means which Jolly George requires before imprisonment, both presuppose that the information is available. A system that depends upon the decree-holder's investigation, with no consequence for non-disclosure, favours the debtor who conceals.

The third is mechanical notice. The issue of notices in every application, including those that disclose no right on their face, gives every objector a period of delay as of right. The direction not to issue notices mechanically on third-party claims addresses this, but it is for the executing court to implement it, and a court that is overburdened will do the easier thing.

The fourth is the conversion of execution into a trial. The practice of recording oral evidence on every objection, which Rahul S. Shah condemned, turns an inquiry into a second suit. The Code allows the executing court to hold an inquiry, and the proper course is a summary, documentary one, with oral evidence confined to genuine disputes of fact.

The fifth is repetitive objection. A judgment-debtor who has failed once raises the same point under a different section, and a succession of third parties, each claiming a separate interest, raise one objection after another. The Code lacks an effective sanction against this, and the courts have resorted to the general power to award costs. Challani shows the approach to be preferred: the court looks to what the objector knew and when.

The sixth is collusive transfer. A judgment-debtor who anticipates execution may transfer the property to a relative or associate, who then appears as an obstructor with a claim of independent title. Order XXI Rule 102 and the doctrine of lis pendens, as applied in Alka Shrirang Chavan, are effective against transfers after the suit is instituted, but transfers made

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before it, or disguised as tenancies or family arrangements, continue to cause delay.

The seventh is the weak supervision of the process-serving and execution machinery. Notices that are not served, warrants that are not executed and bailiffs who are not accountable contribute as much to delay as any objection. Rahul S. Shah recognised this in its directions on police assistance and training, but the reports of the courts suggest that implementation depends upon the High Courts and on the diligence of district judges.

## VII. Suggestions

The following proposals follow from the analysis above and are in keeping with the direction taken by the Supreme Court.

(i) **Precise decrees.** Trial and appellate courts should be required, by High Court rules and judicial training, to state in every decree for possession a clear description of the property, and in every decree requiring an act or a payment the period within which it is to be done, so that the decree can be executed without further interpretation.

(ii) **Disclosure at the threshold.** The judgment-debtor should be required to file an affidavit of assets at the first stage of every execution of a money decree, with consequences, including the drawing of adverse inferences and, in a proper case, the use of civil imprisonment under the Jolly George safeguards, for false or incomplete disclosure.

(iii) **A screening stage for objections.** Every objection under Section 47 or Order XXI should be examined at the first hearing to determine whether it discloses a prima facie right, before notice is issued, and objections that could have been raised in the suit, or by an objector who knew of it, should be rejected with costs.

(iv) **Summary inquiry.** Rules should confine oral evidence in execution to genuine disputes of fact and prescribe a time limit for the inquiry, so that the six-month period in Rahul S. Shah is realistic.

(v) **Accountability of the machinery.** High Courts should monitor service of notices and execution of warrants, require reports on the pendency and age of execution petitions, and take disciplinary action against officials whose collusion or neglect delays execution.

(vi) **Statutory consolidation.** The six-month period, the duty to record reasons for delay and the screening of objections have so far rested upon judicial directions. The legislature should consider incorporating them in the Code, so that they have the force of law and not merely of precedent.

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## VIII. Conclusion

The law of execution in India has moved from the application of settled rules to the supervision of their operation. The classical principles remain: the executing court cannot go behind the decree except where it is a nullity; the sale of property must be proportionate to the debt; civil imprisonment is for the debtor who can pay and will not; and a third party's claim must be adjudicated within the execution. What has changed since Satyawati and Rahul S. Shah is the insistence that these principles be applied promptly and on a proper record, with the six-month period as the measure and with reasons required where it is not met.

The recent decisions in Periyammal, Ram Lal, Saraswati Devi, Alka Shrirang Chavan, Challani Ginning and Pressing Factory and Jennifer Messias show that the Supreme Court regards enforcement as a part of adjudication and not as something that follows it. They require disclosure from those who resist, deadlines from the courts and precision from those who draft decrees. The effectiveness of this approach depends upon the High Courts, the district judiciary and the legislature. If the reforms suggested here are adopted, execution will cease to be regarded as an administrative afterthought and will be recognised for what it is: the stage at which the civil justice system either keeps or breaks its promise to the litigant who has succeeded.

IJLRA