

**(1976) 01 MP CK 0012**  
**In the Madhya Pradesh High Court**  
**Case No : C.R. No. 711 of 1972**

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|---------------------------------|----|------------|
| Dagu Satrugan and others        | Vs | APPELLANT  |
| Sukhiram Ratiram Sao and others |    | RESPONDENT |

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**Date of Decision :** 20-01-1976

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100

**Citation :** (1977) JLJ 104

**Hon'ble Judges :** Shiv Dayal Shrivastava, C.J

**Bench :** Single Bench

**Advocate :** D.M. Dharmadhikari, for the Appellant; R.K. Pandey For non-applicants Nos. 2 and 3 and A.K. Jain For non-applicants Nos. 5 (iii) to 5 (vi), for the Respondent

**Final Decision :** Allowed

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## Judgement

Shiv Dayal, C.J.—Ordinarily this Court does not interfere in revision with an order passed under Order 21, Rule 100, Code of Civil Procedure, because the remedy of a regular suit to the aggrieved party is there. However, there are exceptional circumstances in this case, in particular a similar revision has been allowed by Bhave, J. Chakradhar v. Ghasiram C. R. No. 186 of 1972.

2. The questions for determination in this revision are two. The first is whether the application under Order 21, Rule 100, Code of Civil Procedure, which was made by non-applicant-objectors, was competent. Shri Dharmadhikari's objection is that in the application, the objectors themselves alleged that they were in possession. That being so, the application under Order 21, Rule 100, Code of Civil Procedure, is not competent. That Rule contemplates an objection when the objector "has been dispossessed". It follows that an objector, who is in possession and has not been dispossessed, cannot make an application under Order 21, Rule 100, The expression "has been dispossessed" refers to actual possession and not to symbolic possession. On this basis, Bhave, J., allowed Chakradhar v. Ghasiram (supra).

3. However, in *Jagannath v. Fasiuddin* 1938 N L J 223 : A I R Nag. 442, Niyogi, J. held as follows:--

When a party is in doubt as to his legal right to apply under Order 21, Rule 100, Code of Civil Procedure, he can well invite the Court to pronounce its opinion and his competency to apply would depend upon the nature of the Court's opinion. When a party comes to Court with an alternative case, the Court cannot non-suit him by refusing to consider his alternative case which gives him in reality a right of action.

Where therefore an objector in his application under Order 21, Rule 100 contends in the first instance that he was in actual possession of the property, despite the formal transfer to the decree-holder and in the alternative prays that if it was found that he was dispossessed, the possession should be restored to him, the application is competent.

On the basis of the above dictum, it can be said that where there is an alternative relief of being put in possession, in case the Court finds that the objector was not in possession, the application is tenable. The decision in *Jagannath v. Fasiuddin* (supra) was distinguished by Bhawe, J. in that Civil Revision.

4. In the present case, the objectors had, in the alternative, prayed for the relief of possession in case it was found that possession had been delivered to the non-applicants. Therefore, the decision in *Jagannath v. Fasiuddin* (supra) squarely applies to the present case and it must be said that the application under Order 21, Rule 100, Code of Civil Procedure, was competent.

5. A second question arises because the Court arrived at a finding that the objectors were in possession (issue No. 2). It has been found that Fakiro and Tankeshwar had given possession to Santsingh and since then Santsingh was in possession and had been in possession. Under issue No. 8, the executing Court further held that possession had not been given to the decree-holders. Because of this finding, Shri Dharmadhikari's objection is that the executing Court was in error when it directed in the operative part of the order that possession be delivered to the objectors. In my opinion, this contention must be accepted. Once the executing Court held that possession was with the objectors and that the decree-holders had not been given possession, a direction could not be given to the decree-holders to deliver possession to the objectors.

6. The revision is allowed. The operative part of the order passed by the Civil Judge, Class I, Raigarh, dated May 11, 1972, whereby it has directed the decree-holders to deliver possession to the objectors is set aside. This order is made on the basis of the finding that the objectors are in possession and the decree-holders have not been put in possession so far. Parties shall bear their own costs. Shri A.K. Jain was appointed guardian ad litem for Beda, Basanti, Kumudani and Tikedai minors. He appeared for them. He shall be paid the fee, already fixed, within 15 days from today.