

HIGH COURT OF MADHYA PRADESH : BENCH
INDORE

SINGLE BENCH : HON'BLE SHRI JUSTICE VIVEK RUSIA, J.

W.P. no. 1806/2016

Purushottamdas Gupta

Vs.

Shirish Deshmukh and others.

Shri.Ajay Bagdia, counsel for the petitioner.

Shri A.K. Sethi, Sr. Counsel along with Shri Viraj Godha,
counsel for respondent nos. 1 and 2

Shri V.K. Jain, counsel for respondent nos. 4 and 5

Shri Akhil Godha, counsel for respondent nos. 10 and 11.

O R D E R

(Delivered on 19/05/2017)

The petitioner has filed the present writ petition being aggrieved by the order 22/02/2016, by which the application under Order 21 Rule 58, 97, 101 read with section 151 of C.P.C filed by respondent nos. 1 and 2 /

defendants has been entertained and they were directed to lead evidence.

2 The facts of the case for disposal of this petition are as under :

The Court of Shri A.S. Gilani, Sr. Sub-Judge, Gudgaon has passed preliminary decree dated 17/04/1954 in favour of the plaintiff for possession by partition of 2/3rd share of the properties mentioned at nos. 2,4,6,8,9,13,14, 16,18,19 ,21,22, 23,25 and 27 in the list B/1 filed by defendants no. 1 to 16. List B/1 comprises 41 properties situated in different part of the country. One of the property, which is subject matter of this case, is Saraswati Cotton Ginning Factory, Shujalpur. The same is mortgaged for Rs. 30,000/- which was in list â C.

3 The aforesaid preliminary decree was challenged before the Punjab and Hariyana High Court, Chandigarh in Regular First Appeal no. 115/2014 by the plaintiff. Vide judgment dated 19/04/1961, preliminary decree has been affirmed by dismissing the first appeal, except ordering that items of the property which the defendants have proved to be exclusive properties of the plaintiff, item no.

26 in LIST - B attached to the plaint be not operative and be given exclusively to the plaintiff. Thereafter, final decree was passed by the lower Court on 05/08/2004, which is not available in this record.

4 Since the lands of the Saraswati Cotton Ginning factory is situated within Shajapur District, therefore, the execution proceedings were transferred by the Civil Judge, Sr. Division, Rewadi vide order dated 07/09/2015 before the District and Sessions Judge, Shajapur for its execution. In the execution proceedings, a direction has been sought that the name of decree holder be mutated in the revenue record in place of the judgment debtor.

5 The application under section 47 of C.P.C was filed by Satyajeet Deshmukh and Rohit Deshmukh on 10/12/2015 that since 1950, name of their ancestral are recorded as Bhumi Swami and after their death, name of objector and their cousin brother have been mutated. The said application under section 47 of C.PC has been rejected vide order dated 07/01/2016. The said order has attained finality as the objector did not challenge before higher Court.

6 Respondent no 1 Shirish Deshmukh and no. 2 Rajeev Deshmukh filed an application under Order 21 Rule 58, 97, 101 read with section 151 of C.P.C objecting execution of decree on the ground that name of their ancestral were recorded as Bhumi Swami in the revenue record and after their death, names of the objectors have been mutated and they are in possession at the time of passing of final decree. Their ancestral were not made party in the civil suit, hence decree is not binding on them.

7 The said application was opposed by the present petitioner and vide order dated 22/02/2016, that objection was turned down and the Executing Court has held that the application under Order 21, Rule 58, 97, 101 read with section 151 of C.P.C is maintainable and directed the objectors to lead evidence, hence the present writ petition before this Court.

8 Shri Ajay Bagdia, counsel for the petitioner submits that under the provisions of Order 21 Rule 97 of C.P.C, only decree holder can file objection before the Executing Court and only such objections are liable to be decided by

the Executing Court. The learned Executing Court has wrongly entertained the application filed by respondent nos. 1 and 2. He further submitted that even if the application has been entertained, but each and every objections are not liable to be decided by the Executing Court. The Executing Court is not bound to decide each and every objection and no elaborate enquiry is necessary. The Court is not bound to record evidence in every case.

In support of his contention, he has placed reliance over the judgments delivered in the case of **Silverline Forum Pvt Ltd Vs. Rajiv Trust and another reported in AIR 1998 SC 1754; Satyawati Vs. Rajinder Singh and another reported in (2013) 9 SCC 491 and Shobha Mishra and another Vs. Vinod Kumar and others reported in 2010 (I) MPWN 19**

He further submits that similar type of objections raised by other family members of respondent nos. 1 and 2 have already been rejected by the Executing Court by order dated 07/01/2016, therefore, the second application is not maintainable under different provisions of law of C.P.C

9 Shri V.K. Jain, learned counsel appearing on behalf of respondent nos. 4 and 5 has argued in support of the petitioner and submitted that the application filed by respondent nos. 1 and 2 is not maintainable and the Court is not bound to take detailed enquiry in each and every objection.

10 Shri A.K. Sethi, learned Sr. Counsel for respondent no. 1 and 2 / objector submits that the scope of order 21 Rule 97 of C.P.C is very wide and the proceedings under Order 21 Rule 97 of C.P.C is like the proceedings of Civil Suit, which are liable to be decided after taking evidence. He further submits that respondent nos. 1 and 2 are claiming independent right and they are not bound by the order dated 07/01/2016 as they were not party at that time in the execution proceedings.

11 I have heard learned counsel for the parties.

12 Learned Civil Judge, Sr. Sub-Judge, Gudgaon has passed preliminary decree dated 17/04/1954 in favour of the plaintiff for possession by partition of 2/3rd share of certain properties mentioned in LIST â B/1 and dismissed the rest of the claim. The property in execution

before the Executing Court at Shujalpur is in the LIST â C at serial no. 8, which was shown to be under mortgage. Preliminary decree was affirmed by the High Court vide judgment dated 19/04/1961 and the appeal was dismissed except item no. 26 in LIST â B attached to the plaint. Respondent nos. 1 and 2 are claiming that Sarswati Cotton Ginning Factory, Shujalpur was mortgaged and in the revenue record, their names have been recorded and there is no decree in favour of the plaintiff in respect of the said property. This issue is required to be decided by the Executing Court.

13 Shri Ajay Bagdia, learned counsel appearing on behalf of the petitioner has vehemently argued that under Order 21 Rule 97, 100 of C.P.C, the only decree-holder can raised objection about obstructions created by third party.

In support of his contention, he has placed reliance over the Full Bench judgment passed by Hon'ble Supreme Court in the case of **Smt. Usha Jain and others Vs. Manmohan Bajaj and others** reported in **AIR 1980 MP 146**, in which, the Full Bench has held that Executing

Court is not bound to stay its hand till full investigation is made. Rule 97 is permissive and not mandatory. The Executing Court has no jurisdiction to start inquiry *suo-moto* or at the instance of third party other than the decree-holder / auction purchaser under Order 21 Rule 97 of C.P.C. Para 17 and 19 are reproduced below :

17. After the recent amendments made in Order 21 by the Civi) P.C. (Amendment) Act, 1976, Bhagwat Narayan's case (AIR 1974 Madh Pra 26) is causing even greater hardship and injustice to the decree-holder/auction-purchaser and it increases the unfair advantage to the other side which could not have been in contemplation of the Division Bench. In fact, the requirement of only a summary enquiry given in the opinion of Shiv Dayal, J, (as he then was) in Bhagwat Narayan's case as a reason, is no longer available. As a result of the recent amendments in Order 21, C.P.C. the position is considerably altered and instead of only a summary enquiry being contemplated by the executing Court under Rule 97 followed thereafter by a regular civil suit, now after the amendments full investigation into the question of title is required to be made by the executing Court itself as is clearly provided in the amended Rule 101, Order 21, Civil P.C.

19 We have already shown that .none of the reasons given by the Division Bench in Bhagwat Narayan's case (AIR 1974 Madh Pra 26} withstands [scrutiny and that the view taken there-in was on assumptions made which do not exist. With respect, we are of the opinion that the view taken by the Division Bench in Bhagwat Narayan's case cannot be upheld as correct. We are also of the opinion that the correct view which is also in line with the settled view of this Court as also the view of the other High Courts to contained in Ramgulam v. Mahendra Kumar 1972 MPLJ 254; for the same reason the view taken in Supreme General Films Exchange (Pvt.) Ltd. v. Yuvraj Govind Singh, 1972 MPLJ 857; that no fresh warrant could be issued on the auction-purchaser's application under Order 21, Rule 95, except under Rule 98 after investigation, treating that application as one under Rule 97, is also incorrect. We have already shown that the remedy to apply for a fresh warrant without making an application under Order 21, Rule 97, Civil P.C., is available to the decree-holder/auction-purchaser.

14 The aforesaid judgment passed by the Full Bench has been overruled by Hon'ble Supreme Court in the case of **Shreenath and another Vs. Rajesh and others**

reported in **(1998) 4 SCC 543**, wherein it has been held that any person is entitled to object the decree by filing an application under Order 21 Rule 97 or 99 of C.P.C and such objection should be decided by Executing Court, not by separate suit. Para nos. 14 and 18 are reproduced below :

14 We find both either under the old law or the present law the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under order 21, Rule 97, has to be decided by the Executing court itself.

18 In view of the aforesaid finding and the law being well settled the interpretation given by the aforesaid full Bench of the M.P. High Court in the case of Usha Jain Vs. Manmohan Bajaj (supra) cannot be held to be a good law. As we have recorded above, both the Executing Court and the High court have rejected the application of the applicant under Order 21, Rule 97 only on the basis of the said Full Bench decision, hence the said order cannot be sustained. Accordingly, both the orders dated 20th February, 1985 passed by the High Court in civil Revision No. 406 of 1983 and the order dated 20th April, 1983 passed by Executing Court in execution case No. 1-A/70/81 is herewith quashed.

The aforesaid view has been further affirmed in the case of **N.S.S Narayana Sarma and others Vs. Goldstone Exports (P) Ltd and others** reported in **(2002)1 SCC 662**. Para 15 is reproduced below :

Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree holder entitled to possession of the property encounters obstruction from any person. From the provisions in these rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with all issues relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a

litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable

property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting the relevant issues arising in the case.

(Emphasis supplied)

Hon'ble Apex Court has again taken similar view in the case of **Ashan Devi and another Vs. Phulwasi Devi and others reported in (2003) 12 SCC 219** wherein it has been held that a third party resisting or obstructing the execution of the decree can also seek adjudication of his rights under Order 21 Rule 97 of C.P.C in the same way as the decree holder. Para 21, 25 and 27 are reproduced below :

21 The above mentioned decided cases of this Court clearly indicate that the provisions of Order XXI Rule 97 and 99 have been widely and liberally construed to enable the executing court to adjudicate the inter se claims of the decree holder

and the third parties in the executing proceedings themselves to avoid prolongation of litigation by driving parties to file independent suits.

25 In interpreting the provisions of Order XXI Rule 97 of the Code and the other provisions in the said order, the aims and objects for introducing amendment to the Code cannot be lost sight of. Under the unamended Code, third parties adversely affected or dispossessed from the property involved, were required to file independent suits for claiming title and possession. The Legislature purposely amended provisions in Order XXI to enable the third parties to seek adjudication of their rights in execution proceedings themselves with a view to curtail the prolongation of litigation and arrest delay caused in execution of decrees. [See Bhag Mal vs. Ch. Parbhu Ram](#) [1985 (1) SCC 61].

27 There is fallacy in the above reasoning. As has been held by this court in the case of Brahmdeo Chaudhary (supra), a third party resisting or obstructing the execution of the decree can also seek adjudication of his rights under Order XXI Rule 97 in the same way as the Decree Holder. If that be so, it seems illogical that the third party which complains of actual dispossession because of the delivery of possession in execution to the Decree Holder should not be allowed to claim

adjudication of his rights through the executing court. An interpretation of the provision which promotes or fulfils the object of the amended provisions of the Code of curtailing litigation, has to be preferred to the one which frustrates it. The High Court also lost sight of the fact that the property involved was a vacant land and it could have been possessed only by having ownership and control over it. Mere physical absence of the third party at the time of execution of the decree was not a relevant fact to reject application under Order XXI Rule 99 of the Code. From the trend and ratio of decisions of this Court surveyed above, if the Objectors would have been present at or near the vacant land at the time of execution of a decree and had offered obstruction or resistance to the execution, they would have been entitled to seek adjudication of their rights and claims through the executing court under Order XXI Rule 97. On the same legal position and reasoning even though the Objectors were not in actual and physical possession of the vacant land, but as a result of delivery of possession of the land through Nazir to the decree holder, lost their right and control over the land to put it to their use, they will have to be treated to have been "dispossessed" within the meaning of Order XXI Rule 99 of the Code. Such interpretation would

fulfil aim and object of the amended provisions of the Code by allowing adjudication of disputes of title between the decree holder and the third party in the executing court itself without relegating them to an independent litigation.

15 In view of the above, the Executing Court has not committed any error while entertaining the application filed by respondent nos. 1 and 2.

16 Even, the scope of Article 227 of Constitution of India in exercising jurisdiction is very limited in respect of interfering with the order of sub-ordinate Court. Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329***, wherein it has held that :

âThe scope of interference under Article 227 of the Constitution is limited. If order is shown to be passed by a Court having no jurisdiction, it suffers from manifest procedural impropriety or perversity, interference can be made. Interference is made to ensure that Courts below act within the bounds of their authority. Another view is possible, is not a ground for interference. Interference can be made sparingly for the said purpose and not for correcting error of facts and law in a routine manner.

17 In view of the aforesaid observations, I do not find any illegality or error committed by the trial Court. Accordingly, present writ petition is dismissed. C c as per rules.

(VIVEK RUSIA)

JUDGE

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