

THE HIGH COURT OF MADHYA PRADESH
S.A. No. 1319/2019
Sanjay Kumar V/s. Sushil Kumar & another.

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Indore, dated : 21.11.2019

Shri R.R. Chandrawad, learned counsel for the appellant.

Heard on the question of admission. Record perused.

JUDGMENT

The appellant has filed the present second appeal being aggrieved by judgment dated 8.1.2019 passed by Civil Judge, Class-I, Khategaon dismissing the application filed under Order 21 Rule 97 of C.P.C. and judgment dated 19.2.2019 passed by Addl. District Judge, Khategaon, District Dewas dismissing the first appeal.

2. Brief facts of the case are as under :

(i) Respondent No.1 being the plaintiff filed the Civil Suit No.28-A/2005 against respondent No.2/defendant that on the East side of his house, there is a plot of defendant admeasuring 204 x 24 ft. and between the house of plaintiff and defendant, there is a 6 ft. wide common lane belonging to him. The defendant has started construction and illegally opened the door & windows and ventilator on the lane. He has also raised the construction over 2 ft. area of the lane. The defendant filed the written statement refuting the averments made in the plaint by submitting that land bearing Survey No.297 is a public lane and he is also having right to use the said lane. The defendant also filed the counter claim.

(ii) Vide judgment and decree dated 7.12.2009, learned Civil Judge has dismissed the suit as well as the counter claim.

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(iii) Being aggrieved by the aforesaid judgment and decree, the plaintiff filed First Appeal No.3-A/2010 and the defendant filed First Appeal No.4-A/2010. Vide judgment and decree dated 21.5.2010, learned Addl. District Judge has allowed the appeal filed by the plaintiff and dismissed the appeal filed by defendant. Learned Addl. District Judge has held that the lane is belonging to the plaintiff and his family members and they are in possession of the same. Learned Addl. District Judge also held that the defendant is not having any right to open the door, windows and the ventilator in the lane and directed him to close the same with immediate effect. He has also been directed to remove the illegal construction.

(iv) Against the aforesaid judgment and decree, defendant preferred Second Appeal before this Court and thereafter SLP before the apex Court. The appeal as well as the SLP both have been dismissed and the judgment and decree passed in favour of the plaintiff has attained finality.

(v) Thereafter, the plaintiff filed the execution proceedings on 30.7.2011 before the Civil Judge, Class-I, Khategaon seeking direction to the defendant to close the door, windows and ventilator and to remove the encroachment. In the said execution proceeding, present appellant filed the application/objection under Order 21 Rule 97 on 9.8.2018 by submitting that he has also a house next to the house of defendant and the lane in question is a public lane, therefore, the decree cannot be executed against him. The objector cannot be restrained from

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using the lane. Learned Civil Judge vide order dated 8.1.2019 has dismissed the application.

(vi) Against the aforesaid order of Civil Judge, the objector preferred the first appeal before the Addl. District Judge. Vide order dated 19.2.2019, learned Addl. District Judge has dismissed the appeal, hence the present second appeal before this Court.

3. Shri R.R. Chandrawad, learned counsel appearing for the appellant, submits that while dismissing the appeal on the ground of maintainability, learned lower appellate Court did not consider the provision of Order 21 Rule 101 which specifically provides that all the questions including questions relating to right, title or interest in the property are liable to be determined by the executing Court. Since the suit is barred hence all the objections are liable to be decided by the executing Court in an application filed under Order 21 Rule 97 of C.P.C., therefore, the present appellant/objector is not having any remedy, but to file an application under Order 21 Rule 97.

4. After hearing learned counsel for the appellant, I am of the opinion that the learned Addl. District Judge while dismissing the appeal has rightly observed that the provisions of Order 21 Rule 97 to Rule 106 of C.P.C. are relating to resistance to delivery of possession to the decree-holder or the purchaser. There is no decree in favour of the plaintiff in respect of possession, therefore, any objection in respect of other than the possession and dispossession cannot be considered under Order

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21 Rule 97 of C.P.C. I do not find any illegality in the observation made by the learned Addl. District Judge. Order 21 Rule 97 is reproduced below :-

“97. Resistance of obstruction to possession of immovable property – (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

5. As per Rule 97, where the holder of a decree for possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining such resistance or obstruction. As per sub-rule (2), where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained. The apex Court in the case of **Shreenath V/s. Rajesh : AIR 1998 SC 1827** has held that the third party in possession claiming independent right of possession of immovable property can resist such decree by seeking adjudication of his objection under Order 21 Rule 97 of C.P.C. In the present case, vide judgment and decree dated 21.5.2010, learned Addl. District Judge has held that the plaintiff is owner and in possession of 6 ft. wide lane and the defendant has been directed to close the

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door, windows and ventilator and also to remove the construction. The plaintiff filed an application for execution for removal of construction. He has not filed any application seeking possession, therefore, there is no question of obstruction by defendant or any other third person.

6. So far as provisions of Rule 101 are concerned, it is correct that as per the said provisions, all the questions relating to right, title and interest in the property arising between the parties to a proceeding shall be determined by the Court on an application made under Order 21 Rule 97 or Rule 99 of C.P.C. The objector has filed the application only under Order 21 Rule 97 and not under Rule 99 of C.P.C. The application under Rule 99 is maintainable by a person other than the judgment-debtor who has been dispossessed from the immovable property by the decree-holder and claim possession before the executing Court, therefore, under Rule 97, if the decree-holder is resisted or obstructed by any person, he may make an application to the Court complaining such resistance. Hence, learned Addl. District Judge has rightly held that the objector has no right to file an objection under Order 21 Rule 97 of C.P.C. as the issue of possession and dispossession is not involved in the execution of the decree.

7. In view of the foregoing discussion, I find that no question of law much less substantial question of law is involved in this petition. It is well settled the decree-holder who is in possession of the suit property and such a decree which is

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affirmed up to the apex Court, is entitled to enjoy the fruits of the decree.

8. Consequently, this appeal fails and is hereby dismissed in *limine*.

No order as to costs.

(VIVEK RUSIA)
JUDGE

Alok/-