

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL
SEAT AT JABALPUR**

Case No.	S.A No.1693/2006
Parties Name	Padam Singh and others Vs. Radhelal and others
Date of Judgment	14/03/18
Bench Constituted	Single Bench.
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsels for parties	For appellants: Shri Ashok Chakarverti, Advocate. For Respondent No.1 : Shri Hemant K. Chouhan, Advocate.
Law laid down	<u>Order 21 Rule 97 CPC</u> 1. A person raising objection must show some <i>prima-facie</i> pleadings and material in his objection which makes it adjudicable. 2. Executing Court is duty bound to examine the availability of bonafide adjudicatory material. 3. The adjudication mentioned in this provision need not essentially involved a detailed enquiry or collection of evidence. The Court can undertake the exercise of adjudication even on the allegations made by the obstructor. 4. In absence of minimum essential <i>prima-facie</i> pleadings & material, the Courts are not obliged to mechanically permit the obstructors to lead evidence.
Significant paragraph numbers	14,15,16

J U D G M E N T
(14/03/2018)

This second appeal filed under Section 100 Code of Civil Procedure is directed against the judgment dated 29.09.2006 passed by III rd Additional District Judge, Raisen in F.A. No.11-A/2006 affirming the judgment and decree dated 12.07.2006 passed by II nd Civil Judge Class II, Raisen in Execution Case No.8/37-A/82-05 (Radhelal Vs. Tulsiram).

2. Draped in brevity, Radhelal, the respondent/decree holder instituted original civil suit No.33-A/1982 for possession which was decreed in his favour on 03.12.1983. First Appeal No.34-A/1988 filed by Tulsiram was dismissed on 25.09.1990. This judgment of first appeal was assailed by Tulsiram in S.A. No.564/1990. This Court by judgment dated 29.07.2004 remitted the matter back to the first appellate Court with certain directions. In turn, First Appeal No.34-A/1988 was heard and dismissed again on 17.03.2005. This judgment was unsuccessfully challenged by Tulsiram in S.A. No.996/2005, which came to be dismissed by judgment dated 17.08.2005 (Annexure-R/1). Since fruits of judgment and decree were not passed on the decree holder, he filed Execution Case No.8/37-A/82/05. In this execution proceedings, the present appellants/objectors filed an application under Order 41 Rule 97 read with Section 47 CPC on 22.04.2006. The decree holder filed his response to the said application. Thereafter, the executing Court by judgment dated 12.07.2006 (wrongly mentioned as 12.07.2007) rejected the said application. Aggrieved, the appellants filed F.A.

No.11-A/2006 before the Court below. After hearing the parties, by judgment dated 28.09.2006, the Court below affirmed the order passed by the executing Court dated 12.06.2007.

3. Shri Chakraverti, learned counsel for the appellants by placing reliance on Section 47, Order 21 Rule 97 and Rule 101 of CPC contended that when categorical objection is raised by the appellants about their possession on the suit property for more than 35 years, the executing Court should have conducted an inquiry, permitted the objectors to lead evidence and establish their possession. Reliance is placed on AIR 1997 SC 856 (*Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and others*), AIR 1998 SC 1754 (*Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another*) and AIR 2002 SC 3083 (*Tanjeem-E-Sufia Vs. Bibi Haliman and others*). Learned counsel for the appellants contended that without conducting any inquiry, the objection could not have been rejected summarily.

4. *Per contra*, Shri Hemant Chouhan, learned counsel for the respondent No.1 supported the impugned judgments. He submits that the objector Nos.3 & 4 are admittedly sons of judgment-debtor Tulsiram. They are bound by the judgment and decree. The objection is without any basis. The appellant Nos.1 & 2 have not filed any document to *prima facie* establish that they have any right, interest, possession or title on the said property. In absence of any material and documentary evidence, the Court below have rightly relied on the judgment of this Court reported in **2004 (2) MPLJ 317**

(Hamid Khan Ansari Vs. Lilabai). Shri Chouhan contended that in absence of any legal or jurisdictional error, no interference is called for.

5. No other point is pressed by learned counsel for the parties.

6. I have heard learned counsel for the parties at length and perused the record.

7. This Court on 18.02.2008 framed following substantial questions of law for determination:

- “1. Whether learned Executing Court erred in substantial error of law in dismissing the application of the appellant under Order XXI Rule 97 of the Code of Civil Procedure without holding any enquiry and providing opportunity to lead evidence ?
2. Whether by not providing opportunity to appellant to lead evidence, he was unable to prove that he is possessing the suit property for last 35 years ?”

8. As per the admitted facts, the judgment and decree passed by the trial Court dated 12-07-2006 had attained finality. During execution proceedings, two sons of Defendant No.2 (Tulsiram) and two persons filed applications under Order 21 Rule 97 of CPC. These persons (hereinafter called as “Obstructors”) contended that they are in possession on the suit property for more than 35 years. The sons of Tulsiram contended that they were not in talking terms with their father Tulsiram. The property was partitioned before 35 years from the date of filing of aforesaid application. With the connivance of Tulsiram and Radhe Lal, the decree was passed.

9. The said application was opposed by decree holder by filing reply. It is contended that on the land in question, no house is being constructed by obstructors. In order to defeat the decree during execution proceedings, they have raised a temporary construction by use of polythene sheets and earthen tiles. The objection of obstructors is devoid of substance. All the adverse allegations made in the objections were denied in the said reply.

10. The Executing Court by order dated 12-07-2006 considered the said application. The Court opined that the obstructor No.3 and 4 are real sons of original defendant/decreed holder Tulsiram. It is difficult to accept that sons of Tulsiram, who were allegedly residing in the suit property, were not aware of a litigation going on between their father and the decree holder. No documentary evidence was produced in support of any partition allegedly taken place before 35 years. They have not pleaded as to how they are in any lawful possession on the land in question. Tulsiram preferred first and second appeals but before the said Courts did not plead that he had given the land to his sons by way of partition. The Executing Court further opined that had it been correct that any such partition had taken place and obstructors were in possession of the land in question, they would have got their names mutated in the government/revenue records. No government record has been produced to show that they are in possession of the land in question. A joint affidavit has been filed in support of application of obstructors whereas stand of

obstructor No.1 & 2 and 3 & 4 are different. If there were four houses constructed on the suit property, the obstructors would have filed relevant documents in support thereof. No averment has been made as to how obstructor No.1 & 2 came into possession. The Executing Court considered the report of "Machkuri" dated 28-01-2006 and opined that in the half of the portion of the land in question, the houses of Tulsiram, Devi, Neeraj Singh and Hemraj are there whereas in remaining vacant portion two mango trees are standing. The "Machkuri" has not given any report about existing house on the land in question of obstructor No. 1 & 2 i.e. Padam Singh and Arjun singh. The Court below on the basis of aforesaid factual backdrop opined that the obstruction is an attempt to delay the proceedings. The objection/obstruction is malicious in nature, which has no basis. By assigning these reasons the application was rejected.

As to Substantial Questions-

11. The Appellate Court found that the decree holder and judgment debtor have fought a long drawn battle in the corridors of the Court, which continued for about 23 years. It is not possible to accept the contention of obstructor No.3 & 4 that they were not aware of such litigation and outcome thereof when they are admittedly sons of judgment debtor. In the written statement filed in original Civil Suit No.37-A/82, the Defendant No.2 has not pleaded about the existence of any partition in favour of obstructors. The Appellate Court also considered the report of "Machkuri". It was held that it cannot

be said that in every case, where application under Order 21 Rule 97 of CPC is filed, recording of evidence is necessary. The Court below by placing reliance on **Hamid Khan Ansari** (supra) rejected the appeal.

12. In the case of **Brahmdeo Choudhary** (supra), the Apex Court held that obstructor cannot be thrown of lock, stock and barrel by decree holder and he has a right to raise obstruction as per Order 21 Rule 97 of CPC. This principle is consistently followed in the case of **Silverline Forum Pvt. Ltd. And Tanzeem-e-Sufia** (supra). In the case of Silverline Forum Pvt. Ltd. (supra), the Supreme Court held as under:-

*“It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order XXL, Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication **on admitted facts or even on the averments made by the resistor.** Of course the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary.”*
(Emphasis supplied)

13. In the present case, the obstructors’ objection has been considered and adjudicated by both the Courts below. As per principle laid down in the case of **Silverline Forum Pvt. Ltd.** (supra), it is clear that adjudication does not necessarily mean a detailed enquiry or collection of evidence. Putting it differently, as a thumb rule, it cannot be said that in every case the Court dealing with obstruction is bound to record evidence and then only give a finding. It depends on the facts and

circumstances of the case and on the averments made by the obstructor. Pertinently, in *Hamid Khan Ansari* (supra), this Court considered the judgments of *Brahmdeo Choudhary and Silverline Forum Pvt. Ltd.* (supra). In *Hamid Khan Ansari* (supra), the obstruction was moved on the ground that the obstructor is in possession since last 17-18 years and had constructed a garage on the portion of land. Since he is running a garage, he claimed title and possession on the suit property.

14. This Court after considering aforesaid judgments of Supreme Court, opined that in support of his claim, the obstructor has not filed any document to show that he is in possession and is running a garage on the suit land. No license, electricity bill, permission to set up the garage was filed to establish the possession have been filed. This Court considered the report of "Ameen" and opined that there was no report that there exists any garage on the land in question. This Court disbelieved the story of appellant wherein he pleaded that he was not aware about the dispute and came to know only when execution proceeding was filed.

15. The present case if examined on as per the principles laid down by Supreme Court in aforesaid cases, which are followed in the case of *Hamid Khan Ansari* (supra), it will be clear that in the facts and circumstances of the present case, the Courts below have adjudicated the application under Order 21 Rule 97 of the CPC. In the peculiar facts and circumstances of this case and more particularly on account of the averments of the parties, no further enquiry or recording of evidence was

required. Thus, substantial question No.1 must be answered in negative by holding that as a straight-jacket formula, it cannot be said that in every case where such obstruction is filed, the Executing Court is bound to conduct a detailed enquiry and permit the obstructor to lead evidence. The said course of action depends on the nature of pleadings and material produced by the obstructor. The answer of substantial question No.2 depends on answer to the first question. In view of answer to the first question, the second question needs to be answered in negative. At the cost of repetition, it is clear that obstructor No.3 & 4 were sons of judgment debtor. None of the obstructor could file any material to show that they were in lawful possession of the suit land. If they were in possession, they should have pleaded the manner and method by which they came into possession. During these 35 years when they were allegedly in possession and constructed houses, they must have paid corporation tax, water tax, electricity bill, property tax and other statutory payments based on possession of the property. No such documents have been filed and, therefore, in the light of judgment of *Hamid Khan Ansari* (supra), in my view, the Courts below have not committed any error of law in rejecting the application filed under Order 21 Rule 97 of CPC. In *AIR 2004 KAR. NOC 293 (C. Some Gowda vs. C. Ranga Rao & Ors.)*, the High Court opined that a person raising objection must show some *prima-facie* material in support of his objection. In *(2005) 1 MadLJ 191 (G. Ganesan & Others vs. J. Surendran & Others)*, the Court opined that a petition as an obstructor without any document or

material to show that he was in actual possession of premises cannot be filed. It is further held that except for a bare statement that they are in possession of the suit property, no other material was filed to show their actual possession *prima-facie*. Such petitions are not maintainable at all.

In *AIR 2004 Madras 249 (R. Devadass vs. Subordinate Judge, Ponneri & Others)*, the Court opined as under:-

“10. A blind and stereo types method of receiving and activating every application without knowing as to whether it is bona fide or mala fide is an unhealthy trend and before an application is entertained, especially at the state of execution of a hardly won decree, the Executing Court has got an inherent duty to search for the availability of the bona fide adjudicable material.”

(Emphasis supplied)

It is noteworthy that Madras High Court in *R. Devadass* (supra) considered the judgments of Supreme Court in the case of *Brahmdeo Choudhary and Tanzeem-e-Sufia* (supra) and held that in absence of showing *prima-facie* adjudicable material in their favour by obstructor, it is to be held that the objection is only to prevent the execution of the decree. Malafide methods are being adopted by the revision petitioner. In absence of *prima-facie* adjudicable matter, the petition was dismissed.

16. In view of aforesaid analysis, in the considered opinion of this Court, the Courts below have not committed any error in dismissing the application of appellants. In absence of minimum essential *prima-facie* pleadings and material, the Courts were not obliged to mechanically permit the obstructors to lead evidence. The appeal sans substance and is hereby dismissed.

(Sujoy Paul)
Judge