2022 SCeJ 1409, 2022 PLRonline 1410504

SUPREME COURT OF INDIA

Indira Banerjee J. J.K. Maheshwari J.

SRIRAM HOUSING FINANCE AND INVESTMENT INDIA LIMITED — Appellant

versus

OMESH MISHRA MEMORIAL CHARITABLE TRUST — Respondent

Civil Appeal No. 4649 of 2022 [Arising Out of SLP (C) No. 12833 of 2014]
06.07.2022

Civil Procedure Code, 1908 (CPC) – Order 21 Rule 97 – Resistance or obstruction to possession of immovable property – It is only the 'decree holder' who is entitled to make an application in case where he is offered resistance or obstruction by 'any person' – Order XXI Rule 97 and Rule 99 of the Civil Procedure Code deal with cases of resistance or obstruction to possession of immovable property and dispossession of such property by the holder of a decree or purchaser thereof, respectively. Rule 97 only allows the decree holder to make objections against such resistance or obstruction, while Rule 99 allows any person other than the judgment debtor who is dispossessed to make an application for appropriate relief. Rule 98, Rule 100, and Rule 101 deal with the power of the Court to pass appropriate orders upon such applications. Rule 102 clarifies that Rule 98 and Rule 100 do not apply in cases where resistance or obstruction in the execution of a decree is offered by a transferee pendente-lite. In the present case, the appellant cannot take shelter of Rule 97 as they are not the decree holder, nor can they make an application under Rule 99 as they were never dispossessed of the property in question. Therefore, the Court cannot entertain the objections raised by the appellant in the execution proceedings. [Para 14, 15]

Held,

Order XXI Rule 101 allows for the determination of disputes relating to right, title, or interest in the property arising between parties to proceedings or their representatives on application under Rule 97 or Rule 99. However, this rule is inapplicable in the present case as the appellant is not entitled to file any application under Rules 97 or 99. Therefore, the High Court has rightfully set aside the order of the Trial Court that permitted the appellant to raise objections under Order XXI Rule 97 to Rule 102. The Executing Court overstepped its bounds in framing issues and giving direction to parties to provide evidence on the appellant's objections.

Counsel for Appearing Parties

Mr. Mahabir Singh, Sr. Advocate, Mr. Veerendra Kumar, Advocate, Mr. Vishisht Singh, Advocate, Mr. Vedant Singh, Advocate, Mr. Vikas Pandey, Advocate, Mr. Vinay Kumar Dubey, Advocate, for the Appellant; Ms. Naveen Bhandari, Advocate, Mr. Manish Mohan, Advocate, Mr. Pranaya Kumar Mohapatra, Advocate, for the Respondent.

Cases Referred

1.Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and Another, (1998) 3 SCC 723

2.Vateena Begum Vs. Shamim Zafar & Anr., (2020) SCC OnLine Del 1617

JUDGMENT

J.K. Maheshwari, J. – Leave granted.

2. This appeal is arising out of the judgment dated 16.04.2014 passed by High Court of Delhi in C.M. (M) No.493 of 2012, preferred by appellant company herein under Article 227 of Constitution of India, against the order dated 13.01.2012 passed in Execution Petition No.46 of 2006, vide which, the Executing Court entertained the objections filed by appellant company and proceeded to frame issues with a direction to the parties to lead evidence on those issues.

3. The Execution Petition was filed by respondent trust, alongwith legal heirs of late Shri N.D. Mishra for execution of judgment and decree dated 01.02.2003 passed by Trial Court in Civil Suit No. 278 of 2002. The suit was filed by late Shri N.D. Mishra making prayer for a decree for: (i) possession of suit property; (ii) sum of Rs.8000/- on account of arrear of rent for the month of May, 1994; (iii) sum of Rs.30,000/- towards damages/mesne profits/other charges for unauthorized use and occupation by the defendant with effect from 01.06.1994 till the date the defendant delivers back possession of suit property; (iv) permanent injunction against the defendant restraining her from using the suit property; and (v) mandatory injunction against the defendant restraining her from obstructing the plaintiff in enjoying the right of passage from main entrance on ground floor to the terrace. The Trial Court decreed the suit in favour of plaintiffs while restraining the defendant from obstructing the plaintiff from enjoying the right of passage from the main entrance on ground floor to the terrace and from raising further construction. Further regarding damages and mesne profits, the Trial Court directed payment of Rs.30,000/- per month with effect from 01.06.1994 till the date of delivery of possession of suit property by the defendant. Execution proceedings were initiated by decree holders being aggrieved, the appellant company filed objections before Executing Court, which were duly considered and decided by the Court vide order dated 13.01.2012. The said order was challenged by the respondent trust before the High Court by filing the petition, which was allowed vide order dated 16.04.2014 setting aside the order of the Executing Court.

4. The facts briefly put are that, one late Shri N.D. Mishra (now deceased) was the owner of the property in dispute i.e. Kothi No.27, situated at Ishwar Nagar in New Delhi. The disputed property was self-acquired by the deceased. Shri N.D. Mishra had a family consisting his wife Smt. Raj Mishra (now deceased), two sons namely Mr. Yogesh Mishra and Mr. Omesh Mishra (now deceased) and three married daughters namely Smt. Dheera Sharma, Smt. Neena Bharadwaj and Smt. Meena Sharma. In memory of the deceased son, the respondent trust was established in year 1992 by Smt. Raj Mishra in the name and style of ‘Omesh Mishra Memorial Charitable Trust’.

5. The history of instant litigation starts from the time when late Shri N.D. Mishra in year 1986, lent a portion of the ground floor of the suit property on lease to one Ms. Nisha Chauhan (hereinafter referred to as ‘tenant’) for a period of two years at the monthly lease rent of Rs. 7000/-. On expiry of the period, the lease was terminated but the tenant failed to vacate the suit property, whereafter, Shri N.D. Mishra filed Civil Suit No.181 of 1994 (i.e. suit for possession/recovery of arrears of rent/damages/mesne profit and mandatory/permanent injunction) against the tenant. During the pendency of suit, Shri N.D. Mishra died on 27.05.1998. On 13.08.1998, by filing application under Order XXII Rule 3 of

Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), substitution was allowed by Trial Court and Smt. Raj Mishra (wife), Mr. Yogesh Mishra (son), Mrs. Dheera Sharma, Mrs. Neena Bharadwaj and Mrs. Meena Sharma (daughters) were substituted as legal heirs. Later, one Subhash Chander Sabharwal (the authorized trustee of respondent trust herein) moved an application dated 02.08.1999 under Order I Rule 10 read with Section 151 of CPC before the Trial Court and sought impleadment as plaintiff in Civil Suit No.181/1994 on the anvil of 'Will dated 29.08.1992' executed by Shri N.D. Mishra in his lifetime, whereby, as stated in the application, Shri N.D. Mishra in terms of aforesaid 'Will', bequeathed the property in question in favour of the respondent trust. It was at this time when the existence of the will dated 29.08.1992 executed by Shri N.D. Mishra was brought to the notice of the Trial Court. Reply to the said application filed on behalf of respondent trust seeking impleadment was sought by Trial Court from the substituted legal heirs. Vide application dated 03.12.1999, the plaintiff legal heirs filed their reply and stated that they were not in knowledge of the said will executed by Shri N.D. Mishra in favour of the Trust and admitted the ownership of respondent trust over the property in question in the following manner –

> '4. .....The legal heirs of Shri N.D. Mishra first time came to know regarding the execution of Will of Shri N.D. Mishra on 06.06.1998 when one of the legal heir Smt. Neena Bharadwaj has attended the meeting of Omesh Mishra Memorial Trust Pvt. Ltd. It is correct that Shri N.D. Mishra on account of fact and by virtue of said WILL, the property bearing Kothi No. 27, Ishwar Nagar, New Delhi has been bequeathed in favour of Omesh Mishra Memorial Charitable Trust....It is further correct that said Trust shall be entitled to get the aforesaid property transferred in its own name and trust is also competent to dispose-off the said property....It is further correct that by virtue of said Will, Omesh Mishra Memorial Charitable Trust/applicant has become the owner of the suit property and entitled to substitute as plaintiff/co-plaintiffs in the present suit...'

It is worthwhile here to mention that the none of the legal heirs dispute the validity/genuineness of the will and admitted the existence of same. Thereafter, vide order dated 30.11.2000, the Trial Court allowed the application for impleadment and respondent trust became the co-plaintiff in Civil Suit No.181/1994 alongwith plaintiffs legal heirs.

6. Eventually, vide judgment and decree dated 01.02.2003, the 'decree for possession' in respect of suit premises, 'mandatory injunction' as well as 'mesne profits/damages' were passed in favour of plaintiffs i.e. the legal heirs and against the defendant i.e. the tenant. The relevant portion of the said judgment and decree is reproduced below for ready reference –

> "In view of my finding on the foregoing issues, the decree for possession in respect of the suit premises i.e. house bearing no.27, Ishwar Nagar, Main Mathura Road, New Delhi – 110025 as shown in red in Ex. PW1/3 as well as decree for possession in respect of portion shown in yellow in site plan Ex. PW 1/3 is passed in favour of the plaintiff and against the defendant. Further, decree of mandatory injunction is passed in favour of plaintiff thereby restraining the defendant from obstructing the plaintiff from joying the right of passage from the main entrance on the ground floor to the terrace and from raising further construction. The suit of plaintiff is also been decreed in respect of the relief of mesne profits/damages and decree for damages/mesne profits @ Rs.30,000/- per month passed in favour of the plaintiff and against the defendants w.e.f. 01.06.1994 till date the defendant delivers back the possession of the suit premises...'

Originally, in the judgment and decree dated 01.02.2003, the name of the respondent trust herein was not incorporated, whereafter, vide order dated 16.10.2004, the correction with respect to name of parties was carried out by Trial Court and name of respondent trust was included as one of the decree holders. Henceforth, for the purpose of judgment and decree dated 01.02.2003, the legal heirs of Shri N.D. Mishra alongwith respondent trust herein became the decree holders, whereas the obligations of the judgment debtor vested with the tenant for execution. Pursuant thereto, vide possession letter dated 22.12.2003, the tenant handed over the vacant and physical possession of the suit property to one Shri S.R. Pandey who was acting as power of attorney holder and authorized agent of Mr. Yogesh Mishra.

7. On the said factual premise, Execution Petition No.13/2004 was filed by decree holders seeking enforcement of judgment and decree dated 01.02.2003 against the tenant. It was at this time when the dispute arose, once it came to the notice of the respondent trust that based on mutation entry in revenue records in his favour, Mr. Yogesh Mishra had transferred the suit property to the appellant company vide sale deed dated 12.04.2004. The appellant company while acting as the agent of Mr. Yogesh Mishra even took the possession of the suit property directly from tenant i.e., the judgment debtor on 22.12.2003. On the perusal of the possession letter, it was found that the appellant company termed itself as bona-fide agent/power of attorney holder of Mr. Yogesh Mishra.

8. Subsequently, the appellant company filed an application dated 23.09.2004 under Order XXI Rule 58 of CPC in the execution proceedings and prayed for dismissal of execution petition on the ground that vide registered sale deed dated 12.04.2004, appellant company became owner of the suit property. Vide order dated 27.11.2004, the Executing Court dismissed the aforesaid application filed by appellant company as non-maintainable on the ground that respondent trust was impleaded as co-plaintiff in the main suit based on 'Will dated 29.08.1992' which was never disputed/objected by legal heirs of late Shri N.D. Mishra. The relevant portion of order reads as under –

> '(A) ….I have given my thoughtful consideration to the rival contention of the parties. It is clear from the record that vide order dated 30.11.2000, Omesh Mishra Memorial Charitable Trust was impleaded as co-plaintiff in the main suit as there was a WILL in favour of Trust dated 29.08.1992 and this WILL was not objected by the LR's of late Shri N.D. Mishra. Considering all these facts a decree has been passed in favour of DH, thus, applicant have got no right to stay in the property and is liable to handover the vacant and peaceful possession to the DH. It is also clear that judgment/decree for possession has been passed in favour of the trust and thus Sh. Yogesh Mishra has/had got no right to transfer the title/possession of the suit property to anyone. Decree dated 01.02.2003 passed in favour of the Omesh Mishra Memorial Charitable Trust. LR's of Sh. N.D. Mishra has not been challenged by the JD or anyone else, thus, the same has become final….'

Review against such dismissal was also preferred by appellant company, though the same came to be dismissed by Executing Court vide order dated 24.12.2004.

9. Thereafter, appellant company preferred Civil Revision No.34/2005 challenging the aforesaid order of rejection of application alongwith the order passed in Review. The said Revision also came to be dismissed by High Court vide order dated 27.11.2008 with the observation that since the appellant company was a 'purchaser pendente lite', it could not have instituted the objections and the only remedy available to it was to file a separate suit to get the dispute adjudicated regarding title and ownership of suit property. The order passed in Civil Revision was impugned by the appellant company before this Court in

Special Leave Petition (C) No.31457 of 2008, which also came to be dismissed vide order dated 12.01.2009, with an observation that 'since the High Court has permitted filing of a suit, it goes without saying that observation made in present proceedings will not be determinative issue if the suit is filed.' Following the dismissal of Special Leave Petition with aforesaid observation, the appellant company filed separate suit bearing no. CS (OS) No.434/2009 before High Court for 'declaration and permanent injunction' against the respondent trust and legal heirs of Shri N.D. Mishra. Written statement and objections were taken on record and after hearing both the parties, the said suit vide order dated 22.12.2010 was 'dismissed as withdrawn' by High Court with liberty as under-

> '5. Since the learned Senior Counsel for the plaintiff has sought permission to withdraw the suit with liberty to file objections, the same is allowed subject to all objections being raised by defendants herein as may be permissible under law.
>
> 6. The suit is accordingly dismissed as withdrawn with liberty as prayed for.'

10. In view of the liberty granted by High Court vide order dated 22.12.2010, the appellant company on 03.01.2011 filed its objections under Order XXI Rules 97 to 101 CPC in Execution Petition No.46/2006 (i.e., the same proceedings previously numbered as Execution Petition No.13/2004) and reiterated the same objections as raised by it under Order XXI Rule 58 in the previous round of litigation. The respondent trust filed objections and challenged the maintainability of the application. Vide order dated 13.01.2012, the Executing Court while dealing with the objections framed the issues and directed the parties to lead their evidence. Being aggrieved, the respondent trust preferred CM(M) No.493/2012 and C.M. No.7470/2012 before High Court and assailed the order dated 13.01.2012 passed by Executing Court in Execution Petition No.46/2006. The High Court vide order dated 16.04.2014 allowed the petition and set aside the order passed by Executing Court primarily on the ground that the Executing Court at the stage of execution proceedings framed the issues to lead parties to evidence without keeping in mind that once the objections under Order XXI Rule 58 of CPC filed by the appellant company against the execution of the decree, were already decided by the Executing Court, High Court as well as this Court against the appellant company in previous proceedings with the observation that the only remedy left with appellant company is to file an 'independent/separate suit' to decide the dispute with respect to title/ownership of the suit property, the objections filed by appellant company again at the stage of execution proceedings were not maintainable. The High Court further observed that, if the objections were to be held maintainable, it would amount to a fresh trial and hence, the decree holder may not be able to get the fruits of the decree for the next couple of decades while the illegal possession obtained by appellant company with respect to suit property shall remain with it.

11. The appellant company has assailed the impugned judgment inter-alia on the following grounds –

> a) The appellant company is a bona-fide purchaser of the suit property as it was purchased from Mr. Yogesh Mishra (son of Shri N.D. Mishra) vide registered sale deed dated 12.04.2004;
>
> b) Mr. Yogesh Mishra was the sole and absolute owner of the suit property by virtue of 'Will dated 23.05.1998' and same was sold to appellant company by Mr. Yogesh Mishra being a decree holder after the decree was passed. Therefore, the appellant company is legally entitled to raise objections under Order XXI Rule 97 to 101 of CPC;

c) High Court erred in interpreting Order XXI Rule 102 of CPC as it is only applicable when judgment debtor has transferred the property after the institution of suit, whereas, in the instant case, the suit property was sold by decree holder;

d) It is well settled that the Executing Court has discretion to frame issues and to conduct a trial in the matter while adjudicating the objections filed under Order XXI Rule 97 to 101 of CPC.

e) Reliance is placed on following case laws to substantiate the grounds as raised above –

i. **Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and Another, (1998) 3 SCC 723**.

ii. **Vateena Begum Vs. Shamim Zafar & Anr., (2020) SCC OnLine Del 1617**.

12. Per contra, the counsel for the respondent trust supported the impugned judgment passed by High Court and contended as follows –

a. The appellant company is claiming the suit property on the anvil of 'Will dated 23.05.1998' which has not been proved in any court of law by leading primary evidence in terms of Section 64 of Indian Evidence Act;

b. The Executing Court has gone into the claim or objection preferred by appellant company and once finality has been bestowed upon adjudication made under Order XXI and Rule 58, it can only be supplanted by another decree in Civil Suit. Therefore, having already invoked Order XXI Rule 58 of CPC, the appellant cannot invoke proceedings under Order XXI Rule 97 to 101 of CPC under doctrine of election;

c. The appellant company cannot invoke proceedings under Order XXI Rule 97 as only the 'decree-holder' or an 'auction purchaser' is entitled to make an application thereto. The appellant company does not fall under both the categories. Further, for purpose of Rule 99, the applicant has to make a statement that he/she has been 'dispossessed of immoveable property' by either the decree-holder or auction purchaser. In the instant case, the appellant company is very much in possession of suit property;

d. The judicial records sufficiently show that Mr. Yogesh Mishra had no title over the suit property which he could have transferred to appellant company;

e. 'Will dated 29.08.1992' stands proved in Court in Civil Suit No.181 of 1994 and hence, the said Will cannot be disputed merely by oral evidence;

13. Heard the rival contentions of learned counsel for both parties and perused the material available on record. Before adverting to the rival contentions raised by both the parties, it is apt to reproduce the Order XXI alongwith Rules 97 to 102 for ready reference –

'Order XXI – Execution of decrees and orders

97. Resistance or 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.]

98. Orders after adjudication –

(1) Upon the determination of questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2), –

a. make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

b. pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree-holder or purchaser –

(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession –

Upon the determination of questions referred to in rule 101, the Court shall, in accordance with such determination, –

a. make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or b. pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined –

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.

102. Rules not applicable to transferee pendente lite –

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation – In this rule, ‘transfer’ includes a transfer by operation of law.

14. From bare reading of the aforesaid provisions, it is clear that Order XXI Rule 97 deals with the resistance or obstruction to possession of immovable property by ‘any person’ obtaining possession of the property against the decree holder. It empowers the ‘decree holder’ to make an application complaining about such resistance or obstruction. On the other hand, Rule 99 of Order XXI deals with the right of ‘any person’ other than the judgment debtor who is dispossessed by holder of a decree for possession of such property or in case where such property is sold in furtherance of execution of a decree. The said provision vests ‘any person’ with a right to make an application complaining about such dispossession of immovable property in the manner prescribed above. Rule 98 and Rule 100 deal with the power of the Court to pass appropriate orders upon an application preferred under Rule 97 and Rule 99 respectively. In so far as Rule 101 is concerned, it confers jurisdiction on the Court as well as casts an obligation to determine the questions relating to right, title or interest in the property, if any, arising between parties on an application made by the concerned person under Rule 97 or Rule 99 in the same proceedings for adjudication and not in a separate suit. Lastly, Rule 102 clarifies that Rule 98 and Rule 100 shall not apply in a case where resistance or obstruction in execution of a decree for the possession of immovable property is offered by ‘transferee pendente-lite’ i.e., the person to whom the property is transferred by the judgment debtor after institution of the suit in which the decree sought to be executed was passed.

15. On conjoint reading of the aforesaid provisions, it can be observed that under Rule 97, it is only the ‘decree holder’ who is entitled to make an application in case where he is offered resistance or obstruction by ‘any person’. In the present case, as admitted by the appellant itself, it is a bona-fide purchaser of the property and not the ‘decree holder’. As available from the material placed on record, it is the respondent trust alongwith legal heirs of late N.D. Mishra who are the decree holders and not the appellant. Therefore, it is obvious that appellant cannot take shelter of Rule 97 as stated above to raise objections against execution of decree passed in favour of respondent. Further, Rule 99 pertains to making a complaint to the Court against ‘dispossession’ of the immovable property by the person in ‘possession’ of the property by the holder of a decree or purchaser thereof. It is factually not in dispute that appellant purchased the said property from Mr. Yogesh Mishra vide sale deed dated 12.04.2004 and has been in vacant and physical possession of the property since then. Had it been the case that the appellant was dispossessed by the respondent trust in execution of decree dated 02.09.2003, the appellant would have been well within the ambit of Rule 99 to make an application seeking appropriate relief to be put back in possession. On the contrary, the appellant in the instant case was never dispossessed from the property in question and till date, as contended and unrefuted, the possession of same rests with the appellant. Considering the aforesaid, the appellant cannot be said to be entitled to make an application under Rule 99 raising objections in execution proceedings since he has never been dispossessed as required under Rule 99.

16. Now, as stated above, applications under Rule 97 and Rule 99 are subject to Rule 101 which provides for determination of questions relating to disputes as to right, title or interest in the property arising between the parties to the proceedings or their representatives on an application made under Rule 97 or Rule 99. Effectively, the said Rule does away with the requirement of filing of fresh suit for adjudication of disputes as mentioned above. Now, in the present case, Order XXI Rule 101 has no applicability as the appellant is neither entitled to make an application under Rule 97 nor Rule 99 for the reasons stated above. Accordingly, we find no substance in the argument raised by learned counsel for the appellant. In such circumstances, Executing Court had no occasion to frame issues and give direction to parties to lead evidence on objections raised by appellant. By

doing so, the Executing Court transgressed the scope of Order XXI Rule 97 and Rule 99. Therefore, in our considered view, the High Court has rightly set aside the order of Trial Court entertaining the objections filed by appellant under Order XXI Rule 97 to Rule 102.

17. Resultantly, this appeal is dismissed with a direction to the Executing Court to decide the execution case as expeditiously as possible not later than six months.