

CASE NO.:
Appeal (civil) 5457 of 2002

PETITIONER:
TANZEEM-E-SUFIA

Vs.

RESPONDENT:
BIBI HALIMAN AND ORS.

DATE OF JUDGMENT: 03/09/2002

BENCH:
R.C. Lahoti & Brijesh Kumar.

JUDGMENT:

BRIJESH KUMAR, J.

Leave granted.

Heard learned counsel for the parties.

While issuing notice on 28.9.2001, this Court passed the following order:

"Issue notice limited to the question as to why the petitioner should not be allowed to pursue at least one of the two remedies either to proceed with application under Order XXI rule 97 C.P.C. or with civil suit. Until further orders the petitioner shall not be removed from possession in execution of decree."

The brief facts of the case are that the respondent Bibi Haliman and others had filed a title suit No. 8 of 1983 for eviction of the defendants. The suit relates to holding No. 116 (Old)/182 (New) situated in ward No. 2 of Giridhi Municipality. The suit was decreed in favour of Bibi Haliman in pursuance whereof the defendants were to handover the possession of suit property to the plaintiff. The decree holder Bibi Haliman and others filed an execution case No. 12 of 1984 for obtaining the possession of the premises indicated above. It is said that according to the report of the Nazir dated 26.7.1992, the Judgment debtors No. 1 to 6 had vacated the suit premises but Judgment debtor No. 7 Siwaitulla son of Kahamatulla had not given the possession and at the time the Nazir went to execute the delivery of the possession he found that Judgment debtor was lying in bed and doctors attending him told the Nazir that Judgment debtor was

a heart patient and he should not be informed about the warrant of delivery of possession as it may adversely affect his condition. According to the report, the son of the Judgment debtor told the Nazir that property belongs to Sufi Ashram where Sufi Dhyani Kendra has been established with registration No. 196 Tanzeem-e-Sufia Sufi Sant Ashram, hence the delivery of possession could not be affected. The Judgment debtor No. 7 filed an application under Section 151 C.P.C. on behalf of one Ashok Kumar Gupta, Secretary Tanzeem Sufia. The said application was registered as Misc. case No. 1 of 1994 by order dated 14.2.94. The decree holder preferred a Civil Revision No. 125/94R against the order dated 14.2.1994 at the Ranchi Bench of the High Court. The Revision has been allowed on 13.9.1994 and order dated 14.2.1992 was set aside by the High Court observing that the applications dated 3.8.92 and 12.10.1993, moved on behalf of the objector, a 3rd party, at the stage of execution proceeding when the decree holder had not, despite the report of the Nazir, filed an application under Order 21 Rule 97 CPC, were premature.

The appellant also filed a title suit No.66 of 1993 against the decree holders in respect of the same premises with a prayer for declaration of title in their favour, confirmation of possession and in case found dispossessed during the pendency of the suit, then a decree for recovery of possession was also prayed for. It was further prayed that decree obtained in title suit No. 8 of 1983 be declared not binding on the plaintiff, namely the present appellant. In Execution case No. 12 of 1984, the appellant filed a caveat under Section 148 of the Civil Procedure Code praying that in case any application under Order 21 Rule 97 CPC is filed by the decree holder in that event caveator may be heard before passing any order on such an application. The decree holder, thereafter filed a petition dated 13.3.1995, for issuance of writ of a delivery of possession. The appellant requested the executing court to treat the said application dated 13.3.1995 moved by decree holder as a petition under Order 21 Rule 97 CPC. The executing court by order 17.8.2001, rejected the prayer of the appellant to treat the application dated 13.3.1995 as a petition under Order 21 Rule 97 CPC observing that appellant had no locus standi to raise objection and only remedy available to him would be to move the executing court under Order 21 Rule 99 CPC and ordered for delivery of possession to the decree holder.

The appellant preferred a Civil Revision against the above noted order dated 17.8.2001 passed by the executing court. In the High Court it was submitted that a 3rd party in possession is entitled to file objections in proceedings initiated by the decree holder under order 21 Rule 97 CPC for delivery of possession. The High Court rejected the revision observing that the appellant has already filed a suit for declaration of title after declaring the decree passed in title suit No. 8 of 1983 as not binding on it and for confirmation of its possession etc. over the property in question. Therefore, it was not entitled to invoke the provisions of Order 21 Rule 97 CPC for the same relief.

Shri Sanyal, learned senior counsel appearing for the appellant has vehemently urged that the petition dated 13.3.95 moved by the Decree holder for delivery of possession before the executing court, should be treated as an application under Order 21 Rule 97 CPC. And in that event, the appellant shall be entitled to file objections before the Executing court as a 3rd party in possession and such objections are liable to be decided in accordance with law.

A perusal of Order 21 Rule 97 shall facilitate the proper appreciation of the contentions raised on behalf of the appellant. It reads as follows:

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."

The above noted provision entitles the decree holder to bring it to the notice of the execution court the fact that the execution of the decree is being resisted or obstructed by any person in possession of the property. The executing court would adjudicate upon the application made under sub-rule (1) of Rule 97 in accordance with law.

We may also peruse Rule 99 Order 21, which reads as under:

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."

The above provision is to be availed of after a person in possession claiming its independent right is dispossessed, in that event such the 3rd person can complain of dispossession to the executing court.

It will also be appropriate to peruse Rule 101 of Order 21, it reads as under:

101. Question to be determined All questions (including questions relating to 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."

We have already seen that the decree obtained by the decree holder could not be executed by the respondents in so far as it related to defendant No.7. As against others the decree had been executed. The decree holder thus filed an application, dated 13.3.95 for issuance of writ of delivery of possession. The appellant requested that it may be treated as an application by the decree holder under Order 21 Rule 97. We feel that the petition dated 13.3.95 is actually an application under Order 21 Rule 97 CPC. Though the said provision is not specifically indicated in the application but a perusal of the application shows that the resistance/obstruction in delivery of possession, by and at the instance of the appellant is clearly indicated therein. It is mentioned that office of Tanzeem-e-Sufia known as Sufia Ashram, is being run in a portion of the premises in question. It is also stated that one Ashok Kumar Gupta has been set up by the judgment debtor as Secretary of the society. A prayer has been made for delivery of possession by removing all obstructions with the assistance of armed police and lady constables etc. Such an application is envisaged under Order 21 Rule 97 CPC and that being the position, it entitles the appellant to be heard before passing any order on the application moved by the decree holder. There is no question of treating the application dated 13.3.95 as one under Order 21 Rule 97, in fact it is an application under that provision. The appellant took extra precaution to inform the court about its intention to file objections before hand and requested for a hearing. Once an application was moved by the decree-holder on 13.3.95 there was no occasion to refuse hearing to the appellant. According to the appellant it is in possession of the property having been gifted to it by one of its followers viz. Chandobibi.

In support of the contention raised on behalf of the appellant Shri Sanyal placed reliance upon a decision of this Court reported in 1998 (4) SCC 543 Shreemath and Anr. Vs. Rajesh and Ors. It has been held in this case that the term "any person" includes even a person not bound by the decree who shall also be entitled to file objections. It has been so provided to widen the scope of Order 21 rule 97, so that all such matters may be decided at the execution stage itself to curtail the lengthy procedure of an independent suit claiming a right not to be dispossessed from the property covered by the decree of a Court. Another decision relied upon is reported in 1997 (3) SCC 694 Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and Anr. It has been held that the executing court must

first adjudicate upon the objection of the objector on merits under Rule 97 (2) of order 21 CPC. It is also observed that it should not be insisted that possession be handed over first and an application under Order 21 Rule 99 be moved later on complaining about dispossession.

We find that in the case in hand the appellant is claiming its independent right over the property and asserts its possession thereof. Order 21 Rule 101 clearly provides that all questions relating to right, title or interest in property relevant to the adjudication of the application, shall be dealt with the application and not by a separate suit. The High Court therefore, erred in refusing to hear the appellant, on the ground that it has already filed a suit for declaration of its title and for declaration that the decree passed in title suit No. 8 of 1983 is not binding on it. The provision contained under Order 21 Rule 101 CPC seems to have escaped notice of the High Court while passing the order. We would also like to observe that the reasoning given by the execution Court while rejecting the application of the appellant as indicated in the order of the High Court, that the remedy of the appellant would only lie by moving an application under Order 21 Rule 99 CPC is also erroneous as in case of *Brahamdeo Chaudhary* (supra), it has been held that it should not be insisted that possession be delivered first and the objector may later on move the Court under Order 21 Rule 99 CPC.

For the reasons indicated above, we allow the appeal and set aside the judgment and order passed by the High Court as well as passed by the executing court. We further provide that the executing court shall dispose of the application dated 13.3.95 moved by the respondents afresh after giving an opportunity of hearing to the appellant. In the interest of justice it is desirable that the application is disposed of expeditiously.

Costs easy.