

Ram Kumar Tiwari and Others Vs. Deenanath and Others

Ram Kumar Tiwari and Others Vs. Deenanath and Others

SooperKanoon Citation : sooperkanoon.com/496407

Court : Chhattisgarh

Decided On : Apr-12-2001

Reported in : 2001(4)MPHT1(CG)

Judge : Mr. R.S. Garg, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 21, Rules 35(1), 97, 97(1), 97(2), 98, 99, 100, 101, 102 and 103; [Transfer of Property Act, 1882](#) - Sections 52

Appeal No. : Civil Revision No. 1896/2000

Appellant : Ram Kumar Tiwari and Others

Respondent : Deenanath and Others

Advocate for Def. : Shri Nande, Adv.

Advocate for Pet/Ap. : Shri Agrawal, Adv.

Disposition : Revision allowed

Judgement :

ORDER

R.S. Garg, J.

1. The present applicants apprehending their dispossession in execution of the decree passed in favour of respondent No. 1 submitted their objections before the Executing Court inter alia submitting that the property in dispute was purchased by them much before the institution of the suit and as their vendor and they themselves were not joined as party in the suit the decree passed in favour of the decree-holder was not executable against their interest. They prayed for an inquiry in accordance with the Order 21 Rules 98 and 101. The decree-holder opposed the application tooth and nail and submitted before the Court that as the present applicants/objectors had purchased the property during the pendency of the suit, therefore, and in view of the bar contained under Section 52 of the Transfer of Property Act, the present petitioners/objectors have no rights in their favour, their application was worth rejection.

2. After hearing the parties, under order 18-7-2000, the learned Executing Court rejected the objections holding that the property in dispute was purchased during the pendency of the suit, therefore, the objection submitted by the applicants were not worth consideration.

3. Being aggrieved by the said order, the objectors/applicants have filed this revision petition under Section 115 of the Civil Procedure Code.

4. Learned counsel for the applicants submits that as the property was purchased by them much before the institution of the suit, therefore, and as their vendor and they themselves were not joined as parties to the suit, firstly the decree was not binding upon them and secondly without making any inquiry in relation to the right, title or interest of the present objectors, the decree could not be executed. It is also contended that the Court below was unjustified in observing that the property was purchased by the applicants during the pendency of the suit.

5. Shri Nande, learned counsel for respondent No. 1, was unable to contend before this Court that the property in dispute was purchased by the present applicants during the pendency of the suit. He fairly conceded that the property was purchased prior to 1982. He however submits that even if the provisions contained in Section 52 of the Transfer of Property Act are not applicable, then too the objections of the applicants were not maintainable because till date they were

not dispossessed. He has also raised a preliminary objection that against the order passed on an application filed under Order 21 Rule 97 or Rule 99, an appeal lies under Order 21 Rule 103, therefore, the present revision petition is not maintainable.

6. Shri Agrawal, learned counsel for the applicants, submits that as the application filed by the present applicants was not entertained and the rights of the parties were not adjudicated, therefore, the provisions of Rule 103 of Order 21 would not be applicable. He however submits that as the application was unceremoniously rejected and the Court has refused to exercise its jurisdiction in accordance with law, a revision petition under Section 115, CPC would be maintainable.

7. Order 21 Rule 103, CPC reads as under :--

'Rule 103. Orders to be treated as decrees.-- Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.'

A fair perusal of Rule 103 of Order 21 would show that where an application is adjudicated upon under Rule 98 or Rule 100, CPC, then the order passed on such application shall have the same force and shall be subject to the same conditions as to an appeal or otherwise as if the order of adjudication was in fact a decree. The very first requirement for attraction of Rule 103 is that an application must have been adjudicated upon. Rule 98 reads as under :--

'Rule 98. Orders after adjudication.-- (1) Upon the determination of the 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 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.'

8. Before referring to the provisions contained under Rule 98, it would be profitable to refer to the provisions of Rule 100. Rule 100 reads as under:--

'Rule 100. Order to be passed upon application complaining of dispossession.-- Upon the determination of the questions referred 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 possession of the property or dismissing the application; or

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

From a very perusal of Rule 100, it would clearly appear that upon the determination of the questions referred in Rule 101, the Court shall in accordance with the determination make an order allowing the application or dismissing the application or pass such orders as in the circumstances of the case it may deem fit. It would also be necessary to refer to Rule 101 at this stage because Rule 100 is subordinate to Rule 101. The said Rule 101 reads as under:--

'Rule 101. Questions 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 question.'

According to Rule 101, all questions including the 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 relevant to the adjudication of the application shall be determined by the Court dealing with the application and not by a separate suit. The questions referred to in Rule 101 are the questions which can be raised under Rule 97 or Rule 99. Rule 97 says that when resistance or obstruction to possession of immovable property is offered, then the decree-holder may make an application to the Court, which is executing the decree, making a complaint that resistance was offered, therefore, the said resistance be removed. Rule 99 provides that where any person other than the judgment-debtor is dispossessed of immovable property, then such a person may make an application to the Court complaining of such dispossession. The question whether a third party can file an objection under Rule 97 has been considered in detail by the Supreme Court in the matter of *Silverline Forum Pvt. Ltd. v. Rajiv Trust and another*, reported in 1998(3) SCC 723. In the said case, the Supreme Court has observed as under :--

'It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions 'arising between the parties to a proceeding on an application under Rule 97 or Rule 99' shall be determined by the Executing Court, if such questions are 'relevant to the adjudication of the application'. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the Execution Court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

When a decree-holder complains of resistance to the execution of a decree, it is incumbent on the Execution Court to adjudicate upon it. But while making adjudication, the Court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

The words 'all questions arising between the parties to a proceeding on an application under Rule 97' would envelop only such questions as would legally arise for determination between those parties. In other words, the Court is not obliged to determine a question merely because the resister raised it. The questions which the Executing Court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97 (2) of the Code, the Execution Court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.'

In the above context, we may refer to Order 21 Rule 35 (1) which reads thus:--

'35. (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, it' necessary, by removing any person bound by the decree who refuses to vacate the property.'

It is clear that the Executing Court can decide whether the resister 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 21 Rule 97 (2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed inquiry or collection of evidence. The Court can make the adjudication on admitted facts or even on the averments made by the resister. Of course, the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary.

In *Bhanwar Lal v. Satyanarain*, AIR 1995 SC 358, a Three-Judge Bench has stated as under:--

'A reading of Order 21 Rule 97, CPC clearly envisages that 'any person even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or sets up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the Court in addition to the power under Rule 35 (3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done.'

In *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*, (AIR 1997 SC 856) this Court, following the aforesaid decision, made the under-quoted observation:--

'It is pertinent to note that the resistance and/or obstruction to possession of immovable property as contemplated by Order 21 Rule 97, CPC could have been offered by any person. The words 'any person' as contemplated by Order 21 Rule 97, sub-rule (1) are comprehensive enough to include apart from judgment-debtor or anyone claiming through him even persons claiming independently and who would, therefore, be total strangers to the decree. Consequently, it must be held that respondent 1's application dated 6-5-1991 though seeking only reissuance of warrant for delivery of possession with aid of armed force in substance sought to bypass the previous resistance and obstruction offered by the appellant on the spot. Thus, it was squarely covered by the sweep of Order 21 Rule 97, sub-rule (1) CPC. Once that happened the procedure laid down by sub-rule (2) thereof had to be followed by the Executing Court. The Court had to

proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the said order.'

9. From the above judgment of the Supreme Court, it would clearly appear that not only the decree-holder or a person dispossessed in the execution of the decree has a right to make an application to the Executing Court but a person who is apprehending dispossession can also make an application to the Court and when such an application is brought before the Court, the said Court shall be obliged to make an enquiry into the allegations and pass an order after making the enquiry into the right, title or interest of the party. The first objection of the respondent that the application filed by the present applicants under the provisions of Order 21 Rule 97 or Rule 99 was not maintainable cannot be upheld. The said objection is rejected.

10. The next objection relating to the maintainability of the revision petition is that in view of the dismissal of the objection, the order shall be deemed to be a decree and instead of filing a revision, the present applicants were required to file an appeal under Order 21 Rule 103, CPC. The argument unfortunately loses sight of the fact that an appeal would lie against an order which is passed after the objections are adjudicated, upon the rights of the parties as required under Rule 98 or Rule 100. If the Court below exercising its jurisdiction makes an order adjudicating upon the rights of the party and the order is in accordance with the provisions contained in Rule 98 or Rule 100, then only the said order would be deemed to be a decree and would be subject to an appeal. In a case where an application filed under Order 21 Rule 97 or Rule 99 is dismissed at its threshold on the ground of the maintainability without making any inquiry into the right, title or interest of the parties, then such an order cannot be said to have been passed under Rule 98 or Rule 100 of Order 21. Such an order cannot be termed to be an order passed under Rule 98 or Rule 100 of Order 21. If the order does not meet the mandatory requirement contained under Rule 98 or Rule 100, then such an order would not confer upon the party a right to file an appeal before the Appellate Court because such an order cannot be deemed to be a decree for the purposes of appeal or for the purposes of Rule 103.

11. As the application filed by the present applicants was rejected without any inquiry or without making any adjudication into the right, title or interest of the parties or without adopting the procedure required for disposal of the application, such an order in my considered opinion would be revisable. The objection raised by the learned counsel for the non-applicant is rejected.

12. So far as the merits of the matter are concerned, in view of the fact that the applicants did not purchase the property during the pendency of the suit, the observations made by the learned Court below, that the objections filed by the present applicants were hit under the provisions of Section 52 of the Transfer of Property Act or by its pendence, would become contrary to records. If the learned Court below had applied its mind to the facts of the case and the objections raised by the present applicants, it could read from the objections that they had purchased the property much before the institution of the suit and their vendor, so also they themselves were not joined as parties to the suit. If such was the objection, then application of Section 52 of the Transfer of Property Act was patently illegal. The order passed by the learned Executing Court cannot be allowed to stand. Not only it is contrary to law but the same is contrary to the facts. The order passed by the Executing Court deserves to and is accordingly quashed. The parties are directed to appear before the Executing Court on 8-5-2001. The Executing Court shall grant proper opportunity to the respondent/deed-holder to file fresh objections/ reply and shall proceed to decide the application filed by the applicants in accordance with law.

13. There shall, however, be no order as to costs.