

**In Re: Janab Majibullah**

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**SooperKanoon Citation :** [sooperkanoon.com/858078](http://sooperkanoon.com/858078)

**Court :** Kolkata

**Decided On :** Apr-10-1984

**Reported in :** AIR1984Cal249

**Judge :** G.N. Ray, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 97

**Appeal No. :** Revn. Appln.

**Appellant :** In Re: Janab Majibullah

**Advocate for Pet/Ap. :** Haradhan Banerjee, Adv.

**Disposition :** Application rejected

**Judgement :**

ORDER

**G.N. Ray, J.**

1. This revisional application is directed against Order No. 30 dated March'24, 1984 passed in Misc. Case No. 4 of 1984 arising out of Title Execution Case no.27 of 1983. It appears that the said Misc. Case No. 4 of 1984 has arisen out of an application under Order 21, Rule 97, Civil Procedure Code made by the present petitioner contending inter alia, that he is a third party to the decree and the decree sought to be executed in the Title Execution Case No. 27 of 1983 is not

binding on him. It may be noted that prior to the making of the said application under Order 21, Rule 97 of the Code, the objector-petitioner filed a suit being Title Suit No. 39 of 1980 in the Court of the learned Munsif, Howrah for declaration of the said objector-petitioner's title to the property in question as a tenant. The said suit was dismissed on contest on the finding that the plaintiff had no tenancy right in the disputed premises.

2. Against the said judgment and decree, the objector-petitioner has preferred a Title Appeal being Title Appeal No. 206 of 1983 before the learned District Judge, Howrah and the said appeal is pending final decision. In the said appeal, an application for injunction was made but the prayer for injunction was not granted by the learned District Judge. It was observed in the said order refusing to grant the interim order that if the petitioner had any independent title, he would have valid ground, to resist the execution of the decree and if, such resistance was made, the matter could be well adjudicated by the executing Court. The objector-petitioner did not move against the said order of the learned District Judge refusing to grant interim order but made an application under Order 21, Rule 97 of the Civil Procedure Code before the executing Court whereupon the said Misc. Case No. 4 of 1984 arose. It appears that a submission was made before the learned Munsif that, as the said objector-petitioner was in actual possession of the suit premises and as he was not a party to the decree his possession should be protected. The learned Munsif had noted in the impugned order that the objector had failed to get a declaration of his right, title and interest in the property in the Title Suit No., 39 of 1980, instituted by him against the decree-holder and had also failed to obtain any interim order in the appeal preferred by him. In the aforesaid circumstances, the learned Munsif was not inclined to stay the Title Execution Case No. 27 of 1983 in favour of the said objector-petitioner. The learned Munsif was of the opinion that he had not found any tenable ground to refuse the prayer of the decree-holder to execute the said decree,

3. In my view, the petitioner having failed to obtain any declaration of his title to the premises in question which is the basis of his claim of independent title to the property, he cannot claim, as a matter of right, before the executing Court that the execution proceeding should be stayed because he had raised a dispute as a third

party. A person not being party to a decree is not bound by the decree unless he claims any interest through any of the parties to the decree. Such third party can maintain an application under Order 21, Rule 97, Civil Procedure Code for resisting the execution of the decree affecting his independent title to the property in question. When such claim of independent title to the property unaffected by the decree is made, the executing Court has jurisdiction and also a duty to determine the validity of the claim of the objector. But if the objector had already chosen to institute a suit against the decree-holder for declaring his title to the property in question unaffected by the decree and had failed to obtain such declaration after a contested hearing, the executing Court cannot ignore the judgment and decree suffered by the objector in his own suit. The effect of such judgment and decree can only be undone by the competent Court of appeal. It may be noted that simply because an appeal has been preferred by the objector against the decree suffered by him in the Suit in which he is a party, the judgment and decree of the trial Court do not lose their force. Even though an appeal may be treated as a continuation of the suit, the judgment and decree passed by the trial Court nevertheless remain in force and are binding on the parties to the suit unless set aside by the Court of appeal. The executing Court, in my view, in entertaining an objection petition under Order 21, Rule 97, Civil Procedure Code cannot sit on appeal over the issue of independent title claimed by the objector since decided by the competent Court in a suit between the objector and decree-holder. The Court of appeal, in such case may be competent to stay execution proceeding till the appeal is finally disposed of. Hence, the teamed Munsif is justified in rejecting the objection petition. In the circumstances, no interference in revision is called for and the revisional application is, therefore, rejected.