

# **UTTARAKHAND JUDICIAL AND LEGAL ACADEMY**

## **MODULE ON STEP BY STEPS GENERAL PROCEDURE IN CASE OF EXECUTION OF DECREES**

### **TABLE OF CONTENTS**

<b>SR. NO.</b>	<b>CONTENT</b>	<b>PAGE NO.</b>
<b>MODULE-A</b>		
<b>STEP BY STEPS GENERAL PROCEDURE IN CASE OF EXECUTION OF DECREES</b>		
1.	General Procedure in Case of Execution of Decree	2-9
<b>MODULE-B</b>		
<b>EXECUTION PROCEDURE FOR VARIOUS SPECIFIC DECREES BY VARIOUS MODES</b>		
2.	Execution Procedure For Various Specific Decrees By Various Modes	10-11
3.	Execution of Money Decree By Attachment & Sale of Immovable Property	12-19
4.	Execution of Money Decree By Attachment & Sale of Movable Property	20-25
5.	Execution of Money Decree By Attachment of Salary	26-27
6.	Execution of Money Decree By Arrest & Detention	28-31
7.	Execution of Decree of Injunction	32-35
8.	Execution of Decree of Possession	36-39
9.	Execution of Decree of Specific Performance (Execution of Sale Deed)	40-42
10.	General Guidelines and Directions Issued by Hon'ble Supreme Court	43-47

**MODULE – A**  
**STEP BY STEP GENERAL PROCEDURE IN CASE OF EXECUTION OF DECREES**

**APPLICATION FOR EXECUTION**

**1.1.1 Execution Petition :** An “application for execution of a decree” is the formal petition under Order 21 of the Code of Civil Procedure, 1908 is usually called an “execution petition” and is filed in the court that passed the decree (or in the transferee court if the decree has been transferred).

**1.1.2 Written or Oral :** It is a written (or sometimes oral) application by the decree-holder seeking enforcement of a decree/order. The application is filed under **Order 21, Rule 10–13 CPC** .

**1.1.3 Oral Application {Order 21, Rule 11(1)}:** In money decrees, the decree-holder may make an oral application at the time the decree is passed, if the judgment-debtor is present in court. The court may then order immediate execution (for example, arrest of the judgment-debtor) before a formal warrant is prepared.

**1.1.4 Written application {Order 21, Rule 11(2)} (Form No. 6 – Appendix E) :**

Where an application is written (the usual case), it requires to be:

- **Sign & Verify:** In writing, signed and verified by the applicant or by a person acquainted with the facts.
- **Formatted in tabular form with particulars such as:**
  - (a) The suit number.
  - (b) Name of parties.
  - (c) Date of the decree.
  - (d) Whether any appeal has been preferred.
  - (e) Payment or adjustment made after the decree.
  - (f) Previous execution applications.
  - (g) Amount with interest due.
  - (h) Amount of costs.
  - (i) Person against whom execution is sought.
  - (j) Mode of assistance required (e.g., attachment, sale, arrest).

**1.1.5 Certified Copy of Decree {Order 21 Rule 11(3)}:** The court to which a written application in made may require the applicant to produce a certified copy of decree.

According to G.R. (Civil), 1957 the application for execution of a decree need not be accompanied by a copy of the decree sought to be executed **{Rule 165 of G.R. (Civil), 1957}**.

**1.1.6 Grounds of Arrest (Order 21 Rule 11-A):** Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.

**1.1.7 Inventory of Movable Property not in JD's Possession (Order 21 Rule 12):** When a decree-holder applies for the attachment of movable property in the possession of the judgment-debtor, they **must annex an inventory of the property**, providing a reasonably accurate description, as noted by Writing.

**1.1.8 Application for the attachment of a judgment-debtor's immovable property must include specific details at the foot of the application (Order 21 Rule 13):**

- **Description of Property:** The application must provide a clear, accurate, and detailed description of the immovable property intended for attachment.
- **Boundaries/Numbers:** If the property can be identified by survey numbers, boundaries, or settlement records, these must be specified.
- **Judgment-Debtor's Interest:** The application must outline the extent of the judgment-debtor's share or interest in the property, based on the applicant's best belief and information.

This rule ensures that the court has sufficient information to identify the property correctly before issuing an attachment order. Failure to comply with these requirements may effect the execution process.

**1.1.9 Courts by which decree may be executed (Section 38):** Section 38 CPC states that a decree can be executed either by the court which passed it or by the court to which it is sent for execution.

- i. **Court Which Passed the Decree** - Section 37 CPC defines this as the court of first instance that passed the decree, including appellate scenarios or where the original court no longer exists or lacks jurisdiction, the successor court with jurisdiction at execution time then qualifies.
- ii. **Transferee Courts** - The original court may transfer the decree under Section 39 CPC to another competent court, either on application or its own motion. For execution; the transferee court gains full powers as if it passed the decree (Section 42 CPC).
- iii. **Special Cases** - Foreign decrees from reciprocating territories (Section 44A) or civil courts outside CPC areas (Section 43) can be executed similarly after certification in Indian courts of competent jurisdiction.

**1.1.10 Limitation Period for Execution of Decree :** General limitation period to file an execution petition is 12 years from the date the decree or order becomes enforceable, unless a shorter period is expressly stipulated by law; however, decrees granting perpetual injunctions are not subject to any limitation period for execution.

- i. **General Rule (Article 136 Limitation Act, 1963):** Article 136 of the Limitation Act, read with Section 47 CPC, provides that an application for execution of any decree (other than a decree granting a mandatory injunction) must be filed within 12 years from the date the decree becomes enforceable. This 12 year period is the outer limit; if no execution is initiated within that period, the decree is treated as unenforceable.
- ii. **Execution of Mandatory Injunctions (Article 135 Limitation Act, 1963):** Under Article 135 of the Limitation Act, the limitation period for the execution of a mandatory injunction decree is **three years** from the date of the decree or the date fixed for performance,. If no specific date for performance is mentioned, the three-year period begins immediately upon the passing of the decree.

- iii. **Decrees Granting Injunctions** - A decree granting a perpetual or prohibitory injunction is not barred by limitation; an execution application in respect of such a decree can be filed at any time, so long as the decree remains subsisting.

**1.1.11 Prompt disposal of execution cases {Rule 162 of G.R. (Civil), 1957}:**

- Every presiding Judge shall see that execution cases are not neglected or needlessly prolonged, but disposed of with the same care and regularity as original suits.
- Sufficient time should be allowed for the execution of all processes, warrants and orders issued which shall be drawn up in the execution department in strict rotation except in special cases under written orders of the presiding Judge.
- Processes and orders ordered to be given *dasti* to a party or counsel shall be promptly prepared and given out the same day in Court through the Reader.
- The Judge shall see that the orders issued by him are carried out: and frequent or habitual carelessness, unpunctuality or procrastination in the execution department should be adequately punished.
- An order staying execution shall be promptly complied. If execution has taken place there shall be no restitution in pursuance of the order of stay.

**1.1.12 Recording of orders in execution {Rule 163 of G.R. (Civil), 1957}:**

- All orders in execution cases shall be recorded on the order sheet in consecutive order with serial number prefixed and
- all such orders shall be legibly signed and dated by the Judge.

**1.1.13 Work for Amins {Rule 529 of G.R. (Civil), 1957}:**

- An Amin in a civil court is a specialized officer appointed to assist in judicial proceedings. Role of Amin is very important in execution proceedings.
- According to G.R. (Civil), 1957 Civil Court Amins besides being employed to conduct sales under Chapter VI, rule 174, may be employed on any of the following duties:
  - (1) In executing commissions-
    - (a) to examine witnesses,
    - (b) for local investigation,**
    - (c) to examine accounts, and
    - (d) to make partitions.**
  - (2) in making attachments under an order of the Court.**
  - (3) In making delivery of possession of property under an order of the Court.**
  - (4) In ascertaining the sufficiency of securities.
  - (5) In ascertaining means of persons suing as an indigent person.

**1.1.14 Information by Amin to decree-holder {Rule 532 of G.R. (Civil), 1957}:**

- An Amin shall inform the Decree-Holder or his pleader by registered post or otherwise, within sufficient time, of the date on which he proposes to be at a certain spot to make an attachment or deliver property, so as to enable the party concerned or his representative to attend on that date.

\*\*\*\*\*

**PROCEDURE ON RECEIVING APPLICATION FOR EXECUTION OF DECREE**

**1.2** After the application for execution is received by the court, the following main steps are usually taken (**Order 21 Rule 17, CPC**) :

**1.2.1 Ascertaining the requirements of Rules 11 to 14 :**

- The Court shall ascertain whether such of the requirements of Rules 11 to 14 as may be applicable to the case have been complied with.
- If they have not been complied with, execution application should be registered as miscellaneous case.
- The Court shall allow the defect to be remedied then and there or within a time to be fixed by it.
- If the defect is not so remedied, the Court shall reject the application.
- Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

**1.2.2 Duty of Munsarim and Office {Rule 166 of G.R. (Civil), 1957}:**

- It shall be the duty of the Munsarim to receive applications for execution, and before putting up an application for orders the office shall, by reference to its registers, ascertain and report whether the requirements of O. XXI R. 11 to 14 applicable to the case have been complied with and whether the application is within time and jurisdiction.
- For special reasons the applicant may be required to produce a certified copy of the decree.
- The office report shall state that the application is in order, or, if it be not in order, shall state the exact defect and how the defect should be remedied.
- The execution application must be put up before the Presiding Officer on the same day or on the next day.

**1.2.3 Registration and numbering {Rule 167 of G.R. (Civil), 1957}:**

- The court registers the application in the execution register (**Form No. 68**) .
- The Court assigns an execution number (e.g., “Ex. No. \_ of 2026”).

**1.2.4 Transfer of Execution :**

- Transfer of execution means sending a decree from the court that passed it to another competent court (usually in a different place or State) so that the decree-holder can execute it more conveniently, usually where the judgment-debtor’s property or residence lies.
- Under Section 39 (1) of CPC, the court that passed the decree may, on the decree-holder’s application, send it for execution to another court of competent jurisdiction:
  - (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
  - (b) if such person does not have property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

- (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.
- The Court which passed a decree may of its own motion send it for execution to any subordinate court of competent jurisdiction **{Section 39 (2) of CPC}**.
  - When a court sends its decree for execution to another court. The originating court must send **(Order 21 Rule 6)** -
    - (1) A copy of the decree;
    - (2) A certificate of non-satisfaction or partial satisfaction **(Form No. 3,4,5 – Appendix E)**; and
    - (3) A copy of any execution order.
  - Postage shall be levied in the form of ten rupees cash from the decree-holder for the transmission and return by post of a decree, sent under section 39 of the Code to another Court for execution upon an application by the decree-holder. The money shall be credited into the treasury by pass book **{Rule 177 of G.R. (Civil), 1957}**.
  - The Court to which the decree is sent shall proceed to execute the decree.
  - The record of proceedings, shall be returned to the Court by which the decree was sent for execution:-
    - (1) when the decree has been executed, wholly or in part, by the Court to which it has been sent;
    - (2) when the decree is found for any reason to be incapable of execution, or
    - (3) if no application is made for execution, after the expiry of one year from the date on which the decree was received.

#### **1.2.5 Issue notice to the Judgment-Debtor (Order 21 Rule 22 CPC):**

- If required, the court issues notice under **Order 21 Rule 22 CPC** calling upon the judgment-debtor to show cause why the decree should not be executed.
- Notice may include directions to pay the amount, file objections, or appear before the court by a specified date.
- The Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him, where an application for execution is made—
  - (a) more than two years after the date of the decree, or
  - (b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of Section 44-A ,or
  - (c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent.
- Where the person to whom notice is issued under Rule 22 does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed **{Order 21 Rule 23(1) CPC}** .
- Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit **{Order 21 Rule 23(1) CPC}**.

### 1.2.6 Hearing objections (Section 47) :

- Any objections filed by the JD (for example, that the decree is satisfied, time-barred, or that certain property is exempted) should be registered as Miscellaneous Case.
- During the hearing proceedings of objections the proceedings of Execution Case should be stopped and dates should be fixed with the Miscellaneous Case.
- The Executing Court considers the objections under the scope of section 47 of CPC .
- Objections under Section 47 must strictly pertain to execution/discharge/satisfaction of the decree only.
- If the objections are upheld, then execution application shall be dismissed.
- If the objections are overruled, then the Court shall order the decree to be executed.
- Powers available under Section 47 CPC are quite different and much narrower than those available in appeal/revision or review. Executing court can neither travel behind decree nor sit in appeal over the same or pass any order jeopardising rights of parties thereunder **{Brakewel Automotive Components (India) (P) Ltd. v. P.R. Selvam Alagappan, (2017) 5 SCC 371}**.
- For the applicability of the section 47 CPC, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible **{Pradeep Mehra v. Harijivan J. Jethwa, 2023 SCC OnLine SC 1395}**.

### 1.2.7 Passing of execution order and issue of process :

- If the court finds the application in order and execution is permissible, it passes an order for execution process **{Order 21 Rule 24(1) CPC}**.
- The court issues a warrant or process (e.g., warrant of attachment, sale, or detention) to the court-executing officer (usually a bailiff / process-server) **{Order 21 Rule 24(2) CPC}**.
- The court-executing officer tasked with execution must write on the process how and when it was executed. If not executed, or if the timeline passes, the officer must state the reasons and return it to the court **{Order 21 Rule 25(1) CPC}**.
- If the process is partly or fully executed, the court examines the return report and may pass further orders (e.g., sale proceedings, distribution of proceeds).
- If the officer is unable to execute the warrant, the court must examine the officer regarding their inability **{Order 21 Rule 25(2) CPC}**.
- If the executing officer reports that execution could not be effected, the court may examine the officer, record reasons, and decide whether-
  1. To re-issue the process;
  2. Choose a different mode of execution; or
  3. Dismiss the pending application.

### 1.2.8 Stay of Execution (Order 21 Rule 26,29 and Order 41 Rule 5):

A stay of execution is a temporary halt to the enforcement of a court decree or order. It is primarily governed by Order 21 Rule 26, 29 and Order 41 Rule 5 of CPC.

- **Stay by Executing Court (O-21 R-26) :** The executing court may stay execution for a reasonable time to allow the judgment-debtor to appeal, provided "sufficient cause" is shown.

- **Stay of execution pending suit (O-21 R-29) :** A court may stay execution, if a separate suit is pending against decree-holder on the part of the judgment-debtor in the same court.
- **Stay by Appellate Court (O-41 R-5) :** An appeal does not automatically stay execution; a specific application for a stay must be filed. A stay is granted only if the court is satisfied that substantial loss will occur otherwise, the application was made without delay, and security is provided.

**For Stay of Execution, Applicant must show :**

- **Substantial loss:** Irreparable harm if the execution continues.
- **Security:** Adequate security for the performance of the decree must be provided.
- **Prompt Action:** The application must be filed without unreasonable delay.

**1.2.9 Hearing of Application (Rule 105):**

- This rule outlines court procedures for scheduling and conducting hearings on execution applications.
- The courts fix a hearing date for any pending execution application.
- If the applicant fails to appear on the fixed or adjourned date, the court may dismiss the application.
- If the applicant appears but the opposite party does not (despite notice), the court may proceed ex parte and pass an appropriate order.
- The explanation clarifies that this includes claims or objections under Rule 58.

**1.2.10 Setting aside Ex Parte Orders (Rule 106):**

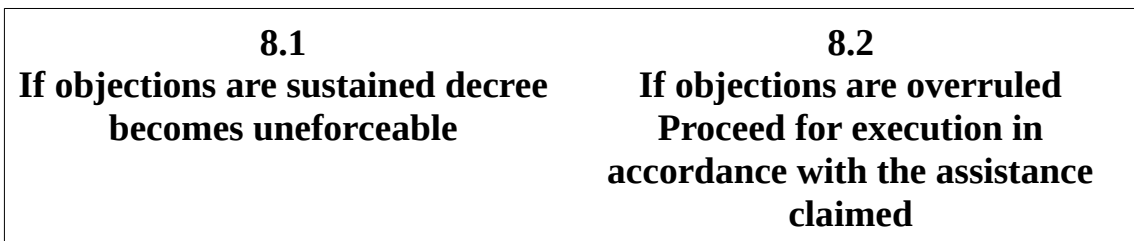
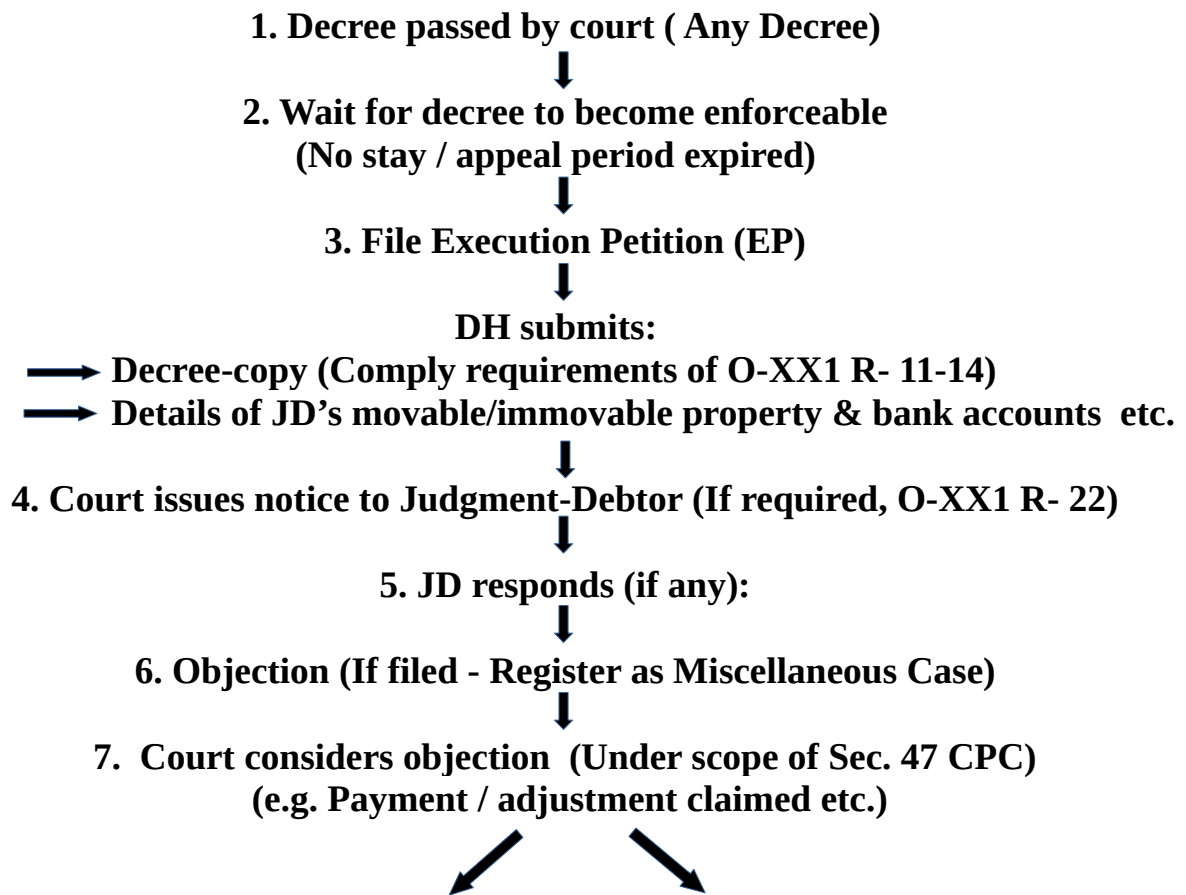
- This rule makes provision for remedy to restore dismissal or ex parte orders in execution proceedings.
- Applicant under Rule 105(2) or opposite party under Rule 105(3) can apply to set aside the order by showing sufficient cause for non-appearance.
- The court after satisfaction may restore it on terms.
- No set-aside order is made without notice to the other party.

**1.2.11 Limitation Period for Application under Rule 106 {(Order 21 Rule 106(3)}:**

- Applications must be filed within 30 days from the date of order, or for ex parte orders from knowledge of it.
- Section 5 of the Limitation Act does not apply, making the timeline strict.

\*\*\*\*\*

**FLOW-CHART FOR GENERAL PROCEEDINGS OF EXECUTION OF DECREES**



\*\*\*\*\*

**MODULE - B**

**EXECUTION PROCEDURE FOR  
VARIOUS SPECIFIC DECREES BY VARIOUS MODES**

**2.1.1 Various Kinds of Decrees :** In general, the Courts pass the following kinds of decrees:

- Decree for payment of money (Order 21 Rule 30);
- Decree for specific movable property (Order 21 Rule 31);
- Decree for immovable property (Order 21 Rule 35,36);
- Decree for specific performance (Order 21 Rule 32);
- Decree for an injunction (Order 21 Rule 32);
- Decree for execution of document (Order 21 Rule 34);

**2.1.2 Various Modes of Executing the Decrees :** Section 51 outlines five main modes of execution :

- (a) Delivery of any property specifically decreed;
- (b) attachment and sale or by sale without attachment of any property;
- (c) arrest and detention in prison;
- (d) appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require:

**2.1.3** Courts can choose or combine modes based on the application of DH, ensuring swift enforcement while protecting judgment-debtors from undue hardship.

TYPE OF DECREE	PROVISIONS	MODES OF EXECUTION
Money Decree	O-XXI R-30	Arrest and detention in civil prison; Attachment and sale of any kind of property; Sale.
Specific movable property	O-XXI R-31	Seizure and delivery; Arrest and detention in civil prison; Attachment of property; If undelivered after attachment, sale with compensation to decree-holder.
Specific performance of contract; Restitution of conjugal rights; Injunction	O-XXI R-32	Arrest and detention in civil prison; Attachment of property; Both. Extended to corporate officers.
Execution Document; Endorsement of Negotiable Instrument	O-XXI R-34	Decree-holder prepares a draft of document and files it with the court;  Serves a copy to the judgment-debtor;  If the JD objects, they must put them in writing; Court will make an order approving or altering the

<p>Possession of immovable property</p>	<p>O-XXI R-35</p>	<p>draft; After finalizing the draft, the officer authorized by the court signs the document;  Registration of document as per law.</p>
		<p><b>Direct Delivery:</b> Possession is delivered to the decree-holder.</p> <p><b>Forcible Removal:</b> If the judgment debtor refuses to vacate, the court may authorize their forcible removal.</p> <p><b>Joint Possession:</b> If the decree is for joint possession, it is executed by fixing a warrant copy on the property and proclaiming the decree via beat of drum.</p> <p><b>Breaking Locks:</b> If necessary, court officers may break open locked doors to deliver possession.</p>
	<p>O-XXI R-36</p>	<p><b>Symbolic (formal) possession</b> - when a third party, such as a tenant, is in occupation and not bound to vacate. It involves notifying the occupant via a posted warrant and proclamation. The occupant remains, but the holder's right is legally established.</p>
<p>Partition Decree</p>	<p>O-XX R-18, Section - 54</p>	<p>Execution of a partition decree involves a two-stage process. A preliminary decree defining shares and a final decree for physical division.</p> <p><b>Non Revenue Property {Order 20 Rule 18(2)}:</b> The court appoints a commissioner to divide the property and pass a final decree. No separate suit is required; Issue amin parwana; Kurra-bandi; Kurra confirmation; Delivery of possession.</p> <p><b>Government Revenue Land (Sec 54 CPC):</b> Partition must be executed by the Collector or a gazetted subordinate.</p> <p><b>Execution (Order 21):</b> Once the final decree is passed, it is executed like any other decree for possession under Order XXI, Rule 35, where the court can remove occupants to deliver possession.</p>

Below is the concise overview of step by steps general procedure in execution of various specific kinds of decrees by various modes:

<b>EXECUTION OF MONEY DECREE BY ATTACHMENT &amp; SALE OF IMMOVABLE PROPERTY</b>
---

### 2.2.1 Legal basis and conditions :

- A money decree may be executed by attachment and sale of JD's property under Section 51(b), coupled with Order 21 Rules 30, 41–57 and Section 60 CPC.
- The court may order attachment initially, followed by public sale, or may proceed to sale without prior formal attachment, as long as the property is within the executing court's jurisdiction and JD has an attachable interest.

### 2.2.2 What immovable property can be attached:

- Under Section 60 CPC, immovable property within the JD's ownership or interest is generally liable to attachment and sale, subject to limited exemptions.
- **Exempt Properties List:**
  1. Right to future maintenance.
  2. Tools of artisans, agricultural implements, livestock for ploughing/breeding.
  3. Wearing apparel, bedding, cooking vessels, houses of agriculturists/labourers/domestic servants.
  4. One main residential house (and attached land/buildings) for agriculturists in certain states.
  5. Pensions, gratuities, allowances from government.
  6. Salary/wages: first ₹1,000 + 2/3 of remainder (non-maintenance decrees); fully exempt after 24 months under one decree.
  7. Stipends for scholarships, provident funds, trusts for public/charitable purposes.
- **Before attachment, the court must be satisfied that:**
  1. The JD has disposable interest in the property; and
  2. The property is not in the exclusive interest of a third party (confirmed by checking title via Rule 14 verification).

### 2.2.3 Procedural steps before attachment:

#### (A) Execution application-

- DH files an application for execution under Order 21 Rule 10, expressly stating request for attachment and sale of immovable property.
- The application should include:
  1. Complete description of the property (survey number, boundaries, location, revenue record, mutation, etc.);
  2. Title-chain / documents relied on to show JD's interest;
  3. Estimated value vis-à-vis the decretal amount.

#### (B) Notice :

- **If filed within 2 years of decree** - Court may issue attachment warrant without notice (Order 21 Rule 22).

- **If filed after 2 years or against legal heirs, or certain cases-** Issue show-cause notice to judgment-debtor before attachment.

#### 2.2.4 Order of attachment (Order 21 Rule 54):

- Court issues an order of attachment of the immovable property (prohibition on JD's dealing e.g. transfer, mortgage, etc.) specifying **(Form No. 24, Appendix-E)**:
  - (a) Name and description of JD;
  - (b) Description of property;
  - (c) The order is implemented by:
  - (d) Physically serving the order on JD/occupant;
  - (e) Filing the order in the local revenue-record-maintenance office (tehsildar/patwari) and, if required, in the sub-registrar's office.
- The order shall require the judgment-debtor to attend court on a specified date to settle the terms of the proclamation of sale. **{{Order 21 Rule 54(1-A)}}**.
- The attachment must be proclaimed by beat of drum or other customary methods at the location of the property. If the land pays revenue, the order is posted in the Collector's office. If located in a village, it is also posted in the Gram Panchayat office **{{Order 21 Rule 54(2)}}**.
- Rule 54 directions are mandatory, not merely directory; defective attachment may be challenged by JD or third-party claimants.

#### 2.2.5 Removal of Attachment (Order 21 Rule 55):

- Attachment of property is removed automatically ("deemed to be withdrawn") under three scenarios:
  - (a) **Payment:** When the decreed amount, along with costs, charges, and expenses resulting from the attachment, are paid into the court.
  - (b) **Satisfaction:** When the decree is otherwise satisfied or adjusted through the court.
  - (c) **Reversal:** When the decree is set aside or reversed by a competent court.
- If the attached property is immovable, the withdrawal of attachment can be proclaimed at the expense of the JD if he so desires.

#### 2.2.6 Determination of Attachment (Order 21 Rule 57):

- This rule applies when the court dismisses the execution application.
- The Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.
- If the Court omits to give such direction, the attachment shall be deemed to have ceased.

#### 2.2.7 Objections (Order 21 Rule 58):

- Under Order 21 Rule 58 of CPC, provides a summary procedure for adjudicating claims or objections regarding property attached during the execution of a decree.
- JD or third party may raise objections to title, exemption, or over-attachment; these are decided within the execution proceeding without filing a separate suit.

- The court will not entertain a claim if the attached property has already been sold, or if the claim/objection is deemed to be intentionally or unnecessarily delayed.
- The court may pass the following orders:
  - (a) allow the claim and release property wholly/partly;
  - (b) disallow it;
  - (c) continue attachment subject to mortgages/charges; or
  - (d) pass fit orders.
- Such orders function as decrees, appealable under CPC; refused claims allow a fresh suit, but refusal is conclusive until suit outcome.

## 2.3 General Steps from Attachment to Sale (Order 21 Rule 64 to 73):

### 2.3.1 Order for Sale and Sale by whom conducted and how made (Order 21 Rule 64 & 65):

- An executing court may pass an order to sell attached property or a necessary portion thereof to satisfy a decree (**Order 21 Rule 64**).
- The sale can only be conducted by an authorized officer of the Court or another individual appointed by the Court (**Order 21 Rule 65**).
- It must be made through a public auction, ensuring that the property is sold to the highest bidder.
- Warrant of sale of property shall be issued to Bailiff of the Court (**Form No. 27 Appendix-E**).

### 2.3.2 Proclamation of Sale (Order 21 Rule 66):

- Court prepares proclamation in local language.
- The proclamation must be drawn up after notice to the decree-holder and the judgment-debtor (**Form No. 28 Appendix-E**).
- The proclamation must specify as accurately as possible (**Form No. 29 Appendix-E**):
  - i. The property to be sold.
  - ii. Revenue assessed on the estate (if any).
  - iii. Any known encumbrances (liabilities) on the property.
  - iv. The exact amount for which the sale is ordered.
  - v. Any other material information a purchaser should know.
- The Executing Court shall issue order on Nazir/Bailiff (or authorized officer) for causing service of proclamation of sale (**Form No. 30 Appendix-E**).
- The Amin shall receive the actual expenses incurred towards making proclamation (munadi) through a method prescribed by the Court. The statement of expenditure along with original bills, if any, should be verified by the Amin {**Rule 526 G.R. (Civil), 1957**}.
- The court can examine any person or call for documents to verify details for the proclamation.
- Failing to comply with Order 21 Rule 66 is a "flagrant breach" and "nullity ab initio" if the sale is conducted casually without proper notice to the judgment-debtor. {**Lal Chand v. VIIIth ADJ, (1997) 4 SCC 356**}.

- Where valuable property is to be sold by public auction court should itself make valuation of property and enter it in sale proclamation. *{Shalimar Cinema v. Bhasin Film Corpn., (1987) 4 SCC 717}*

### 2.3.3 Assessment and Valuation (Second Proviso to Order 21 Rule 66):

- After attachment, the court may order valuation of the property.
- The court is not required to make its own estimation of the value, but the proclamation shall include the estimates of value given by either or both parties.
- The Court records the valuation and fixes the minimum reserve price (normally not below valuation).

### 2.3.4 Mode of Proclamation (Order 21 Rule 67):

- Every proclamation must be published as nearly as possible in the manner prescribed in Order 21 Rule 54(2), which involves making the proclamation at or adjacent to the property by beat of drum or other customary method, and a copy affixed to a conspicuous part of the property and the court-house **(Mandatory)**.
- The Court may direct the proclamation to be published in the Official Gazette, a local newspaper, or both, for wider publicity **(Optional)**.
- If the property is divided into lots for sale, separate proclamations for each lot are not required unless the Court believes a proper notice cannot be given otherwise.
- A direction for publication under the second paragraph of O-XXI, R-67(2) shall be given only in exceptional cases **{Rule 173 G.R. (Civil), 1957}**.

### 2.3.5 Time of Sale (Order 21 Rule 68):

- Order 21 Rule 68 of the CPC mandates minimum time period for selling attached property.
- It requires a minimum waiting period after the proclamation of sale is affixed on the courthouse:
  - i. **Immovable Property:** At least **15 days** must pass.
  - ii. **Movable Property:** At least **7 days** must pass.

### 2.3.6 Adjournment or stoppage of sales (Order 21 Rule 69) :

- The court has discretionary power to adjourn a sale to a specific day and hour.
- The officer conducting the sale may also do so, but must record reasons.
- If the sale occurs within the court premises, an adjournment cannot be made without the leave of the Court.
- If an adjournment lasts for **longer than 30 days**, a fresh sale proclamation **(under Order 21 Rule 67)** is necessary, unless the judgment-debtor consents to waive it.
- If the JD tenders the full debt and all costs (including sale expenses) to the officer, or proves payment to the court before the lot is sold, the sale shall be stopped **{Order 21 Rule 69(3)}** .

### 2.3.7 DH not to bid for or buy property without permission (Order 21 Rule 72) :

- No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

- When the DH buys the property ***with court permission***, he can set off the purchase money against the amount due on the decree, subject to the provision of ***Section 73 (rateable distribution)***.
- If a DH purchases property without permission (by themselves or through another), the JD or any interested person can make an application the court to set aside the sale.
- If a sale is set aside due to lack of permission, DH may have to bear costs and pay for any deficiency in price upon resale.

### **2.3.8 Restriction on bidding or purchase by officers (Order 21 Rule 73) :**

- No Officer or individual with a duty related to the sale is allowed to purchase or bid "directly or indirectly" for the property.
- It applies to "any officer or other person having any duty to perform in connection with any sale".

### **2.3.9 Sale by Court in execution of a decree {Rule 174 G.R. (Civil), 1957} :**

- Where property to be sold in execution of a decree is a garden, or land occupied by a house or appurtenant thereto, or moveable property of any description, or is any interest in such garden, land or moveable property, the Court shall appoint a Civil Court Amin to conduct the sale,
- unless special reasons render it necessary that other agency should be employed; in which case such reasons shall be set forth in the handwriting of the presiding Judge in the order of appointment.

## **2.4. Steps for Sale of Immovable Property (Order 21 Rule 82 to 96):**

### **2.4.1 What Courts may order sales (Order 21 Rule 82):**

- Sales of immovable property in execution of decrees can be ordered by any Civil Court.
- But not by a Court of Small Causes.

### **2.4.2 Postpone a scheduled sale of immovable property (Order 21 Rule 83):**

- The judgment-debtor may apply to the court to postpone the sale of their attached property, to allow time to raise amount via a private sale, mortgage, or lease.
- The court, if convinced that the money can be raised, may postpone the sale on such terms and for such periods as it deems proper.
- Upon satisfaction, the court grants a certificate authorizing the judgment-debtor to make the transfer within a specified time, bypassing general restrictions (Section 64 CPC).
- Proceeds from the private sale or mortgage must be paid directly into the court, not to the JD.
- The sale does not become absolute until confirmed by the Court.
- This rule does not apply to a sale already directed for the enforcement of a mortgage or charge.

### **2.4.3 Payment, Default, Re-sale, and Co-sharer right (Order 21 Rule 84 to 88):**

- **Initial Deposit (Order 21 Rule 84) :** Immediately after being declared the purchaser in an auction, the person must deposit 25% of the purchase money with the officer conducting the sale.

- **Immediate Re-sale (Order 21 Rule 84)** : If the purchaser defaults in making this 25% deposit, the property is to be re-sold immediately.
- **Balance Payment (Order 21 Rule 85)**: The remaining 75% of the purchase money and stamp duty must be deposited within 15 days of the sale, with the time frame strictly enforced.
- **Default Consequences (Order 21 Rule 86)**: Failure to pay the balance results in the forfeiture of the initial 25% deposit to the government, and the property is re-sold.
- **Re-sale Procedure (Order 21 Rule 87)**: When a resale occurs due to default, it is treated as a new sale requiring a new proclamation.
- **Co-sharer Preference (Order 21 Rule 88)**: If a co-sharer matches the highest bid for an undivided property, they are given preference.

### **Setting Aside an Immovable Property Auction Sale:**

#### **2.4.4 Application to set aside sale on deposit (Order 21 Rule 89):**

- Where immovable property has been sold in execution of a decree.
- The JD or anyone deriving title from them, or any person entitled to an interest in the property can make an application to have the sale set aside.
- **Conditions for Application are:**
  - (a) Deposit 5% of the purchase money as compensation to the purchaser.
  - (b) Deposit the amount specified in the proclamation of sale (minus any amount already received by the DH).
- The application must be filed within 60 days of the sale (**Article 127 of the Limitation Act, 1963**).

#### **2.4.5 Application to set aside sale on ground of irregularity or fraud (Order 21 Rule 90):**

- Order 21 Rule 90 CPC also allows setting aside an immovable property auction sale.
- The DH, purchaser, or any person entitled to share in a rateable distribution (or whose interests are affected by the sale) can apply to the Court to set aside the sale.
- The sale can be challenged if there was a material irregularity or fraud in publishing or conducting the auction.
- Even if irregularity or fraud is proved, the sale will not be set aside unless the court is satisfied that the applicant suffered substantial injury as a result.
- An application cannot be entertained on any grounds that the applicant could have taken on or before the date the proclamation of sale was drawn up.

#### **2.4.6 Application by purchaser to set aside sale on ground of JD having no saleable interest (Order 21 Rule 91):**

- The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale.
- Application can be made on the ground that the judgment-debtor had no saleable interest in the property sold.

#### 2.4.7 Sale when to become absolute or be set aside (Order 21 Rule 92-93) :

- **Confirmation of Sale (Sub-rule 1):** If no applications are made within 30 days under Rules 89 (deposit), 90 (irregularity/fraud), or 91 (purchaser's right), or if such applications are disallowed, the Court confirms the sale, making it absolute.
- **Setting Aside Sale (Sub-rule 2):** If an application under Rules 89, 90, or 91 is allowed, the Court makes an order setting aside the sale. For Rule 89, the required deposit must be made within 30 days of the sale.
- **Conditional Restriction:** The Court cannot confirm a sale if there is a pending objection or claim regarding the attachment of the property.
- **Finality and Bar on Separate Suit:** Once a sale is confirmed under this rule, the sale becomes absolute. A separate suit to challenge the sale is barred; the only remedy is through the executing court for questions involving fraud or other errors.
- **Notice Requirement:** No order setting aside a sale shall be made unless notice has been given to all persons affected parties (**Form No. 36 & 37, Appendix-E**).
- **Return of purchase-money in certain cases (Order 21 Rule 93):** Where a sale of immovable property is set aside under rule 92 the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

#### 2.4.8 Certificate to Purchaser (Order 21 Rule 94):

- Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale of is declared to be the purchaser.
- Such certificate shall bear date the day on which the sale became absolute (**Form No. 38 Appendix-E**).

#### 2.4.9 Contents of Sale Certificate {Rule 176 G.R. (Civil), 1957} :

(1) A certificate of sale issued under O-XXI, R-94 shall invariably contain the following particulars:-

1. the "addition" (as defined in section 2 of Act No. XVI of 1908) of the person who is declared to be the purchaser;
2. particulars sufficient to identify the property as required in sections 21 and 22 of the said Act.

(2) A certificate issued under O-XXI, R-94 in respect of any sale held after the first day of April, 1879, shall be drawn up upon a stamp paper of the value required by section 3 clause (a) and Article 18 of the 1st Schedule and section 35 of the Indian Stamp Act (No.II of 1899) as amended in its application to Uttar Pradesh.

(3) On each copy of the certificate the amount of stamp-duty paid on the original certificate shall be noted.

*N.B.- Copies prepared in compliance with section 89 (2) of Act No. XVI of 1908 are, by Article 24(a) of Schedule 1 of Act No. II of 1899, exempt from stamp-duty.*

(4) All copies of certificates of sale shall be prepared upon durable paper, sufficient margin being left for binding.

**Post Sale Steps:****2.4.9 Adjustment of sale-proceeds :**

- The adjustment of sale proceeds primarily governs how money realized from the auction of a JD's property is distributed to satisfy the DH decretal amount including interest, permissible costs, auction-expenses and handle remaining balance (**Order 21 Rule 64**).
- The sale-proceeds are first applied to Court-costs, auction-expenses and then decretal amount. Any surplus is paid to the JD.
- If multiple Decree-Holders have applied for execution against the same JD *before* the sale proceeds are realized, the money is distributed rateably (proportionally) among all such creditors (**Section 73 CPC**).

**2.4.10 Delivery of immovable property sold during a Court auction (Order 21 Rule 95 & 96):**

- Where a sale of immovable property has become absolute, and certificate under Order 21 Rule 94 has been granted the purchaser shall apply to the court for delivery of possession.
- The court will order delivery, removing anyone who refuses to vacate.
- In case of delivery of property in occupancy of JD **Actual Possession** shall be delivered (**Order 21 Rule 95**) (**Form No. 39 Appendix-E**).
- In case of delivery of property in occupancy of tenant **Symbolic Possession** (*by affixing a copy of the sale certificate in a visible place and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser*) shall be delivered (**Order 21 Rule 96**) .

\*\*\*\*\*

**EXECUTION OF MONEY DECREE  
BY ATTACHMENT & SALE OF MOVABLE PROPERTY**

**3.1.1 Legal Framework and Conditions :**

- Execution of a money decree by attachment and sale of movable property is governed by Section 51(b) read with Section 60 and Order 21 Rules 30, 41–57 & 64-81 CPC.
- Section 60 CPC enumerates property that is liable to attachment and sale.
- Order 21 Rules 30 provides for the modes of execution of money decree .
- Order 21 Rules 41–57 lay down the procedure for attachment of movable property.
- Order 21 Rules 64-81 lay down the detailed procedure for sale of movable and immovable property.

**3.1.2 Properties that can be attached :**

- For movable property, the court attaches only those items that:
  - belong to the JD (or in which he has disposing power); and
  - are not exempt by Section 60.

**3.1.3 Mode of Attachment for Different Kind of Movable Properties :**

1.	Movable property (other than agricultural produce) in possession of judgement-debtor.	By actual Seizure and sale at once, if the property is subject to speedy and natural decay.	O-21 R-43
2.	Agricultural produce	By affixing copy of warrant on the land and on the house where judgement debtor resides.	O-21 R-44
3.	Movable property not in possession of judgement debtor.	by order prohibiting person in possession from giving it to judgement debtor.	O-21 R-46
4.	Debt not secured by a negotiable Instrument	By an order-prohibiting creditor from recovery of the debt and debtor from paying the debt with a directive to deposit the amount in court.	O-21 R-46
5.	Share in a company	by an order prohibiting the holder from transferring it or receiving dividend.	O-21 R-46
6.	Share or interest in movable property	by notice to the judgement debtor prohibiting him from transferring or charging it.	O-21 R-47
7.	Salary or allowance of employee	by an order that amount shall be withheld from such salary or allowances.	O-21 R-48 & 48A
8.	Partnership property	by making an order of- 1.Attaching the interest share of the partner and partnership. 2. Appointing a receiver of the share. 3. Directing production of accounts.	O-21 R-49

		4. Ordering sale of such interest.	
9.	Negotiable instrument	by actual seizure and bringing it to court.	O-21 R-51
10.	Property in custody of other court or officer	by notice requesting that such property may be held subject to order of the court.	O-21 R-52

### 3.2 Steps for attachment of movable property :

#### 3.2.1 Execution application and list of property (Order 21 Rule 10,11,12):

- The DH files an application for execution, indicating that execution is sought by “attachment and sale of movable property”.
- The DH submits a list of the JD’s movable assets (e.g., vehicles, machinery, jewellery, bank balances, stocks, etc.) and their likely locations.

#### 3.2.2 Examination of judgment-debtor as to his property (Order 21 Rule 41):

- DH may apply to Court to compel a JD to disclose his assets through oral examination or affidavit.
- The court can order the debtor to appear for an examination and produce documents/books.
- If the money decree is not satisfied within 30 days, the court can compel the debtor to file an affidavit listing their assets (**Form No. 16-A Appendix E**).

#### 3.2.3 Court order for attachment:

- The court is satisfied that the JD has attachable interest in the movable property and that the property is not exempt.
- Court passes the attachment order, generally directing actual seizure of movable property (other than agricultural produce) by the court officer.
- The court passes an order of attachment, specifying the list of items, place, and mode of custody.

#### 3.2.4 Seizure and custody (Order 21 Rule 43):

- A court officer / bailiff visits the JD’s premises, seizes the listed movable property, and prepares an inventory list.
- The seized property be kept in safe custody (court-lockup, godown, or with a fit person under court directions).

#### 3.2.5 Attachment of debt, share and other property not in possession of Judgment-debtor (Order 21 Rule 46):

- The court issues a written order prohibiting the person in possession from giving the property to the judgment-debtor and prohibits the creditor from collecting it.
- It covers the movable properties not in the judgment-debtor’s possession (excluding property in court custody).
- A copy of the prohibitory order is affixed at the courthouse, and notice is sent to the person holding the property -

- debts, not secured by Negotiable Instrument (**Form No. 17 Appendix E**),
  - shares in a corporation (**Form No. 18 Appendix E**), and
  - other movable property.
- Debtor who has been prohibited from paying a debt (under Rule 46(1)) to pay that amount directly into court. This payment serves as a valid discharge of his liability, acting as a complete release as if the debt was paid directly to the judgment creditor.

### 3.2.6 Garnishee (Order 21 Rule 46-A to 46-I):

- It applies in case of debt, other than a debt secured by a mortgage or a charge.
- A Garnishee is a third party, who owes money to a judgment debtor.
- Garnishee order is a court-issued notice and directive to pay into Court the debt due from him to the JD instead of the JD.

### 3.2.7 Vulnerable period and objections:

- After attachment generally no immediate sale; the court may allow a limited period during which the JD may pay or raise objections.
- Any person (including third party claimants) may raise objections to the attachment (e.g., right, title, or interest in the property); the executing court decides those objections, not a separate suit (**Order 21 Rule 58**).

### 3.2.8 Precept (Section 46):

- Precept enables attachment outside court jurisdiction.
- It empowers the court that passed a decree to issue a written order (precept) to another competent court to temporarily attach the judgment-debtor's property outside its jurisdiction.
- The precept is sent to a court that is competent to execute the decree in a prescribed format (**Form No. 2 Appendix E**).
- An attachment under a precept is generally valid for a maximum of **two months**.

## 3.3 General Steps from Attachment to Sale (Order 21 Rule 64 to 73):

### 3.3.1 Order for Sale and Sale by whom conducted and how made (Order 21 Rule 64 & 65):

- An executing court may pass an order to sell attached property or a necessary portion thereof to satisfy a decree (**Order 21 Rule 64**).
- The sale can only be conducted by an authorized officer of the Court or another individual appointed by the Court (**Order 21 Rule 65**).
- It must be made through a public auction, ensuring that the property is sold to the highest bidder.
- Warrant of sale of property shall be issued to Bailiff of the Court (**Form No. 27 Appendix-E**).

### 3.3.2 Proclamation of Sale (Order 21 Rule 66):

- Court prepares proclamation in local language.
- The proclamation must be drawn up after notice to the decree-holder and the judgment-debtor (**Form No. 28 Appendix-E**).

- The proclamation must specify as accurately as possible (**Form No. 29 Appendix-E**):
  - i. The property to be sold.
  - ii. Revenue assessed on the estate (if any).
  - iii. Any known encumbrances (liabilities) on the property.
  - iv. The exact amount for which the sale is ordered.
  - v. Any other material information a purchaser should know.
- The Executing Court shall issue order on Nazir/Bailiff (or authorized officer) for causing service of proclamation of sale (**Form No. 30 Appendix-E**).
- The court can examine any person or call for documents to verify details for the proclamation.

### 3.3.3 Assessment and Valuation (Second Proviso to Order 21 Rule 66):

- After attachment, the court may order valuation of the property.
- The court is not required to make its own estimation of the value, but the proclamation shall include the estimates of value given by either or both parties.
- The Court records the valuation and fixes the minimum reserve price (normally not below valuation).

### 3.3.4 Mode of Proclamation (Order 21 Rule 67):

- Every proclamation must be published as nearly as possible in the manner prescribed in Order 21 Rule 54(2), which involves making the proclamation at or adjacent to the property by beat of drum or other customary method, and a copy affixed to a conspicuous part of the property and the court-house (**Mandatory**).
- The Court may direct the proclamation to be published in the Official Gazette, a local newspaper, or both, for wider publicity (**Optional**).
- If the property is divided into lots for sale, separate proclamations for each lot are not required unless the Court believes a proper notice cannot be given otherwise.

### 3.3.5 Time of Sale (Order 21 Rule 68):

- Order 21 Rule 68 of the CPC mandates minimum time period for selling attached property.
- It requires a minimum waiting period after the proclamation of sale is affixed on the courthouse:
  - i. **Immovable Property:** At least **15 days** must pass.
  - ii. **Movable Property:** At least **7 days** must pass.

### 3.3.6 Adjournment or stoppage of sales (Order 21 Rule 69) :

- The court has discretionary power to adjourn a sale to a specific day and hour.
- The officer conducting the sale may also do so, but must record reasons.
- If the sale occurs within the court premises, an adjournment cannot be made without the leave of the Court.
- If an adjournment lasts for **longer than 30 days**, a fresh sale proclamation (**under Order 21 Rule 67**) is necessary, unless the judgment-debtor consents to waive it.

- If the JD tenders the full debt and all costs (including sale expenses) to the officer, or proves payment to the court before the lot is sold, the sale shall be stopped **{Order 21 Rule 69(3)}** .

### **3.3.7 DH not to bid for or buy property without permission (Order 21 Rule 72) :**

- No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.
- When the DH buys the property **with court permission**, he can set off the purchase money against the amount due on the decree, subject to the provision of **Section 73 (rateable distribution)**.
- If a DH purchases property without permission (by themselves or through another), the JD or any interested person can make an application the court to set aside the sale.
- If a sale is set aside due to lack of permission, DH may have to bear costs and pay for any deficiency in price upon resale.

### **3.3.8 Restriction on bidding or purchase by officers (Order 21 Rule 73) :**

- No Officer or individual with a duty related to the sale is allowed to purchase or bid "directly or indirectly" for the property.
- It applies to "any officer or other person having any duty to perform in connection with any sale".

## **3.4 Important Considerations for Sale of Movable Property (Order 21 Rule 74 to 81):**

### **3.4.1 Sale of Agricultural Produce (Order 21 Rule 74-75):**

- If the produce is a growing crop, it is sold on or near the land.
- If cut or gathered, it is sold near the threshing floor or place of storage.
- The court may direct the sale to be held at the nearest place of public resort if it deems this will result in a better price for the property.
- If a fair price is not offered, the owner can apply to postpone the sale to the next day or the next market day. The sale must then be completed on that day, regardless of the price offered.
- If the crop is storable, the sale date must be fixed after the crop is cut or ready for storing. If non-storable, it can be sold beforehand, allowing the purchaser entry to care for or cut it **(Order 21 Rule 75)**.

### **3.4.2 Sale of Negotiable Instruments and shares in corporations (Order 21 Rule 76):**

- The court may authorize the sale of negotiable instruments or shares in a corporation through a broker rather than a public auction.

### **3.4.3 Sale by Public Auction (Order 21 Rule 77):**

- The price for each lot must be paid at the time of sale. If the buyer defaults, the officer can re-sell the property immediately.
- Once the payment is made, the officer holding the sale grants a receipt and the sale shall become absolute.
- If a share of goods is sold and a co-owner bids the same amount as another bidder, the bid is deemed to be that of the co-owner.

#### 3.4.4 Irregularity not to vitiate sale (Order 21 Rule 78):

- No irregularity in publishing or conducting the sale of movable property shall vitiate the sale.
- A person who suffers loss due to such irregularity can sue the person responsible for the mistake to claim compensation for damages.
- If the purchaser was involved in the irregularity, the injured party can sue them for the recovery of the specific movable property.

#### 3.4.5 Delivery to Purchaser (Order 21 Rule 79):

- **By Direct Delivery** : If the movable property was physically seized, it shall be delivered directly to the purchaser **{Order 21 Rule 79(1)}**.
- **By Notice of Prohibition** : If the movable property is held by someone other than the judgment-debtor, delivery occurs by notifying that third person prohibiting from delivering the property to anyone except the purchaser **{Order 21 Rule 79(2)}**.
- **Debts**: Delivery is made through a court order prohibiting the creditor from collecting the debt and the debtor from paying anyone except the purchaser **{Order 21 Rule 79(3)}**.
- **Shares**: A written order from the court is issued prohibiting the registered holder from transferring the shares and the company from transferring them or paying dividends to anyone except the purchaser **{Order 21 Rule 79(3)}**.

#### 3.4.6 Transfer of negotiable instruments and shares (Order 21 Rule 80):

- When a property sold is a share in a corporation or a negotiable instrument (e.g., cheque, promissory note) that requires endorsement, the court officer can sign it on behalf of the owner **{Order 21 Rule 80(1)}**.
- The endorsement should be in the form given in **{Order 21 Rule 80(2)}**.
- Before the formal transfer, the court can appoint a person to receive any dividends or interest payable on these shares or instruments **{Order 21 Rule 80(3)}**.

#### 3.4.7 Post Sale Steps :

- The court adjusts the decree-amount, interest, and costs (including costs and auction-expenses) from the sale proceeds.
- Pays the balance, if any, to the JD or to the rightful claimant.

\*\*\*\*\*

<b>EXECUTION OF MONEY DECREE BY ATTACHMENT OF SALARY</b>
--

**4.1 Steps for execution of money decrees by attachment of salary:****4.1 Legal Framework :**

- Execution of money decrees by salary attachment primarily follows Section 60 and Order 21 Rule 48 CPC.
- This process allows courts to withhold portions of a judgment debtor's salary to satisfy the decree.
- It applies to government servants, railway employees, local authority workers, and certain corporation employees.
- For private employees, Order 21 Rule 48A applies similarly if the disbursing officer is within court jurisdiction.

**4.2 Attachment Limits :**

- Salary is attachable property under Section 60(1) CPC.
- Under Section 60(1)(i) CPC, the first ₹1000 of salary plus two-thirds of the remainder (in execution of any decree other than a decree for maintenance) is exempt from attachment.
- The attachable portion is calculated as: **{Total Salary - ₹1,000 - (2/3 × Remaining Amount)}**.
- For maintenance decrees, one-third of salary is attachable as per Section 60(1)(ia).

**4.3 Duration and Exemptions :**

- Attachment cannot exceed 24 months, either continuously or intermittently, for the same decree.
- After 24 months, the salary is immune from further attachment for 12 months (cooling period).
- Exemptions include notified allowances, provident funds, and stipends.

**4.4 Procedure :**

- The DH files an execution petition under Order 21 Rule 11 CPC (**Specify JD's salary details, employer**) requesting salary attachment.
- Court issues notice to JD (O. 21 R. 22) and Employer (O. 21 R. 48).
- Objections heard and disposed (Section 47).
- Employer confirms salary. If prior attachment exists, the new order is returned with full details.
- The court issues an attachment order to the designated government officer (**Form No. 19 Appendix-E**).

- Upon notice of the Order, the designated government officer instructs the disbursing authority to withhold and remit the amount.
- Deduction starts next pay after attachable portion calculated u/s 60 Proviso.
- Monthly remittance by Employer to Court.
- Proceeds applied to decree.
- Review After 24 Months **{S. 60(1)(i) Proviso}**.
- Exempt for 12 months for same decree.
- Re-attachable for new decree.
- Full exemption for same decree post-24 months.

\*\*\*\*\*

## EXECUTION OF MONEY DECREE BY ARREST & DETENTION

### 5.1 Legal Framework :

- To execute a money decree by arrest and detention (civil imprisonment) of the JD, Section 51(c), Order 21 Rules 30, 31, 32, 11-A, 37–40 CPC, read with Section 55 to 59 CPC are relevant.
- Arrest and detention are allowed generally where the decree is for payment of a sum of money (i.e., a “money decree”).

### 5.2 Procedural steps before issuing arrest warrant :

#### (a) Execution application for arrest :

- The DH files an application for execution under Order 21 Rule 11, clearly stating that execution is sought by arrest and detention.
- File an affidavit / statement of the DH (as contemplated in Order 21 Rule 11-A) explaining (grounds of arrest) :
  - i. JD’s evasion of payment;
  - ii. JD’s known income / assets;
  - iii. reasons why attachment alone will not ensure realisation.

#### (b) No arrest can be allowed in the following cases :

- No women cannot be arrested or detained in execution of a money decree (**Section 56**).
- When the money decree is for the amount not exceeding ₹2,000 (**Section 58**).
- Minors can potentially be arrested under execution provisions, as Section 56 does not explicitly exempt them (although they get **Protection of Order XXXII**).

#### (c) Show-cause notice (Order 21 Rule 37):

- The court usually issues a notice to the JD to show cause why he should not be arrested and detained in civil prison (**Form No. 12 Appendix-E**).
- **If the JD fails to appear:** after receiving the notice, the court may issue a warrant for his arrest (**Form No. 13 Appendix-E**).
- **If JD appears:** The Executing Court **should adjudicate** on the present means of the debtors vis-a-vis the present pressures of their indebtedness, or alternatively whether they have the ability to pay but have improperly evaded or postponed doing so or otherwise dishonestly committed acts of bad faith respecting their assets. The court will take note of other honest and urgent pressures on their assets, since that is the exercise expected of the court under the proviso to Section 51. {*Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360*}

#### (d) Warrant of Arrest (Order 21 Rule 38):

- Every warrant for the arrest of a JD shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed (**Form No. 13 Appendix-E**).
- If the JD pays the full decretal amount (including interest and costs) to the officer, the arrest warrant ceases to have effect, and the debtor is released.

#### (e) Subsistence Allowance (Section 57 & Order 21 Rule 39):

- Subsistence allowance ensures basic support for JD detained in civil prison during decree execution. It is governed primarily by Section 57 and Order XXI Rule 39.

- Section 57 empowers State Governments to set graduated scales of monthly allowances based on the JD's rank, race, and nationality. These cover essentials like food and necessities during detention.
- Courts determine the amount if state scales are absent, factoring in living standards and detention duration.
- Order 21 Rule 39 requires the DH to deposit a sufficient sum before arrest (**covering subsistence from arrest until court appearance, plus conveyance costs**).
- The Court shall direct the attention of a DH taking action under Sections 55 and 59 of the Code, to the provisions of Section 33 of the Prisons Act, 1894, and to paragraphs 464 to 466 of the U.P. Jail Manual (Now Uttarakhand Jail Manual, 2023 is in force) **{Rule 178 G.R. (Civil) - Decree-holder's liability to pay for Civil prisoner's detention in Jail}**.
- No arrest warrant issues unless the DH first deposits in court a sum deemed sufficient by the Judge for the JD's subsistence from arrest until court appearance (**Pre arrest deposit**).
- Once committed to civil prison, the court fixes a monthly allowance as per Section 57 scales. The decree-holder must pay this amount monthly in advance. First payment shall be made to the court officer for the remaining current month. Subsequent ones to the Prison Officer, before each month's first day (**Post arrest deposit**).
- Non-payment leads to mandatory release of the JD barring "special reasons" {Order 21 Rule 39(3)}.
- Sums disbursed by the DH for the subsistence of the JD shall be deemed to be costs in the suit. Therefore, Subsistence allowance is recoverable as costs from the judgment-debtor {Order XXI Rule 39(5)}.
- The JD shall not be detained in the civil prison or arrested on account of any sum so disbursed {Proviso to Order 21 Rule 39(5)}.
- **Chapter XXIX (Rules 678 To 688) of 'The Uttarakhand Jail Manual, 2023'** contains specific provisions for detention of Civil Prisoners.

**(e) Proceeding on appearance of JD [Hearing] (Order 21 Rule 40):**

- Court hears DH's evidence and JD's defense.
- **Pending inquiry:** JD may be held in court officer's custody or released on security.
- **Post-inquiry:** Court may order detention (arrest if needed), but first allows up to 15 days in custody or on security to satisfy decree.
- If no detention ordered, application dismissed and JD released.
- At the hearing, the JD may:
  - offer payment (lump-sum or on terms), or
  - explain genuine inability to pay;
  - the court records evidence and forms a satisfaction.

**(f) Order for arrest and detention :**

- The executing court must satisfy itself that:
  - The decree is for a sum certain (not vague or partly unliquidated).
  - The JD has means or income or is wilfully refusing / evading payment.
  - The DH has exhausted or reasonably explored attachment routes (principle of proportionality; courts prefer attachment/sale over arrest).
- If the court is satisfied, it may pass an order of arrest, specifying:
  - Court that signed the arrest order;
  - Name, description, and address of JD;

- Name of arrest-officer (usually a court officer);
- Maximum period of detention (within Section 58 limits).
- The warrant of arrest is generally issued in **(Form No. 13 Appendix-E)**.

### 5.3 Actual arrest and detention (Section 55):

#### (a) Execution of warrant:

- The arrest-officer arrests the JD (preferably in daytime, avoiding undue hardship).
- Upon payment on the spot, the officer shall release the JD immediately and report the payment to the court.
- If no payment is made, the JD is taken to civil prison / district jail and an acknowledgement of reception is obtained.

#### (b) Restrictions :

- No entry into dwelling house after sunset/before sunrise.
- No breaking outer door unless JD occupies and refuses access.
- Special notice to pardanashin women.

#### (C) In-prison detention :

- The JD is detained only for the period fixed in the warrant, not exceeding the Section 58 ceiling. During detention, the JD may be released earlier if:
  - He pays the decretal amount; or
  - The court, on suitable grounds (e.g., undertakings, medical reasons), orders release.

### 5.4 Statutory time limits for detention :

- Under Section 58(1), CPC, maximum detention in civil prison is:

Amount of Money - Decree	Period of Detention
Exceeding ₹5,000	Maximum 3 months
Exceeding ₹2,000 - Not Exceeding ₹5,000	Maximum 6 weeks
Not Exceeding ₹2,000	No detention is allowed

- A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt.
- JD shall not be liable to be re-arrested under the execution of same decree.

### 5.5 Insolvency of JD {Section 55 (3), 55 (4)} :

#### • Inform JD of insolvency option {Section 55(3)} :

- Court to inform a JD arrested for a money decree of their right to apply for insolvency.
- If the JD has not acted in bad faith and complies with insolvency laws, this provision protects him from immediate, indefinite imprisonment by offering a path to discharge.

#### • Realeas on security for filing insolvency application within one month {Section 55(4)} :

- If the JD intends to apply for insolvency and provides security, the court *may* release him for **up to one month** to file the application.
- Failing which he may be committed to civil prison.

\*\*\*\*\*

**FLOW-CHART FOR EXECUTION OF MONEY DECREE  
BY ARREST & DETENTION**

**DH Files Execution Petition for Arrest (O. XXI R. 11A, 37)**  
[Grounds stated: JD has means but refuses payment]



**DH to deposit Subsistence Allowance in advance (O. XXI R. 39)**



**No arrest warrant can be issued unless the DH first deposits in court Subsistence Allowance**



**The Court shall fix a sum deemed sufficient for the JD's subsistence**  
(a) from arrest until court appearance (Pre arrest deposit)  
(b) Once committed to civil prison, the court fixes a monthly allowance (Post arrest deposit)  
Court can call the report from the Jail Authorities for fixation the amount



**Court Issues Show-Cause Notice to JD [Reasonable time to appear]**  
[O. XXI R. 37(1)] [Form No. 12 Appendix-E]



**[If appearance is not made, arrest-warrant can be issued.**  
(O. XXI R. 37(2)) [Form No. 13 Appendix-E]



**If JD appears**  
[Objection u/s 47 CPC disposal, if any]  
Hearing: Inquiry into Means; Evidence of assets/disposal  
[S. 51 Proviso; O. XXI R. 40(1)]  
{*Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360*}



**Warrant of Arrest Issued (S. 55; O. XXI R. 38; App. E Form 13)**  
[Bailiff executes; JD produced before court promptly]



**JD Before Court: Insolvency Option Informed (S. 55(3))**  
[Payment or detention ordered; Subsistence Allowance from DH deposit]



**Detention in Civil Prison (S. 58)**  
[Max period: Rs. 2000-5000/- (6 Weeks); Exceeding Rs. 5000+ (3 months)]  
[Not Exceeding Rs. 2000/- No Detention]  
[Release on payment/adjustment; No manual labour]



**END (Decree satisfied or max detention served)**

**EXECUTION OF DECREE OF INJUNCTION****6.1 Legal Framework :**

- Execution of an injunction decree (prohibitory or mandatory) is governed primarily by Order 21 Rule 32 CPC, read with Section 36–74 CPC and Article 135/136 of the Limitation Act, 1963.

**6.2 Modes of executing an injunction decree (Order 21 Rule 32) :**

- Arrest and detention in civil prison;
- Attachment of property;
- Both.

**6.3 Procedure before the executing court:****(a) Filing the execution application under Order 21 Rule 32(1), clearly stating:**

- Nature of the injunction decree (prohibitory/mandatory);
- facts and date of breach/disobedience;
- relief/mode sought (detention, attachment, compensation, act to be done, etc.).

**(B) The DH usually annexes:**

- Certified copy of the decree;
- affidavit describing the disobedience and evidence (photographs, site-inspection report, etc.).

**(C) Notice and inquiry into disobedience :**

- The court issues notice (If required) to the JD.
- Hearing and disposal of objections raised under the purview of Section 47 CPC;

- The court must be satisfied that the disobedience was willful (not accidental or justified);
- mere technical breach may not attract harsh measures and execution should be dismissed.

**(d) Passing the execution order :**

- On finding willful disobedience, the court may pass one or more of the orders under Rule 32(2):
  - Order for arrest and detention in civil prison **{Order 21 Rule 32(2)}**;
  - attachment of property (for maximum 06 month) **{Order 21 Rule 32(3)}**;
  - sale, (where any attachment remained in force for six months, if the JD has not obeyed the decree and the DH has applied to have the attached property sold, such property may be sold) **{Order 21 Rule 32(3)}**;
  - compensation for loss, (out of the sale proceeds the Court may award to the DH such compensation as it thinks fit, and shall pay the balance (if any) to the JD on his application) **{Order 21 Rule 32(3)}**;
  - the attachment shall cease **{Order 21 Rule 32(4)}**,
    - ◆ where the JD has obeyed the decree and paid all costs of executing the same which he is bound to pay, or
    - ◆ where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused;
  - direction that the act be done by DH or third-party at JD's cost **{Order 21 Rule 32(5)}**;
  - restoration of possession to the DH (If dispossession has been done during pendency).

**6.4 Time limit for Execution Application:**

- For decree of mandatory injunction, 03 years time limit is prescribed under Article 135 of the Limitation Act, so the DH may apply for execution at any time.
- Time runs from the date of the decree or the fixed date of performance.
- For decree of perpetual injunction, no time limit is prescribed under Article 136 of the Limitation Act, so the DH may apply for execution at any time.

\*\*\*\*\*

**FLOW-CHART FOR EXECUTION OF DECREE OF INJUNCTION**

**A- [DH Files Execution Application under Order XXI Rule 11 & 32 CPC]**

**B -[Court Issues Notice to Judgment-Debtor, If required]**

**C - [Court Inquires]:**

**Willful Disobedience and Opportunity to Obey?**

**D-1 - [No] E - [Execution Dismissed]**

**D-2 - [Yes] F- [Court Orders Enforcement]**

**G [Choose Mode]**

**H - [Attachment]**

**I - [Attach Property upto 6 months, then sell if no compliance]**

**J - [Detention]**

**K - [Detain JD in Civil Prison - max. 3 months]**

**L - [Both] [Detention + Attachment]**

**M - [Alternative]**

**[Authorize DH/Third Party to Perform Act at JD's Cost - Rule 32(5)]**

**N - [Final Compliance]**

**O - [Yes] [Attachment Ceases - Costs Paid]**

**P - [No] [Continue/Sell Property/Award Compensation]**

**Q- End of execution (or decree extinguished after 12 years limitation)**

<b>EXECUTION OF DECREE OF POSSESSION OF IMMOVABLE PROPERTY</b>
--

**7.1 Legal Framework :**

- Execution of a decree for possession of immovable property is done under Order 21 Rules 35, 36 CPC, read with Section 36–74 CPC.
- **Actual Possession :** The object is that the DH obtains actual/physical delivery of possession from the JD or others resisting the delivery, and, if necessary, removes any person bound by the decree who refuses to vacate **{Order 21 Rule 35(1)}**.
- **Symbolic Possession :** Delivery of immovable property in the possession of a tenant or third party not bound by the decree to vacate, when physical eviction is not permitted, may be made through constructive or "symbolic" possession executed by affixing a warrant copy and making a public proclamation on the property **{Order 21 Rule 36}**.

**Order 21 Rule 36:** Provides for delivery of vacant possession where the JD has obstructed delivery; the court may order arrest and detention (up to 30 days) of the obstructing person and ensure delivery of vacant possession.

**7.2 Procedure before the executing court:****(a) Execution application under Order 21 Rule 11:**

- The DH files an application for execution stating that the decree is for delivery of possession of immovable property.
- DH shall give particulars such as location of property, occupants, and nature of obstruction (Compliance of Order 21 Rule 11).

**(b) Handling of resistance / obstruction (Section 74):**

- If the JD or someone at his instance obstructs delivery:
- The court may invoke Order 21 Rule 36, and order arrest and detention in civil prison of the obstructing person for up to 30 days (Section 74).
- Police may be requisitioned to assist the court officer in executing the warrant peacefully.

**(c) Handling of Claims and Objections (Order 21 Rule 97-103):**

- In execution proceedings mandatory mechanism for handling third-party resistance (Rule 97) or dispossession (Rule 99) has been provided.
- These provisions cover objections by any person, including strangers and tenants, claiming a right on their own behalf.
- It requires to adjudicate title/right issues by executing court itself rather than through separate suits.
- Order 21 Rule 97 allows DH or auction purchaser to file applications against obstructers.
- Order 21 Rule 99 enables third party occupants (tenants, licensees not bound by decree) to seek restoration of possession in case of dispossessed by DH or auction purchaser.
- If third persons are not parties to the suit, the court cannot dispossess them on the decree, the DH must seek possession through tenant-eviction statutes (e.g., Rent Act/Tenancy Act), not execution of decree for possession.
- Once an objection is raised, the executing court shall stay the execution and adjudicate the matter on its merits before proceeding with the execution.

- The executing court must adjudicate all questions (including title, right, or interest) arising between the parties or their representatives in the execution process (Order 21 Rule 101).

**(d) Orders after Adjudication (Order 21 Rule 97 & 100):**

- The Executing Court shall adjudicate treating them as part of the suit, not a separate suit and can take evidence.
- The Executing Court can pass the following orders :
  - **Allowing the Claim:** The court may uphold the objection, protecting the third party's possession and removing the property from execution.
  - **Disallowing the Claim:** The court may reject the objection and order the obstructor to be dispossessed.
  - **Protection of Rights:** The court can pass any order it deems fit to satisfy the decree.
- The decision made by the executing court under these rules is deemed a decree and is appealable, not a separate suit.
- Both sets of remedies (O-21 R-99 and O-21 R-97) are available to a stranger (third party) to the decree **{Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal, (1997) 3 SCC 694}**.
- A third party claiming to be in possession can file an objection under Order 21 Rule 97, which must be resolved by the executing court before they are dispossessed, rather than the court waiting for them to be dispossessed first. **{Shreenath v. Rajesh, (1998) 4 SCC 543}**.

**(d) Order for delivery of possession :**

- The court issues an order / warrant directing delivery of possession to the DH (or his nominee) .
- If the JD is in occupation, the court may (**Order 21 Rule 35**):
  - Direct peaceful surrender of possession; or
  - Direct the court officer (bailiff / attach-officer) to enter the property and put the DH in possession, removing any JD/person resisting (**Form No. 11 Appendix E**).
- When the judgment-debtor is not in actual possession, but a tenant or other occupant who is not required by the decree to vacate is in possession, the Court orders symbolic possession in the following manner (**Order 21 Rule 36**) :
  - A copy of the warrant is affixed in a conspicuous place on the property.
  - The substance of the decree is proclaimed on-site through beat of drums or other customary methods.

**(e) Joint Possession decrees {Order 21 Rule 35(2)}:**

- Possession is delivered by affixing a copy of the warrant in a conspicuous place on the property; and
- proclaiming the decree through customary means (e.g., drumbeat, public notice).

**7.3 Time limit:**

- For delivery of vacant possession, the DH must generally move within 1 year from the date of confirmation of sale or decree (**Section 134 Limitation Act, 1963**).
- For the execution of decree, the limitation period is 12 years (**Section 136 Limitation Act, 1963**).

**7.4 Police Assistance:**

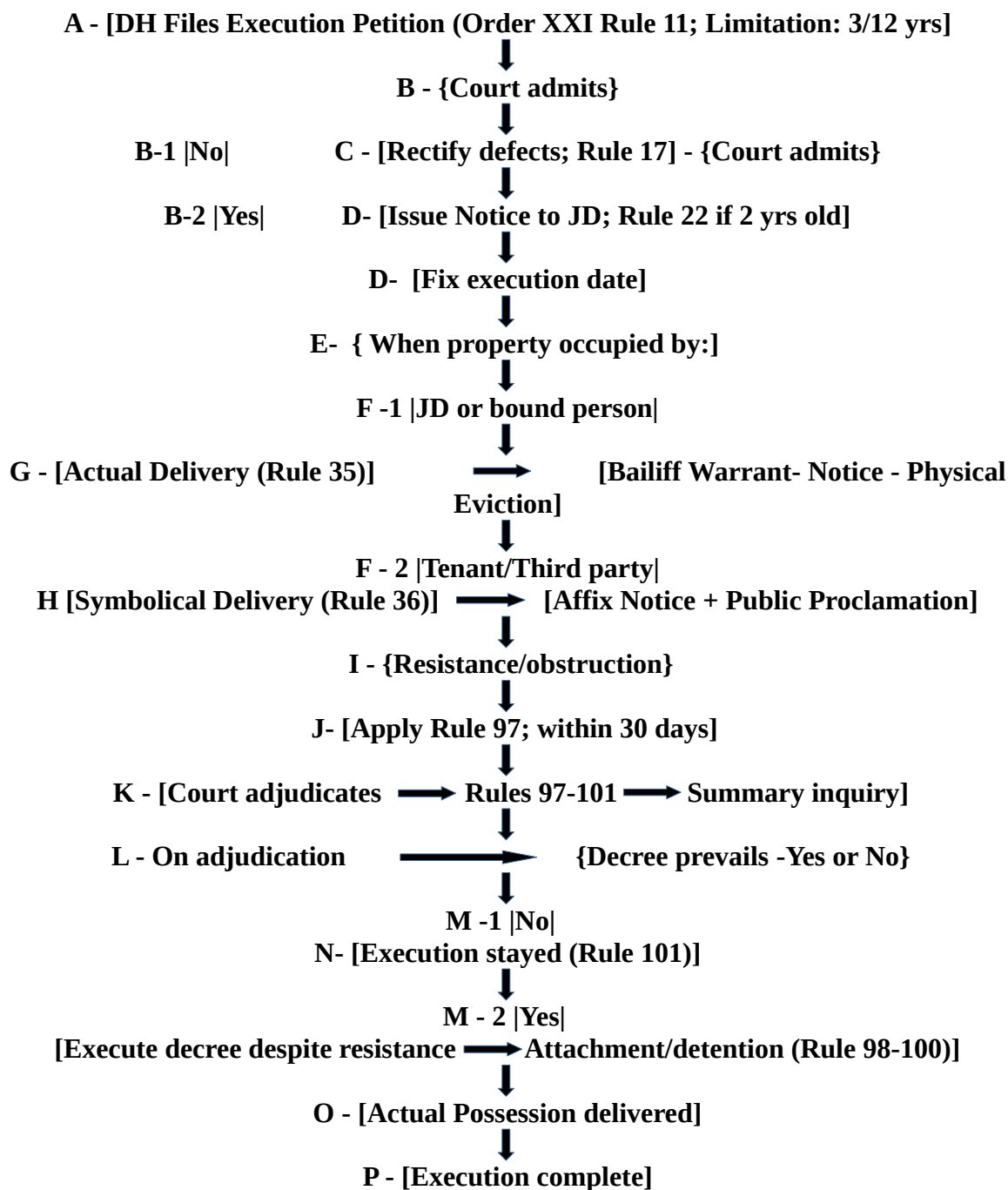
- Courts may grant short-term police assistance to the DH for delivery.
- The DH shall deposit the cost of police force expenses.
- Decrees have to be executed, if necessary with the police help *{Jahurul Islam Vs. Abul Kalam, 1995 Supp (1) SCC 464}*.

**7.8 Procedure for police to help to an Amin {Rule 534 G.R. (Civil), 1957}:** 

- When Amin has to make an attachment under an order of the Court (Rule 529), and he apprehends that resistance will be offered by the judgment-debtor or any other person he may apply for requisite police help if and when necessary, subject to the conditions following :
  - (i) Application for such assistance should be made through the Presiding Officer of the Court who should not forward the application unless he is satisfied that the attachment cannot be effected without police assistance.
  - (ii) The Superintendent of Police will be entitled to refuse assistance but he should not ordinarily refuse it unless he has not the necessary force available. When he refuses assistance, he will inform the Presiding Officer of the Court of the reasons for his refusal.
  - (iii) If in any particular case, for reasons of urgency, it is not possible to resort to this procedure, the Amin may apply direct to the officer-in-charge of the police station concerned who may refuse to give assistance but should inform the Superintendent of Police, immediately of his reasons for such refusal.

\*\*\*\*\*

**FLOW-CHART FOR  
EXECUTION OF DECREE OF POSSESSION OF IMMOVABLE PROPERTY**



**EXECUTION OF DECREE OF SPECIFIC PERFORMANCE  
(EXECUTION OF SALE DEED)**

**8.1 Legal Framework:**

Execution of a decree for specific performance of contract (execution of sale deed) is governed by Order 21 Rule 32 CPC, read with Sections 36–74 CPC and the Specific Relief Act, 1963.

**8.2 Modes of execution under Order 21 Rule 32:**

- Detention in civil prison;
- Attachment and sale of movable or immovable property;
- Compensation (The JD may be directed to pay compensation for loss caused by non-performance, if the court thinks it just and equitable).

**8.3 Procedure before the executing court :****(a) Execution application under Order 21 Rule 11, 32(1):**

- The DH files an application for execution, clearly stating:
  - that the decree is for specific performance of contract;
  - how and when the JD has disobeyed the decree (with some proof).
  - The application should specify the relief sought:
    - detention; and/or
    - attachment of property; and/or
    - direction to execute the sale-deed or
    - deliver possession; and/or
    - compensation.
- Rectification of defects, if any (**Order 21 Rule 17**).

**(b) Notice and inquiry into disobedience :**

- If required, the court issues notice to the JD and holds an inquiry to determine whether the disobedience is willful or justified.
- The JD may show inability to perform or mistake etc.
- If the court is satisfied, the decree may be modified or dropped.

**(c) Passing the execution order :**

- On finding willful disobedience, the court may combine:
  - an order for detention (civil prison);
  - attachment / sale of property;
  - a direction that the sale-deed be executed by registrar / court officer (**Procedure prescribed under Order 21 Rule 34 shall be followed**); or
  - possession be delivered;
  - a direction for compensation.

#### 8.4 Act to be done by DH or third party at JD's cost for execution of sale deed and delivery of possession:

- Where the decree is mandatory (e.g., execute sale deed, hand over possession), the court may:
  - Direct that the sale deed be executed.
  - Permit the DH or, in some cases, a court appointed officer to execute the deed.
- The following procedure shall be followed (Order 21 Rule 34) :
  - DH to Prepare Draft Sale Deed **{Rule 34 (1)}**
  - Court examines draft
  - Serves draft on JD
  - Issue Notice to JD - Fix date for JD objections **{Rule 34(2)}**
  - JD compliance – If Yes (JD executes sale deed as per draft)
  - JD compliance - If Not (JD objects to draft in writing)
  - Court hears objections
  - Court orders - Approving or Altering/Modifying the Draft
  - DH delivers to Court the Altered Draft
  - Court may direct for proper stamp paper, (if stamp is required) **{Rule 34(4)}**
  - Court can call report from Sub Registrar Office for proper value of stamp
  - Court/Appointed Officer executes document **{Rule 34(4)}**
  - Register document, if required **{Rule 34(6)}**
  - DH pays balance consideration
  - Delivery of possession, If the decree contemplates delivery of possession, the Executing Court may pass an order for delivery of possession **(Order 21 Rule 35 or 36)**.
  - Court can order that the costs and expenses be borne by the JD.

#### 8.5 Time Limit :

A decree for specific performance is generally enforceable within 12 years from the date it becomes enforceable (Article 136 of the Limitation Act, 1963) unless modified by agreement or court order.

\*\*\*\*\*

**FLOW-CHART FOR EXECUTION OF DECREE OF SPECIFIC PERFORMANCE  
EXECUTION OF SALE DEED**

**A- [DH Files Execution Petition; Order XXI Rule 11, 32; Specific Performance Decree]**

**B- {Court admits- Yes or No}**

**B -1 |No|**

**C- [Rectify defects (Rule 17)]**

**B -2 |No|**

**D- [DH to Prepare Draft Sale Deed {Rule 34 (1)}]**

**E - [Court examines draft]**

**F- [Serves draft on JD]**

**G- [Issue Notice to JD - Fix date for JD objections Rule 34(2)]**

**H - {JD compliance - Yes or Not}**

**H-1 - |Yes|**

**[JD executes sale deed as per draft]**

**H-2 - |No|**

**[JD objects to draft in writing]**

**[Court hears objections]**

**[Court orders - Approving or Altering/Modifying the Draft]**

**[DH delivers to Court the Altered Draft]**

**[Court may direct for proper stamp paper, if stamp is required]**

**[Court/Appointed Officer executes document {Rule 34(4)}]**

**[Register document if required {Rule 34(6)}]**

**I - [DH pays balance consideration]**

**J - [Delivery of possession (Rule 35/36) if specified]  
[Execution complete]**

**GENERAL GUIDELINES & DIRECTIONS  
ISSUED BY HON'BLE SUPREME COURT**

***Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418***

**Para 42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:**

**42.1.** In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

**42.2.** In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

**42.3.** After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

**42.4.** Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.

**42.5.** The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

**42.6.** In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

**42.7.** In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

**42.8.** The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

**42.9.** The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

**42.10.** The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

**42.11.** Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

**42.12.** The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

**42.13.** The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

**42.14.** The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.

**43.** We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.

***Periyammal v. V. Rajamani, (2025) 9 SCC 568***

**62.** A harmonious reading of Section 47 with Order XXI Rule 101 implies that questions relating to right, title or interest in a decretal property must be related to the execution, discharge or satisfaction of the decree. The import of such a reading of the provisions is that only matters arising subsequent to the passing of the decree can be determined by an executing court under Section 47 and Order XXI Rule 101. Such reasoning is reinforced by the decisions of this Court in *C.F. Angadi v. Y.S. Hirannayya, (1972) 1 SCC 191* and *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670*, wherein it has been held that while determining a question under Section 47, an executing court cannot go behind the decree and question the correctness of the same.

**63.** What flows from the position of law, as afore stated, is that the issues that ought to have been raised by the parties during the adjudication of the original suit cannot be determined by the executing court as such adjudication may undermine the decree itself. This Court in *Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418* has held that the benefit of Section 47 cannot be availed to conduct a retrial causing failure of realisation of fruits of the decree.

76. The mandatory direction contained in para 42.12 of *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418 requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in *Bhoj Raj Garg v. Goyal Education & Welfare Society* [*Bhoj Raj Garg v. Goyal Education & Welfare Society*, (2025) 9 SCC 618] .....

77. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the Presiding Officer concerned would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.

***Shub Karan Bubna v. Sita Saran Bubna*, (2009) 9 SCC 689**

29. The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings, that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief.

30. In money suits and other suits requiring a single decree, the process of suit should be a continuous process consisting of the first stage relating to determination of liability and then the second stage of execution and recovery, without any pause or stop or need for the plaintiff to initiate a separate proceedings for execution. In suits for partition and other suits involving declaration of the right and ascertainment/quantification of the relief, the process of the suit should be continuous, consisting of the first stage of determination and declaration of the right, second stage of ascertainment/division/quantification, and the third stage of execution to give actual relief.

***Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*, (1997) 3 SCC 694**

***Para 8. A conjoint reading of Order 21, Rules 97, 98, 99 and 101 projects the following picture:***

(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order 21, Rule 35 then the decree-holder has to move an application under Order 21, Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without a just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order 21, Rule 98, sub-rule (2)

and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a decree under Order 21, Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on the spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order 21, Rule 99 CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order 21, Rule 98, sub-rule (1) CPC the executing court can direct the stranger applicant under Order 21, Rule 99 to be put in possession of the property or if his application is found to be substanceless, it has to be dismissed. Such an order passed by the executing court disposing of the application one way or the other under Order 21, Rule 98, sub-rule (1) would be deemed to be a decree as laid down by Order 21, Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order 21, Rule 101.

***Jai Narain Ram Lundia v. Kedar Nath Khetan, (1956) 1 SCC 75***

- When a decree imposes obligations on both sides which are so conditioned that performance by one is conditional on performance by the other execution will not be ordered unless the party seeking execution not only offers to perform his side but, when objection is raised, satisfies the executing court that he is in a position to do so. Any other rule would have the effect of varying the conditions of the decree: a thing that an executing court cannot do.
- There may of course be decrees where the obligations imposed on each side are distinct and severable and in such a case each party might well be left to its own execution. But when the obligations are reciprocal and are interlinked so that they cannot be separated, any attempt to enforce performance unilaterally would be to defeat the directions in the decree and to go behind them which, of course, an executing court cannot do.
- ***In a decree for specific performance*** where the decree itself cannot be given unless the side seeking performance is ready and willing to perform his side of the bargain *and is in a position to do so*, only strengthens the conclusion that that was the meaning and intendment of the language used. The reason is, that to hold otherwise would be to permit an executing court to go behind the decree and vary its terms by splitting up what was fashioned as an indivisible whole into distinct and divisible parts having separate and severable existence without any interrelation between them just as if they had been separate decrees in separate and distinct suits.
- The basic principle in execution is that the executing court must take the decree as it stands and cannot go behind it. If the decree says that on payment being made some definite and specific thing is to be given to the other side, the executing court cannot alter that and allow something else to be substituted for the thing ordered to be given.
- The defendant may or may not have the right to ask the court which passed the decree to vary it in that way but he can certainly not ask the executing court to do so. The decree must either be executed as it stands in one of the ways allowed by law or not at all.
- The remedy provided in Order 21 Rule 32(1), is, of course, one of the remedies available in execution of a decree for specific performance but it can only be used by a person who is entitled to

execute the decree, and if, by reason of his own incapacity to perform his part, he is precluded from seeking execution, Order 21 Rule 32(1), cannot apply.

- The only question that remains is whether the executing court can consider whether the defendant is in a position to perform his part of the decree. But of course it can. If the executing court cannot consider this question who can? The executing court has to see that the defendant gives the plaintiff the very thing that the decree directs and not something else, so if there is any dispute about its identity or substance nobody but the court executing the decree can determine it. It is a matter distinctly relating to the execution, discharge and satisfaction of the decree and so, under Section 47 of the Civil Procedure Code, it can only be determined by the court executing the decree. And as for the first court's conclusion that it could not decide these matters because it was not the court that passed the decree, it is enough to say, that Section 42 of the Code expressly gives the court executing a decree sent to it the same powers in executing such decree as if it had been passed by itself.
- Objections to execution not required to be taken by the Appellate Court while dealing with transfer application. Questions involving inquiry into fact should not be raised before appellate court.

\*\*\*\*\*

M/S. BRAKEWEL AUTOMOTIVE COMPONENTS (INDIA)  
PVT. LTD.

A

v.

P. R. SELVAM ALAGAPPAN

(Civil Appeal Nos. 4313-4314 of 2017)

B

MARCH 21, 2017

[ARUN MISHRA AND AMITAVA ROY, JJ.]

*Code of Civil Procedure, 1908:*

*s.47 – Scope and ambit of scrutiny under – Suit for recovery by appellant-plaintiff – Decreed by trial court – Execution application by appellant – s.47 application by respondent-defendant objecting to executability of the decree – Appellant questioned the maintainability of such application by respondent – Executing Court held the application to be maintainable – Order affirmed by High Court – On appeal, held: The purview of scrutiny u/s. 47 qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness – Only a decree which is a nullity can be the subject matter of objection u/s.47 and not one which is erroneous either in law or on facts – Having regard to the contextual facts and the objections raised by the respondent, no case made out to entertain the application u/s. 47 – Both the Executing Court and the High Court, not only erred in construing the scope and ambit of scrutiny u/s. 47 CPC, but also overlooked the fact that the decree did not suffer either from any jurisdictional error or was otherwise invalid in law.*

C

D

E

*s.47 – Executing Court – Power of – Discussed.*

F

**Allowing the appeals, the Court**

**HELD: 1.1** An Executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered *non est* and is thus inexecutable. An erroneous decree cannot be equaled with one which is a nullity. In the present case, the objections raised by the appellant even if considered to exist did not infest the decree with any jurisdictional infirmity or reduce it to a nullity.

G

H

A There are no intervening developments as well to render the decree inexecutable. [Para 19] [688-G-H]

B 1.2 Section 47 of CPC mandates determination by an executing court, of questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof. [Para 20] [689-A-B]

C 1.3 The purview of scrutiny under Section 47 *qua* a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness. Only a decree which is a nullity can be the subject matter of objection under Section 47 and not one which is erroneous either in law or on facts. [Para 21] [689-C]

*Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and Ors.* [1971] 1 SCR 66 – relied on.

E 1.4 The powers of the Court under Section 47 are quite different and much narrower than those in appeal/revision or review. The exercise of power thereunder is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree inexecutable after its passing. None of the above eventualities as recognised in law for rendering a decree inexecutable, exists in the case in hand. [Para 22] [690-B-C]

G *Dhurandhar Prasad Singh vs. Jai Prakash University and Ors.* AIR 2001 SC 2552 : [2001] 3 SCR 1129 – relied on.

#### Case Law Reference

H	[1971] 1 SCR 66	relied on	Para 21
	[2001] 3 SCR 1129	relied on	Para 22

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4313-4314 of 2017. A

From the Judgment and Order dated 03.06.2016 of the High Court of Judicature at Madras in C.R.P. (NPD) No. 1499 of 2016 and CMP No. 8225 of 2016.

J. S. Bakshi, Saurabh Ajay Gupta, Advs. for the Appellant. B

M. P. Parthiban, T. R. B. Sivakumar, Advs. for the Respondent.

The Judgment of the Court was delivered by

**AMITAVA ROY, J.** 1. Leave granted.

2. The subject matter of impeachment is the order dated 3.6.2016 rendered in CRP (NPD) 1499 of 2016 and CMP No. 8225 of 2016 by the High Court of Judicature at Madras, thereby rejecting the prayer of the appellant/plaintiff/decreed-holder (for short, hereinafter to be referred to as "the appellant") to eschew evidence of the respondent/defendant/judgment-debtor (for short, hereinafter to be referred to as "the respondent") in a proceeding under Section 47 of the Code of Civil Procedure, 1908 (as amended) (hereinafter to be referred to as "CPC/Code"), as well as to dismiss such application as not maintainable. By the order impugned, the High Court has affirmed the determination made to the same effect by the Executing Court. C D E

3. We have heard Mr. J.S. Bakshi, learned counsel for the appellant and Mr. M.P. Parthiban, learned counsel for the respondent.

4. The genesis of the present lis is traceable to Civil Suit (OS) No. 1690 of 2010 instituted before the High Court of Delhi at New Delhi by the appellant against the respondent arrayed as the proprietor of M/s. Kargaappa Auto Products and M/s Paans Auto Products for recovery of Rs. 20,94,953/- arising from business transactions between the parties. While the appellant described itself to be a company registered under the Companies Act, 1956 and engaged in the business of manufacture and sale of auto components/parts, the respondent was introduced as the proprietor of the afore-named proprietorship firms. According to the appellant, the respondent approached it in the month of November, 2002 for a business deal and on the basis of the bargain entered into, it supplied auto components and parts to the respondent, as per the specifications mentioned and raised bills in connection therewith. F G H

A           5. As per the books of account maintained in the regular course  
of business, at the relevant time i.e. 15.10.2007, Rs. 8,01,708/- was due  
and outstanding against the respondent in the accounts of M/s. Kargaappa  
Auto Products and Rs. 4,93,952/- as on 6.6.2008, in the account of M/  
s. Paans Auto Products, thus totalling Rs. 12,95,660/-. As this amount  
B           was not paid inspite of repeated demands, and the ultimate notice dated  
28.12.2009, addressed by the appellant to the respondent, the suit was  
filed for realisation of the aforementioned amount together with interest  
@ 24% p.a. for an aggregate sum of Rs. 20, 94,953/-.

C           6. Though on the receipt of the summons in the suit, the respondent  
arranged for his representation, he eventually failed to submit his written  
statement and accordingly, his defence was struck off vide order dated  
20.10.2011, in view of his persistent default to that effect. Subsequent  
thereto, the appellant filed the affidavit of one of its directors in  
endorsement of its pleaded case, who proved, amongst others, the  
copies of various invoices authenticating the supply of goods to the  
D           respondent and also the statement of accounts pertaining thereto. This  
witness too was not cross-examined on behalf of the respondent, though  
opportunity was granted and eventually the Trial Court, on a consideration  
of materials on record, decreed the suit for Rs. 18,95,077/- by allowing  
the interest @ 18% p.a. in lieu of 24%, as claimed.

E           7. As the records would reveal, a defective appeal was filed on  
behalf of the respondent thereafter only to be withdrawn in due course.  
The appellant launched the execution and the application in connection  
thereto was registered as E.P. No. 11787 of 2014 to execute the  
decree as aforementioned. It was thereafter that an application for  
review was filed by the respondent before the High Court seeking to  
F           recall the judgment and order dated 16.12.2011. It was pleaded by the  
respondent that the suit was not maintainable on account of non-joinder/  
mis-joinder of proper and necessary parties. Though he had admitted  
that he was the proprietor of Paans Auto products, he asserted that he  
was not so of M/s. Kargaappa Auto Products and that instead his wife  
G           Mrs. A. Kamalla being so was the proper and necessary party and that  
in view of this defect, the suit was liable to be dismissed. He also pointed  
out that the name of this firm is M/s. Karpaga Auto Products and not  
M/s. Kargaappa Auto Products, as recited in the plaint. The respondent  
alleged fraud as well and contended that the appellant was guilty of  
suppression of material facts of rejection of its goods. Further, he also  
H

alleged collusion and connivance between his counsel and the appellant for which the former deliberately abstained from taking necessary steps to ensure his effective representation in the suit, thus resulting in the ex-parte decree. A

8. He pleaded that on receiving the summons in the suit, necessary instructions were conveyed to his counsel at Delhi to appropriately contest the proceeding, but the latter refrained from either filing the written statement or from taking necessary steps resulting in his default for which ultimately, the suit was decreed. According to him, though he was in touch with his counsel at Delhi through his counterpart at Chennai, he was being given the impression that there was no progress in the suit and that he would be duly informed about any substantial development therein whenever the same would occur. The respondent contended that it was in February/March, 2014, when he and his local counsel grew suspicious of the evasive replies given by his counsel at Delhi, that the records of the suit were consulted, which revealed that his defence had been struck off on 20.10.2011 and the suit had been decreed on 16.12.2011. The records of the suit also divulged that though an opportunity to him for cross-examination of the witnesses by appellant had been afforded, it was not availed of due to the sheer dereliction of the professional duties of his counsel. B C D

9. Noticeably, the respondent in his review application disclosed that his said counsel however did prefer an appeal against the ex-parte decree, which eventually was returned in view of the attendant defects. The appeal was however not re-filed and that in the meanwhile, a complaint had been lodged against the counsel with the Bar Council of Tamil Nadu at Chennai, was mentioned as well. E

10. It is worthwhile to note that no interim order was passed on this review application, which eventually was dismissed on 15.4.2015 on account of unexplained delay of three years. F

11. Meanwhile, however the respondent filed his counter-affidavit in the execution proceedings and also followed it up with an application under Section 47 of CPC to resist the execution of the decree. Suffice it would be to state that the demurrals in these pleadings are in substance a replication of those narrated in the review application and, therefore are not being re-traversed. G

12. In refutation, the appellant did file a common counter-affidavit H.

A asserting that the respondent had placed orders for automobile components, which were accordingly dispatched and as on the date of the institution of the suit, the payments in connection therewith were outstanding, a suit was filed to recover the same and eventually, it was decreed on 16.12.2011 for a sum of Rs. 18,95,077/- along with pendente lite and future interest @ 18% p.a. Apart from highlighting that the respondent had after the receipt of the summons/notices in the suit, continuously abstained himself from contesting the same by filing his written statement or taking further initiatives and that, therefore the decree passed was valid in law, the appellant maintained that the suit had been filed against the respondent, as he represented both the firms and had participated in the transactions in that capacity for which either the mistake in the name of M/s. Kargaappa Auto Products instead of M/s Karpaga Auto Products or non-impleadment of his wife as the sole proprietress thereof was wholly inconsequential qua the aspect of executability of the decree. The allegation of suppression of any material fact, as alleged was denied. The accusation of collusion between the learned counsel for the respondent and the appellant was stoutly denied as well. It was pointed out that the fact of filing of appeal preferred by the same counsel against the decree belied the allegation of dereliction of duty as unfounded. Underlining the inexplicable delay and inaction of three years on the part of the respondent in filing the review petition, it was contended that the resistance to the executing proceedings was only with the objective of protracting the proceedings to his advantage on flimsy and frivolous grounds.

13. The respondent next filed an affidavit on the same lines as narrated in his counter and the application under Section 47 CPC and sought to supplement the same by producing documents to that effect by way of oral and documentary testimony of the pleaded facts. The appellant in its rejoinder did object to this initiative on the part of the respondent as impermissible, being beyond the purview of Section 47 CPC and prayed for obliteration of such evidence. The appellant pleaded that after the counter-affidavit had been filed by the respondent in the execution proceedings, arguments on behalf of the decree-holder were heard and though the proceedings were deferred for the arguments on behalf of the respondent, an application by him under Section 47 CPC was filed, the maintainability whereof was questioned by the appellant and that it was at that belated stage that the respondent sought to introduce the documentary evidence.

14. The Executing Court however by its order dated 8.2.2016, dismissed the objection of the appellant by taking note principally of the fact that the respondent was not the proprietor of Karpaga Auto Products and that it was necessary to examine as to how he was related to the said proprietorship firm, a question to be decided in the proceedings under Section 47 CPC.

15. By the impugned order, the High Court has affirmed this determination of the Executing Court by observing that though the issue of maintainability of the application under Section 47 CPC had been raised by the appellant, it was within the right of the respondent to lead evidence, both oral and documentary pertaining to all questions arising between the parties to the suit. It was of the view that the question of maintainability of the application under Section 47 CPC ought to be decided along with the objections raised with regard to the executability of the decree.

16. Learned counsel for the appellant, in the above backdrop, has argued that the impugned order is clearly unsustainable in law and on facts having regard to the established contours of scrutiny under Section 47 CPC and is thus indefensible. Not only the grounds urged in the counter-affidavit to the execution petition and the application under Section 47 CPC do have any factual foundation and are thus non-existent, these are liable to be rejected in limini and do not warrant any verification thereof. Not only are these objections frivolous on the face of record, these have been resorted to only for protracting the execution proceedings. He urged that the impugned order has the effect of going behind and reopening the decree, which is impermissible in law. According to him, neither the decree suffers from any jurisdictional error nor is a nullity and is thus executable in law.

17. In reply, the learned counsel for the respondent has insisted that in the teeth of incorrect name of one of the firms and non-representation thereof by its rightful proprietor, the decree which is composite in nature, has been rendered inexecutable. He further argued that as the decree is an yield of fraud and collusion between the learned counsel for the respondent and the appellant, it is non est in law and thus the impugned order which only permits an inquiry in these aspects, is well within the purview of Section 47 CPC and therefor no interference therewith is called for.

A 18. The materials on record and the arguments based thereon  
have received our due consideration. To recapitulate, the plaint discloses  
that the respondent had represented before the appellant to be authorised  
to act on behalf of both the firms and in that capacity had participated in  
the transactions that followed. In that perspective, even assuming that  
B the name of one of the firms was wrongly mentioned and that in fact,  
it is the wife of the respondent, who is the proprietress thereof, with  
whom there is no conflict of interest, these in our comprehension per se,  
would not render the decree void or inexecutable. Such errors, even if  
exist, would not infest the decree with any jurisdictional infirmity or  
reduce it to a nullity. Noticeably, there is no dispute with regard to the  
C identity of the firms involved and their representation by the respondent  
in the suit transactions. The allegation of fraud and collusion between  
the learned counsel for the respondent and the appellant is visibly self-  
serving, omnibus, speculative and unauthentic and cannot therefore,  
after so many years, ipso facto render the decree invalid on account  
D thereof. Visibly, the respondent had been the center figure in all the  
transactions between the parties on behalf of the firms, as stand proved  
in the suit and the resistance to the execution of the decree is neither on  
behalf of M/s. Kargaappa Auto Products/M/s. Karpaga Auto Products  
nor its proprietress, his wife contending that the decree is neither binding  
on the firm nor on her. For all practical purposes, the said firm is still  
E being represented by the respondent in the subsisting proceedings. The  
sequence of events disclose that the suit had been instituted in the year  
2010 and was decreed on 16.10.2011. The persistent default on the part  
of the respondent has been adverted to hereinabove. Though a defective  
appeal had been filed on his behalf in the year 2012, it was withdrawn  
and was not re-filed by removing the defects. The Execution Petition  
F though lodged in the year 2014 has not seen the fruit of the decree as on  
date. The Review Petition filed by the respondent has also been dismissed.  
Significantly, in all the proceedings initiated by the respondent to stall  
the execution of the decree, the same pleas have been reiterated.

G 19. It is no longer res integra that an Executing Court can neither  
travel behind the decree nor sit in appeal over the same or pass any order  
jeopardizing the rights of the parties thereunder. It is only in the limited  
cases where the decree is by a court lacking inherent jurisdiction or is a  
nullity that the same is rendered non est and is thus inexecutable. An  
erroneous decree cannot be equaled with one which is a nullity. There are  
H no intervening developments as well as to render the decree inexecutable.

20. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof. A B

21. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric. This Court, amongst others in *Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and others* 1971 (1) SCR 66 in essence enunciated that only a decree which is a nullity can be the subject matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following extract from this decision seems apt: C D

“A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. E

When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.” F G H

A            22. Though this view has echoed time out of number in similar  
pronouncements of this Court, in *Dhurandhar Prasad Singh vs. Jai  
Prakash University and others*, AIR 2001 SC 2552, while dwelling on  
the scope of Section 47 of the Code, it was ruled that the powers of the  
court thereunder are quite different and much narrower than those in  
B appeal/revision or review. It was reiterated that the exercise of power  
under Section 47 of the Code is microscopic and lies in a very narrow  
inspection hole and an executing court can allow objection to the  
executability of the decree if it is found that the same is void ab initio and  
is a nullity, apart from the ground that it is not capable of execution under  
C of law or the law was promulgated making a decree inexecutable after  
its passing. None of the above eventualities as recognised in law for  
rendering a decree inexecutable, exists in the case in hand. For obvious  
reasons, we do not wish to burden this adjudication by multiplying the  
decisions favouring the same view.

D            23. Having regard to the contextual facts and the objections raised  
by the respondent, we are of the unhesitant opinion that no case has  
been made out to entertain the remonstrances against the decree or the  
application under Section 47 CPC. Both the Executing Court and the  
High Court, in our comprehension, have not only erred in construing the  
scope and ambit of scrutiny under Section 47 CPC, but have also  
E overlooked the fact that the decree does not suffer either from any  
jurisdictional error or is otherwise invalid in law. The objections to the  
execution petition as well as to the application under Section 47 CPC  
filed by the respondent do not either disclose any substantial defence to  
the decree or testify the same to be suffering from any jurisdictional  
F infirmity or invalidity. These are therefore rejected.

G            24. On a consideration of all relevant aspects in the entirety, we  
are thus disinclined to sustain the impugned orders and hereby set-  
aside the same. The appeals are allowed. The Executing Court would  
proceed with the execution proceedings and take it to the logical end  
with utmost expedition. No costs.

**CASE DETAILS**

PRADEEP MEHRA

v.

HARIJIVAN J. JETHWA (SINCE DECEASED THR. LRS.) & ORS.

(Civil Appeal No. 6375 of 2023)

OCTOBER 30, 2023

[SANJAY KISHAN KAUL AND SUDHANSHU DHULIA, JJ.]

**HEADNOTES**

**Issue for consideration:** Matter pertains to the delay being caused to the execution proceedings u/ord. XXI CPC, and the process being abused in the execution proceedings, to the peril of the decree holder.

**Code of Civil Procedure, 1908 – s. 47 – Questions to be determined by the court executing decree – Scope and ambit of:**

**Held:** All questions between the parties can be decided by the executing court – These questions are limited to the execution of the decree – Executing court can never go behind the decree – Under s. 47 the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree unless the court’s order is itself without jurisdiction – Appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. [Para 5]

**Code of Civil Procedure, 1908 – s. 47 – Execution of decree – Four years after the pronouncement of the order of execution of decree which had attained finality, the judgment debtors filed an application before the executing court challenging the execution of decree – Decree holder challenged the maintainability of the application and the same was allowed – In revision, the said order was set aside – Decree holder then filed a writ petition on the ground that the revisional court erred in holding that the application moved by the judgment debtors for setting aside the order of execution comes within the purview of the power of the executing court u/s 47; and that the said order attained finality and**

**res judicata would apply against the judgment debtors – Dismissed by the High Court – Correctness:**

**Held:** Executing court rightly allowed the objections of the decree holder and dismissed the application filed by the judgement debtors – An execution proceeding works in different stages and if the judgment debtors have failed to take an objection and have allowed the preliminary stage to come to an end and the matter has moved to the next stage, the judgment debtors cannot raise the objection subsequently, and revert back to an earlier stage of the proceeding – Executing court gave the said reasons in its order – Merely, because it did not specifically refer to the principle of res judicata would not make any difference – High Court though found substance in the arguments of res judicata, nevertheless refused to interfere in the petition – High Court erred by not interfering in the matter – Order passed by the appellate court and by the High Court not sustainable thus, set aside while the order of the executing court is upheld – Res judicata. [Para 8]

**Code of Civil Procedure, 1908 – s. 47 – Exercise of power under – Execution of a decree – Inordinate delay and slow process in the execution of a decree – Concern expressed by the Supreme Court – Direction to the executing court to complete execution within six months.** [Para 6]

**Res judicata – Principles of - Applicability:**

**Held:** Principles of res judicata are not only applicable in respect of separate proceedings but the general principles of res judicata are also applicable at the subsequent stage of the same proceedings and thus, the same court would be precluded to go into that question which has already been decided, or deemed to have been decided by it in the earlier stage – It would be barred by the principle of res judicata, or at least by the principle of constructive res judicata. [Para 7]

**LIST OF CITATIONS AND OTHER REFERENCES.**

*Raj Durbhunga v. Maharajah Coomar Ramaput Sing*, 1872 SCC OnLine PC 16: (1871-72) 14 Moo IA 605; *Dhurandhar Prasad Singh v. Jai Prakash University and Others* (2001) 6 SCC 534: [2001] 3 SCR 1129; *Rahul S. Shah v. Jinendra Kumar Gandhi and Others* (2021) 6 SCC 418 – referred to.

**OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6375 of 2023.

From the Judgment and Order dated 08.01.2021 of the High Court of Judicature at Bombay in WP No.8475 of 2018.

**Appearances:**

Sudhir Chandra, Sr. Adv., Bhagabati Prasad Padhy, Achintya Dvivedi, Advs. for the Appellant.

Vinay Navare, Sr. Adv., Kailash Pandey, Ranjeet Singh, Krishna Yadav, J. K. Mishra, Gaichangpou Gangmei, Advs. for the respondents.

**JUDGMENT / ORDER OF THE SUPREME COURT**

**JUDGMENT**

**SUDHANSHU DHULIA, J.**

1. This appeal before us shows how the execution proceedings under Order XXI of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’), are being delayed, and the process is being abused in the execution proceedings, to the peril of the helpless decree holder.

As long back as in 1872 (when the CPC of 1859 was in operation), it was observed by the Privy Council that, “*the difficulties of a litigant in India begin when he has obtained a decree*”<sup>1</sup>. The situation, we are afraid, is no better even today.

2. The appellant is the landlord and the respondents are the tenants in a premises measuring about 3240 sq. ft. bearing C.T.S. No(s). 691/2, 691/3, 691/6, 691/7 and 691/8, situated at Mehra Industrial Compound, Andheri-Kurla Road, Sakinaka, Mumbai (hereinafter referred to as ‘suit property’). We will also be referring to them as the decree holder and the judgement debtors respectively.

---

<sup>1</sup> **Raj Durbhunga v. Maharajah Coomar Ramaput Sing, 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605 at page 612**

The landlord, who is more than 70 years of age as of now, had filed a suit for eviction which ultimately resulted in a consent decree on 11.06.2005 where *inter alia*, it was stipulated that in case the judgment debtors (i.e., tenants) fail to pay the rent for two consecutive months, they could be evicted as the decree would become liable for execution.

3. The tenants evidently committed a default in payment of rent, and on an application moved by the decree holder, the court vide its order dated 12.02.2013 allowed the application holding that the decree holder/appellant is entitled to execute the decree. Meanwhile, for one reason or another, the proceedings before the executing court were delayed and then the respondents/judgment debtors moved an application before the “executing court” on 19.01.2017 challenging the order dated 12.02.2013 by which the court had allowed the execution of the decree. This as we can see was done nearly four years after the order dated 12.02.2013.

The maintainability of this application was challenged by the appellant/landlord. The executing court vide its order dated 28.09.2017 allowed the objections of the appellant and held that under the garb of the provisions of Section 47 CPC, the respondents/judgment debtors were actually challenging the order of the court dated 12.02.2013, which had allowed the execution of the decree; and which had attained finality.

The order dated 28.09.2017 was challenged by the respondents in revision, where it was set aside by an order dated 22.12.2017. The landlord’s writ petition before the Bombay High Court against the above order was dismissed vide the impugned order dated 08.01.2021, and this is how the decree holder is now before us.

The appellate court and the High Court (in exercise of its powers under Article 227 of the Constitution of India), have held that under Section 47 of the CPC, the executing court can decide the matter as to whether the decree can be executed or not.

4. Section 47 of the CPC reads as under:

**Section 47. Questions to be determined by the Court executing decree.**

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the

execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

\* \* \* \* \*

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

*Explanation 1.*-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

*Explanation II.*-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

5. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the “execution of the decree”. The executing court can never go behind the decree. Under Section 47, CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court’s order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/ judgment debtors before any forum.

The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in ***Dhurandhar Prasad Singh v. Jai Prakash University and Others (2001) 6 SCC 534***, in para 24, it had stated thus:

*“24. .... The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.”*

This Court noted further:

*“..... The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as he had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.*

6. The reality is that pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In ***Rahul S. Shah v. Jinendra Kumar Gandhi and Others (2021) 6 SCC 418***, this Court had observed that a remedy which is provided for preventing injustice (in the Civil Procedure Code) is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. Then, it had observed as under:

*“23. .... The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.”*

The above judgment is an important judgment in respect of Section 47 as well as Order XXI, CPC as the three Judge Bench decision of this Court not only condemned the abuse of process done in the garb of exercise of powers under Section 47 read with Order XXI, CPC, but also gave certain directions to be followed by all Civil Courts in their exercise of powers in

the execution of a decree. It further directed all the High Courts to update and amend their Rules relating to the execution of decrees so that the decrees are executed in a timely manner. As far as Section 47 is concerned, this Court had stated as under:

*“24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.*

*25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.*

*26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.”*

This Court then gave certain directions, which were to be mandatorily followed by all Courts dealing with civil suits and execution proceedings. Two of its directions were as follows:

“42.....

.....

.....

.....

*42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*

.....

.....

*42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.*

*42.13. ....”*

It further directed all the High Courts to update their Rules relating to execution of decrees. It was as under:

*“43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.”*

We have referred to the above decision of this Court only to highlight the slow process in the execution of a decree and the concern of this Court, and its efforts in the past, to improve this situation.

7. The respondents herein are the tenants in the suit property at least since 1996. The present appellant is the landlord. The dispute between them was of sub-letting which led to the eviction suit before the Small Causes Court. During the proceedings, a settlement was arrived at between the parties, *inter alia* stipulating that the tenants would be liable for eviction if they commit a default of payment of rent for two successive months. According to the appellant / landlord, the tenants committed a default which led to the filing of the application under Order XXI Rule 11, CPC for execution of the decree. The executing court vide its order dated 12.02.2013 held that the decree is liable to be executed. This order was admittedly never challenged in appeal by the judgement debtor and has attained finality.

On 19.01.2017, i.e., nearly four years later, the judgement debtors moved an application before the executing court to set aside the order dated 12.02.2013, reiterating their previous stand that the tenants had never committed any default in payment of rent. Objection to the very maintainability of such an application was raised by the decree holder, *inter alia* on the grounds that the order dated 12.02.2013 has attained finality and cannot be reopened. The executing court, to our mind, took the correct decision in allowing the objections of the decree holder and dismissing the application filed by the judgement debtors on the ground of maintainability. The reasons given by the executing court are as follows:

*“8. Admittedly, the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 have contended through their reply Exh. 20 that they are objecting to the execution of decree dated 11.06.2005 by way of application Exh. 18. It is also true that this Court being the Executing Court can consider the objections relating to the execution of decree under Section 47 of The Code of Civil Procedure, 1908. However, it is also settled principle of law that, this Court being a Executing Court cannot go behind the decree and has to execute the decree as it is. It needs to be mentioned at the cost of repetition that, already the Misc. Notice no. 152 of 2006 is decided by my learned predecessor by way of order dt. 12.02.2013. The said notice was contested by the*

*judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2. It was held that the present decree holder is entitled to execute the decree against the judgment debtors. It needs to be mentioned that, the said order is not challenged by the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 before the appropriate forum. If the said fact is taken into consideration, indeed there is considerable substance in the argument of the learned Advocate for the decree holder that, the said order dt. 12.02.2013 has attained finality and now it is open to the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 to agitate the same point again under the pretext of objection to the execution of decree.*

*9. That apart, what is most important is that this Court is not sitting in appeal against its own order. Also, it is not the case of the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2, that the order dated 12.02.2013 passed by my learned predecessor in Misc. Notice no. 152 of 2006 was passed without jurisdiction. Also, the ground of fraud or ex-parte passing the order dt 12.02.2013 is not raised by the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 in the application Exh. 18. The Misc. Notice No. 152 of 2006 was decided on merits after due hearing both sides and the said order is not challenged before the appropriate appellate/revisional forum. If the said fact is considered, there can be hardly any doubt that the application Exh. 18 taken out by the judgment debtor no. 1(a) to 1(e) and judgment debtor no. 2 is nothing but an attempt to re-open the order passed on 12.02.2013 in Misc. Notice no. 152 of 2006 under the garb of objection to the execution of decree which is not permissible particularly when already the said notice is decided on merit and is not challenged till date. Considering the said fact, I have no hesitation to hold that, the application Exh. 18 is not maintainable.”*

As we have already referred above, this order was taken in revision by the judgment debtors, where the revision was allowed and the order dated 28.09.2017 was set aside. The decree holder moved a petition before the Bombay High Court under Article 226/227 of the Constitution of India and the main ground taken before the High Court was that the revisional court fell into an error in holding that the application moved by the judgment debtors for setting aside the order dated 12.02.2013 comes within the purview of

the power of the executing court given to it under Section 47 of the CPC. It was submitted by the decree holder before the High Court that the order dated 12.02.2013 had attained finality and *res judicata* would apply against the judgment debtors. In support of the submission the decree holder relied upon a decision of this court given in ***Barkat Ali & Anr. vs. Badrinarain (D) by Lrs.*** 2008 (4) SCC 615, where this court reiterated the settled position of law that the principles of *res judicata* are not only applicable in respect of separate proceedings but the general principles of *res judicata* are also applicable at the subsequent stage of the same proceedings and therefore the same court will be precluded to go into that question which has already been decided, or deemed to have been decided by it in the earlier stage. In other words, it will be barred by the principle of *res judicata*, or at least by the principle of constructive *res judicata*. The logic here is that an execution proceeding works in different stages and if the judgment debtors have failed to take an objection and have allowed the preliminary stage to come to an end and the matter has moved to the next stage, the judgment debtors cannot raise the objection subsequently, and revert back to an earlier stage of the proceeding. This is exactly one of the reasons given by the executing court in its order dated 28.09.2017 which we have already referred above. Merely, because it has not specifically referred to the principle of *res judicata* will not make any difference.

The High Court even though found substance in the arguments of *res judicata*, nevertheless refused to interfere in the petition.

*“9. The fact remains that when Exhibit-18 or Exhibit 19 was dealt with by the executing court, the issue of operation of principle of res judicata was not at all addressed by either of the parties and even the executing court so also Appellate Bench has no occasion to deal with the said issue. True it is the issue of question of law can be raised at any stage. However, that by itself will not call for exercising extraordinary jurisdiction in the present matter when aforesaid issue was not addressed before the courts below.*

*10. In that view of the matter, in my opinion, Petition deserves to be disposed of with the observation that the issue of res judicata as is raised by the Petitioner be also looked into while dealing with the issue raised in Applications-Exhibits-18 and 19.”*

8. The High Court, to our mind, committed an error by not interfering in the matter. To our mind this case has unnecessarily been dragging on for so long; which is for nearly two decades.

The order dated 22.12.2017 by the Appellate Court and the order dated 08.01.2021 by the High Court are not sustainable in the eyes of law. We therefore allow the appeal and set aside the order of the High Court dated 08.01.2021 and the order of the appellate court dated 22.12.2017, while we uphold the order of the executing court dated 28.09.2017.

The executing court is hereby directed to proceed with and complete the execution as expeditiously as possible, but at any event within a period of six months from the date a copy of this order is placed before the court. The interim order dated 27.07.2021 hereby stands vacated.

**Headnotes prepared by:**  
**Nidhi Jain**

**Appeal allowed.**

A

LAL CHAND

v.

VIIIITH ADDL. DISTRICT JUDGE AND ORS.

FEBRUARY 21, 1997

B

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Code of Civil Procedure, 1908 :*

C

*Or. XXI, Rules, 72 & 90—Execution of decree—Auction sale—Decree-holder taking part in auction without permission of Court—Held, decree-holder has no right to bid in the auction without obtaining prior permission of the Court.*

D

*Or. XXI, Rules 66, 67 and 90—Execution of decree—Auction sale—Conducted without proper notice and publicity—Held, procedure adopted caused great prejudice to the interest of judgment-debtor.*

*Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh, [1994] 1 SCC 131, relied on.*

E

*Or, XXI Rules 64 and 90—Execution of decree arising out of an agreement of sale of 43 decimal of land and decretal amount being Rs. 10,000—Land admeasuring 1 acre 52 decimals put to auction—Land purchased by decree holder, without permission of court, for Rs. 12,000 Held, the decree-holder had over-reached his original agreement which he failed in the suit itself by participating and getting sale in his favour. There is no attempt made for sale of a reasonable portion of the property for realisation of the decree debt—Sale of property conducted by executing court is clearly illegal—However the appellant would pay the decretal amount, interest on principal earnest amount @ 12% per annum as well as impounding fee @*

F

G

*5% on sale amount of Rs. 12,000.*

*Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh, [1994] 1 SCC 131; Ambati Narasayya v. M. Subba Rao, (1989) Supp. 2 693 and Takaseela Pedda Subba Reddy, v. Pujari Padmavathamma, [1977] 3 SCC 337, relied*

H

*on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1727 of 1997. A

From the Judgment and Order dated 9.11.95 of the Allahabad High Court in W.P. No. 2680 of 1989.

Pramod Swarup, T.N. Singh and B.M. Sharma for the Appellant. B

M.S. Ganesh, Sunil Kr. Singh and Anil Shrivastav for the Respondents.

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides. C

This appeal by special leave arises from the judgment of the High Court of Allahabad, made on November 9, 1995 in Civil Miscellaneous Writ Petition No. 2680/89. D

The admitted position is that the plaintiff-respondent had entered into an agreement with the appellant to purchase 43 decimals of land in plot No. 389/2 situated in Umraha, District Varanasi for a sum of Rs. 6625. A sum of Rs. 2,000 was paid as earnest amount while the balance amount had already been paid in the form of loan. The respondent filed the suit seeking specific performance of the agreement, which relief ultimately was refused; but a decree for refund of the earnest money was granted. Since the amount was not paid, the respondent had brought the properties of the appellant, to the extent of one acre, 52-1/2 decimals to sale. The same came to be questioned by filing of an objection under Order XXI, Rule 90, CPC which was dismissed by the court below and upheld by the High Court. Thus, this appeal by special leave. E F

Two questions have arisen in this case, namely, whether the auction was properly conducted by the executing court and whether the respondent-decree holder was entitled to participate in the auction to bid and had sale confirmed in that behalf. It is not in dispute that the land, viz., plot Nos. 24 and 25 of admeasuring 1 acre 19-1/2 decimals and plot No. 50-A admeasuring 33 decimals totalling 1 acre 52-1/2 decimals was brought to sale to realise the decretal amount of Rs. 10,921-50. The court fixed the valuation at Rs. 11,000. On a sale conducted by Amin of the court, the bid was knocked down on April 30, 1983 in favour of the respondent-decree H

A holder for a sum of Rs. 12,000. As stated earlier, the question has arisen whether the sale conducted in execution of the decree is valid in law? Order XXI, Rule 72, CPC envisage as under :

*"72. Decree-holder not to bid for or buy property without permission*  
 B – (1) No. holder of a decree in execution of which Property is sold shall, without the express permission of the court, bid for or purchase the property.

*Where decree-holder purchases, amount of decree may be taken as payment* -- (2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree  
 C may, subject to the provisions of Section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Whether a decree-holder purchases, by himself or through  
 D another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder."

E A reading thereof clearly indicates that no holder of a decree execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property. In the event of such a purchase, on an application by the judgment-debtor or any other person whose interests are affected by such a sale, set aside such a sale. In paragraph 13  
 F of the petition, the appellants has stated, among others, thus :

"After the said auction sale the judgment-debtor filed an objection under Order XXI, Rule 90, CPC mainly on the following grounds in the Court of Munsif Havali, Varanasi :

G (i) The decree-holder purchased the said land through auction without the permission of the Court;"

In the counter-affidavit filed by the respondent, he has not specifically denied in that behalf except stating that it is a matter of record. The proceedings of the auction do indicate that if he was really the person  
 H permitted to participate in the bid, one would necessarily expect an active

participation in the auction. But the proceedings do show that after one Bali Ram Prasad, had bid, earlier, for Rs. 10,000 but later offered Rs. 11,500 and one Srinath had offered a sum of Rs. 11,000, as a last bid, the respondent offered Rs. 12,000 so as to be within the outer limit of valuation fixed by the Court to ward off further onslaught on court sale. Since there was no further offer made by anybody thereafter out of the five participants in the bid, the bid was knocked down in favour of the decree-holder-respondent. Under the teeth of the mandatory language of Order XXI, Rule 72, CPC, he has no right to bid in the auction without obtaining prior permission of the Court. As a consequence, the sale conducted was clearly in flagrant violation of Order XXI, Rule 72, CPC.

It is also to be seen that the sale was conducted without there being any proper notice and publicity as is evident from the report submitted by the Court Amin. After the bid was started, sale was notified in the village by beat of drum and thereafter people started coming and five persons including the respondent participated in the bid. This part of the procedure adopted is clearly illegal and caused great prejudice to the interest of the appellant. In *Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh*, [1994] 1 SCC 131, this Court had pointed out the mandatory requirements of the procedure, as indicated therein, thus :

"The contentions of S/Shri Madhava Reddy and Gujral that the appellant had not given his valuation and that, therefore, is not open to him to raise the objections after the sale is unacceptable. Since the court had not given any notice to the appellant which is mandatory, the need to submit his valuation did not arise. Order 21 Rule 54, sub-rule (I-A) brought in by 1976 Amendment Act mandates that the Court should require the judgment-debtor to attend the court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale. Form 24 of Appendix 'E' second para and the court Rules also envisage the mandate. It is a reminder to the court that it has a statutory duty to issue notice to the judgment-debtor before settlement of the terms of proclamation of sale. Then only the proviso to Rule 66(2) comes into play dispensing with multiplicity of notice and not dispensation of mandatory compliance of notice to the judgment-debtor. Had it been a case where notice was served and the appellant lay by, without objecting to the valuation given by the

A decree-holder, certainly that would be put against the appellant to impugn the irregularities after the sale or the under-valuation settled by the court in the proclamation of sale. The further contentions of both the counsel that merely because there is no order under Order 21 Rule 66(2), it cannot be construed that the Execution Court had not applied its mind in settling the terms of the proclamation of sale, is on of desperation. Except giving a schedule of dates for conducting the sale the Execution Court totally abdicated its duty to scrupulously comply with the mandatory procedure and did not apply its mind to the mandatory duty cast on it by Order 21 Rule 66 to settle the terms of proclamation of sale, and proper publication under Rule 67. After April 20, 1979, the court had merely ensured its publication on the court notice board and on the site at the respective dates and no further. This Court in *Shalimar Cinema v. Bhasin Film Corpn.*, [1987] 4 SCC 717 held that the court has a duty to see that the requirements of Order 21 Rule 66 are properly complied with. It is incumbent on the court to be scrupulous in the extreme. No action of the court or its officer should be such as to give rise to the criticism that it was done in a causal way. Therefore, a proclamation of sale drawn casually without compliance of the mandatory requirement and a sale held in furtherance thereof is not a sale in the eye of law. We are of the considered view that the procedure adopted by the court in non-compliance of Order 21 Rules 66 and 67 is in flagrant breach of the mandatory provision. it is a nullity *ab initio*."

There is yet another infirmity which goes to the root of the matter. It is seen that the respondent, in fact, had a contract to purchase 43 decimals of land and in the execution, managed to give the list of all other lands totalling 1 acre 52-1/2 decimals and the decree for Rs. 10,000 and odd was sought to be put to execution, and purchased the land for 12,000. In other words, he had over-reached his original agreement which he failed in the suit itself by participating and getting sale in his favour. There is no attempt made for sale of a reasonable portion of the property for realisation of the decree debt. Order XXI Rule 64 expressly mandates as under:

"64. Power to order property attached to be sold and proceeds to be paid to person entitled. Any court executing a decree may order that any property attached by it and liable to sale, or such portion

thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

This part of the case was also considered in *Desh Bandhu Gupta's* case (supra) thus :

"Yet another contention of Mr. Gupta is that the sale of the plot of 550 sq. yards is in excess of the execution and the order to sell it is the result of non-application of mind touching the jurisdiction of the court rendering the sale void or manifestly illegal. Therefore, the need to invoke Order 21 Rule 90 does not arise and it can be set aside under Section 47, CPC.

Proviso to sub-rule (4) of Rule 17 of Order 21 provides the procedure to receive the application for execution of the decree. In the case of a decree for payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree. Rule 64 of Order 21 charges the Executing Court that it may order attaching of any property to the extent that "such portion thereof as may seem necessary to satisfy the decree would be sold". It is also enjoined under sub-rule (2)(a) of Rule 66 of Order 21 that where a part of the property would be sufficient to satisfy the decree, the same be sold by public auction. Form 27 of Appendix E of the schedule also directs the court auctioneer to sell so much of the said property as shall realise the sum in the said decree and costs. The Code, therefore, has taken special care charging the duty on the Executing Court and it has a salutary duty and a legislative mandate to apply its mind before settling the terms of proclamation and satisfy that if part of such property as seems necessary to satisfy the decree should be sold if the sale proceeds or portion thereon is sufficient for payment to the decree-holder or the person entitled under the decree to receive the amount and so much of that property alone should be ordered to be sold in execution. In *Ambati Narasayya v. M. Subba Rao*, [1989] Supp. 2 SCC 693 this Court held that it is the duty cast upon the court under Order 21 Rule 64 to sell only such property or a portion thereof as may be necessary to satisfy the

A decree. It is a mandate of the legislature which cannot be ignored. Therein for execution of a decree of a sum of Rs. 2000 and costs, the appellant's 10 acres land was brought to sale which was purchased for a sum of Rs. 17,000, subject to discharge of a Court mortgage of Rs. 2,000. This Court held that without the court's examining whether a portion of the property could be sold, the sale held was not in conformity with the requirement of Order 21 Rule 64 and it was held to be illegal and without jurisdiction. The sale was set aside and the court was directed to put the judgment-debtor in possession of the land and to refund the sale amount to the auction-purchaser. Further direction was given to execute the decree in accordance with law. In *Mangal Prasad v. Krishna Kumar Maheshwar*, [1992] Supp. (3) SCC 31 a shop was sold to realise a decree debt of about Rs. 29,000 and the sale price at the auction was Rs. one lakh and odd. This Court finding that it is excessive execution, set aside the sale and directed return of the sale amount to the auction-purchaser with interest @ 12%. In *Takaseela Pedda Subba Reddy v. Pujari Padmavathamma*, [1977] 3 SCC 337 to recover the decree debt in two decrees the properties situated in two different villages were brought to sale. In the first instance the property in 'D' village fetched a sum of Rs. 16,880, which was sufficient to satisfy the decretal amount. The property in 'G' village was also sold which fetched a sum of Rs. 12,000. This Court set aside the sale of 'G' village. Admittedly, the site in sale is to the extent of 550 sq. yards, situated in a commercial area around which the petroleum installations are established. Though, as contended by Shri Madhava Reddy, that there may be building regulation for division of the property into portions, but the court made no attempt to sell a portion of the property, made be 100 yards or 150 yards out of it, or whether undivided portion thereof would have satisfied the decree debt. It could be legitimately concluded that the court did apply its mind at all to this aspect as well."

G In *Ambati Narasayya v. M. Subba Rao*, [1989] Supp. 2 693 at 695, this court had pointed out as under :

H "It is of importance to note from this provision that in all execution proceedings, the court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof

a may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder, it is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This, in our opinion, is not just a discretion, but an obligation imposed on the court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction."

Similar view was taken in *Takaseela Pedda Subba Reddy v. Pujari Padmavathamma*, [1977] 3 SCC 337 at 340.

Thus, we hold that the sale of the property of the appellant conducted by the executing court is clearly illegal. However, the appellant's directed to pay the decreetal amount, interest on the principal earnest amount of Rs. 3,000 @ 12% per annum from the date of deposit and the costs of execution as well as impounding fee @ 5% on the sale amount of Rs. 12,000.

The appeal is accordingly allowed. No. costs.

R.P.

Appeal allowed.

## **Shalimar Cinema vs Bhasin Film Corporation And Anr. on 19 August, 1987**

**Equivalent citations: AIR1987SC2081, JT1987(3)SC362, 1987(2)SCALE356, (1987)4SCC717, 1987(2)UJ508(SC), AIR 1987 SUPREME COURT 2081, (1987) 3 JT 362 (SC), (1991) 1 LJR 730, (1987) 2 LANDLR 565, 1987 (4) SCC 717, (1987) 33 DLT 88, (1988) 1 APLJ 2.2, (1988) 1 KER LJ 388, (1987) 3 SCJ 72**

**Bench: O. Chinnappa Reddy, M.H. Kania, K. Jagannatha Shetty Shetty**

### JUDGMENT

1. M/s. Bhasin Film Corporation obtained a decree against the two appellants Shamiudin and Nasimudin for a sum of Rs. 1,44,973. In execution of the decree, 28/48 share in the Shalimar Cinema, Bhogal, New Delhi belonging to the judgment debtors was sold on September 1, 1977 for a sum of Rs. 4,37,000. An application to set aside the sale was dismissed by a learned single Judge of the High Court and the learned single Judge's order was confirmed by a Division Bench. The judgment debtors have preferred this appeal by special leave of this Court under Article 136 of the Constitution.

2. Two principal submissions were made on behalf of the appellants. The first was that there was a total failure to comply with the requirements of Order XXI Rule 66 as no notice was given to the judgment debtors of any application made by the decree holders for setting the terms of the proclamation of sale. In fact, it was said that there was no application under Order XXI Rule 66 by the decree holder to the court to settle the terms of the proclamation of sale. The second submission was that the sale was first held on August 29, 1977, but was not concluded. It was adjourned by the auctioneer to a date to be subsequently announced. The sale was purported to have been held on September 1, 1977 without any announcement. This resulted in the bidders being prevented from participating in the auction. A fraud was thus perpetrated by the decree holder and the auction purchaser. On the first question, the learned single Judge and the Division Bench of the High Court held that there was no notice to the judgment debtors of any application to settle the terms of the proclamation of sale, but that the judgment debtors were not there by prejudiced. On the second question, it was held that the bid list prepared by the auctioneer on August 29, 1977 showed that the sale was adjourned on the spot to September 1, 1977 and that the statement in the bid list must be presumed to be correct. The High Court was not prepared to accept the evidence of the witnesses for the judgment debtors on that question.

3. In the view that we propose to take on the second question, we do not consider it necessary to express our view on the first question. But we do wish to say that the court has a duty to see that the requirements of Order XXI Rule 66 are properly complied with. In the words of the Judicial Committee, "In sales under the direction of the court, it is incumbent on the court to be scrupulous in the extreme." Though it may not be necessary for the court to make a valuation and enter it in the

sale proclamation in every case, it is desirable at least in cases of sale of valuable property that the court make its valuable and enter it in the sale proclamation. We think it necessary to add that no action of the court or its officers should be such as to give rise to the criticism that it was done in an indifferent or casual way. We are constrained to make these observations because it was found by the learned single Judge in the present case that there actually was no application under Order XXI Rule 66 and that the sale proclamation was prepared in a routine fashion. Having said this much, we now proceed to consider the second question. The bid list prepared by the court auctioneer on August 29, 1977 shows that each of the bidders who participated in the auction on August 29, 1977 put his signature against the bid offered by him. For example, Sardar Sharanjit Singh, who at one stage offered a bid of Rs. 1,70,000 and later raised it to Rs. 2,50,000/- and again to Rs. 2,90,000/- has put its signature at three places against the three bids offered by him. Similarly, Gian Chand Sharma, who originally offered a bid of Rs. One lakh and later raised it to Rs. two lakhs has put his signatures at two places and Tejwant Singh, who initially offered a bid of Rs. 1,80,000/- and later raised it to Rs. 2,80,000 has put his signature at two places against the bids offered by him. At the end of the document, there is to be found a note by the court auctioneer stating. "It is One O'clock, considering that some good bids may come, the auction will be continued on September 1, 1977 from 10.00 a.m. to 1.00 p.m." It is seen that the bidders who participated in the auction on August 29, 1977 put their signatures against the respective bids offered by them, but not at the end of the document. If the signatures had been put at the end of the document, that would have established that the court auctioneer had indeed announced that the auction was adjourned to September 1, 1977. The question whether the sale was adjourned to September 1, 1977 and announcement made on the spot on August 29, 1977 was expressly raised and put in issue. One would have thought that the auction purchaser would have called the court auctioneer as a witness on his behalf to prove the statement contained in the bid list. The auction purchaser refrained from calling him as a witness on his behalf. On the other hand, there is one telling circumstance in favour of the case put forward by the judgment debtors. We find from a perusal of the bid lists prepared on August 29, 1977 and September 1, 1977 that as many as eight persons participated in the auction on August 29, 1977 and offered their bids while only four persons participated in the auction on September 1, 1977 and offered their bids, and what is more important, not one of the eight persons who offered their bids on August 29, 1977 was present to offer his bid on September 1, 1977. It is a very curious and significant circumstance. It could not be that those persons who exhibited the desire to purchase the property on August 29, 1977 en masse decided not to participate in the auction on September 1, 1977. In our opinion, the legitimate inference to be drawn from the circumstance is that the bidders who participated in the auction on August 29, 1977 were not aware that the auction was being continued on September 1, 1977. This could only be if as alleged by the judgment debtors there was no announcement on August 29, 1977 by the court auctioneer that the auction would be continued on September 1, 1977. One of the bidders, who participated in the auction on August 29, 1977, was examined as a witness by the judgment debtors. His bid was in fact the highest bid that was offered on August 29, 1977. He stated in his evidence that after he made his bid for Rs. 2,90,000, he was informed that the time for the auction was over and that the auction would be held again after notice for the same was published in the newspaper. He said, "My last bid was for Rs. 2,90,000 when I was informed that as the time is over, the auction would be re-held after notice for the same as published in the newspaper. I do not remember whether the date for the next auction was announced on that day or not. The auctioneer who was present there had told the bidders that as the time was over, the

sale will be held at a later date after notice for the sale is published." Relying on the sentence that he did not remember whether the date for the next auction was announced on that date or not, it was sought to be made out that the witness was prevaricating and that an announcement must have been made on that very date about the next date of auction. We do not think that there was any attempt by the witness to prevaricate. What the witness was meant was made very clear in the very next sentence when he stated that the auctioneer told the bidders that the sale would be held at a later date after the notice for the sale was published. When he was further questioned in cross-examination, he stated, "Thereafter we were talking amongst ourselves about the next date on which the auction was to be held. However, the next date was not announced. I had come to know about the auction to be held on August 29, 1977 from the publication in the newspaper as well as from my personal friends. The next date was not informed to me by Mr. Suraj Prakash. It is wrong to suggest that the auctioneer had announced the date after the bidding was over on August 25, 1977. In fact no date was announced on that date."

The evidence of this witness is strongly supported by the circumstance already noticed by us that none of the bidders who participated in the auction on August 29, 1977, participated in the auction on September 1, 1977. There is no conceivable reason as to why this witness who was (he highest bidder on August 29, 1977 should have refrained from participating in the auction on September 1, 1977. The evidence of this witness is practically un rebutted since neither the auctioneer nor any of the bidders who participated in the auction on August 29, 1977 was examined on behalf of the auction purchaser. The auction purchaser examined himself and stated that he was present at the auction on August 29, 1977 and that at that time, the auctioneer announced that the auction would be continued on September 1, 1977. We do not have the slightest doubt that he is not a truthful witness. He was unable to explain why he did not offer any bid if he was Present at the auction on August 29, 1977. He was also unable to give the name of a single person who offered a bid on August 29, 1977.

4. Both the learned single Judge of the High Court and the Division Bench appeared to have been carried away by the note of the auctioneer in the bid list of August 29, 1977 ignoring the material fact of the non-examination of the auctioneer as a witness by the auction purchaser. The judgment debtors put the auction purchaser on notice of their case in their objections to the sale. They adduced evidence in support of their case, it was the duty of the auction purchaser to adduce the best evidence in support of his case by examining the auctioneer. He refrained from doing so. In those circumstances it was not open to the courts below to rely upon the note made by the auctioneer in the bid list when the substance of the note was itself under challenge. In addition, we have already mentioned the other outstanding circumstance of the case that not one of the eight bidders who participated in the auction on August 29, 1977 was present at the auction on September 1, 1977. We are led to the irresistible conclusion that no announcement was made on August 29, 1977 that the auction would be continued on September 1, 1977. We are also satisfied that the price of Rs. 4,37,000/- for a 28/48 share of a cinema in New Delhi standing on land of the extent of 5000 sq. yard can hardly be considered an adequate price. No doubt the auction purchaser stated in his evidence that Shalimar cinema is situated in a poor locality, eclipsed by a flyover and was in shambles. He denied the suggestion that Shalimar cinema was situated on the best road and in one of the finest colonies of South Delhi. On the other hand, Swaranjit Singh who was the highest bidder

on September 1, 1977 stated that he went prepared to the auction to purchase 28/48 share for Rs. twelve lakhs. We do not have any doubt that even in 1977 when prices were not as high as they are today, the price of Rs. 4,37,000/- for 28/48 share of the property in question was totally inadequate. We have, therefore, no option but to set aside the sale held on September 1, 1977. The appeal is accordingly allowed. The order of the learned single Judge and the Division Bench of the High Court are set aside and the sale held on September 1, 1977 is set aside. No costs.

JOLLY GEORGE VERGHESE & ANR.

A

v.

THE BANK OF COCHIN

February 4, 1980

[V. R. KRISHNA IYER AND R. S. PATHAK, JJ.]

B

*Code of Civil Procedure—Section 51, Order 21, rule 37—Scope of—Debtor, if could be imprisoned for failure to pay his debts—Imprisonment when could be ordered.*

The appellants were the judgment-debtors while the respondent-bank was the decree-holder. In execution of the decree a warrant for arrest and detention in civil prison was issued to the appellants under section 51 and order 21, rule 37 of the Code of Civil Procedure. On an earlier occasion there had been a similar warrant for arrest in execution of the same decree. The decree-holders also proceeded against the properties of the judgment-debtors and in consequence all their immovable properties had been attached for the purpose of sale in discharge of the decree-debts. A receiver was appointed by the execution court to manage the properties under attachment. Even so, the court had issued a warrant for the arrest of the judgment-debtors because on an earlier occasion a similar warrant had already been issued without any investigation as regards the current ability of the judgment-debtors to clear off the debts or their *mala-fide* refusal, if any, to discharge the debts.

C

D

On the question whether under such circumstances personal freedom of the judgment-debtors can be held to ransom until repayment of the debt.

E

Allowing the appeal,

HELD : 1. The words in section 51 which hurt are "or has had since the date of the decree the means to pay the amount of the decree." Superficially read this implies that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position, apart from being inhuman going by the standards of Article 11 of the International Covenant on Civil and Political Rights and Article 21. A simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or alternatively current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Considerations of the debtor's other pressing needs and straitened circumstances will play prominently. [922E-G]

F

G

2. Unless there be some other vice or *mens rea* apart from failure to foot the decree, international law frowns on holding the debtor's person in civil prison, as hostage by the court. India is now a signatory to this Covenant and Article 51(c) of the Constitution obligates the State to "foster respect for

H

**A** international law and treaty obligations in the dealings of organised peoples with one another". Even so, until the Municipal Law is changed to accommodate the Covenant what binds the courts is the former not the latter. [918A-B]

**B** 3. Quondom affluence and current indigence without intervening dishonesty or bad faith in liquidating his liability can be consistent with Article 11 of the Covenant because then no detention is permissible under section 51 of the Code of Civil Procedure. [921G]

**C** 4. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. To cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor is no crime and to "recover" debts by the procedure of putting one in prison is flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation put on the proviso to section 51 C.P.C. and the lethal blow of Article 21 cannot strike down the provision as interpreted. [922A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1991 of 1979.

Appeal by special leave from the Judgment and Order dated 9-7-1979 of the Kerala High Court in C.R.P. No. 1741 of 1979.

**E** *M. M. Abdul Khader* and *K. M. K. Nair* for the Appellants.

*K. M. Iyer* and *V. J. Francis* for the Respondent.

The Judgment of the Court was delivered by

**F** KRISHNA IYER, J.—This litigation has secured special leave from us because it involves a profound issue of constitutional and international law and offers a challenge to the nascent champions of human rights in India whose politicised pre-occupation has forsaken the civil debtor whose personal liberty is imperilled by the judicial process itself, thanks to s. 51 (Proviso) and O. 21, r. 37, Civil Procedure Code. Here is an appeal by judgment-debtors—  
**G** the appellants—whose personal freedom is in peril because a court warrant for arrest and detention in the civil prison is chasing them for non-payment of an amount due to a bank—the respondent, which has ripened into a decree and has not yet been discharged. Is such deprivation of liberty illegal?

**H** From the perspective of international law the question posed is whether it is right to enforce a contractual liability by imprisoning

a debtor in the teeth of Art. 11 of the International Covenant on Civil and Political Rights. The Article reads: **A**

No one shall be imprisoned merely *on the ground of inability to fulfil a contractual obligation.*

(Emphasis added)

An apercu of Art. 21 of the Constitution suggests the question whether it is fair procedure to deprive a person of his personal liberty merely because he has not discharged his contractual liability in the face of the constitutional protection of life and liberty as expounded and expanded by a chain of rulings of this Court beginning with *Maneka Gandhi's case.*(<sup>1</sup>) Article 21 reads: **B**

21. *Protection of life and personal liberty.*—No person shall be deprived of his life or personal liberty except according to procedure established by law. **C**

A third, though humdrum, question is as to whether, in this case, s. 51 has been complied with in its enlightened signification. This turns on the humane meaning of the provision. **D**

Some minimal facts may bear a brief narration sufficient to bring the two problems we have indicated, although we must candidly state that the Special Leave Petition is innocent of these two issues and the arguments at the bar have avoided virgin adventures. Even so, the points have been raised and counsel have helped with their submissions. We therefore, proceed to decide. **E**

The facts. The judgment-debtors (appellants) suffered a decree against them in O.S. No. 57 of 1972 in a sum of Rs. 2.5 lakhs, the respondent-bank being the decree-holder. There are two other money decrees against the appellants (in O.S. 92 of 1972 and 94 of 1974), the total sum payable by them being over Rs. 7 lakhs. In execution of the decree in question (O.S. 57 of 1972) a warrant for arrest and detention in the civil prison was issued to the appellants under s. 51 and O.21, r. 37 of the Civil Procedure Code on 22-6-1979. Earlier, there had been a similar warrant for arrest in execution of the same decree. Besides this process, the decree-holders had proceeded against the properties of the judgment-debtors and in consequence, all these immovable properties had been attached for the purpose of sale in discharge of the decree debts. It is averred that the execution court has also appointed a Receiver for the management of the properties under attachment. In short, **F**  
**G**  
**H**

(1) *Maneka Gandhi v. Union of India*, [1978] 1 S.C.C. 248.

- A** the enjoyment or even the power to alienate the properties by the judgment-debtors has been forbidden by the court direction keeping them under attachment and appointing a Receiver to manage them. Nevertheless, the court has issued a warrant for arrest because, on an earlier occasion, a similar warrant had been already issued. The
- B** High Court, in a short order, has summarily dismissed the revision filed by the judgment-debtors against the order of arrest. We see no investigation having been made by the executing court regarding the current ability of the judgment-debtors to clear off the debts or their *mala fide* refusal, if any, to discharge the debts. The question is whether under such circumstances the personal freedom of the
- C** judgment-debtors can be held in ransom until repayment of the debt, and if s. 51 read with O. 21, r. 37, C.P.C. does warrant such a step, whether the provision of law is constitutional. tested on the touchstone of fair procedure under Art. 21 and in conformity with the inherent dignity of the human person in the light of Art. 11 of the International Covenant on Civil and Political Rights. A modern
- D** Shylock is shackled by law's humane hand-cuffs.

At this stage, we may notice the two provisions. Section 51 runs thus:

- E** 51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—
- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- F** (c) *by arrest and detention in prison;*
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require.

**G** Provided that, where the decree is for the payment of money, *execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—*

- H** (a) that the judgment-debtor, *with the object or effect of obstructing or delaying the execution of the decree—*
- (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

- (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or A
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or B
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account. C

*Explanation.*—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree. D

(Emphasis added)

We may here read also order 21 Rule 37 :

37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison: E

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court. F

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor. G

Right at the beginning, we may take up the bearing of Art. 11 on the law that is to be applied by an Indian Court when there is a specific provision in the Civil Procedure Code, authorising detention H

51

**A** for non-payment of a decree debt. The Covenant bans imprisonment *merely* for not discharging a decree debt. Unless there be some other vice or *mens rea* apart from failure to foot the decree, international law frowns on holding the debtor's person in civil prison, as hostage by the court. India is now a signatory to this Covenant and Art. 51 (c) of the Constitution obligates the State to "foster respect for international law and treaty obligations in the dealings of organised peoples with one another". Even so, until the municipal law is changed to accommodate the Covenant what binds the court is the former, not the latter. A. H. Robertson in "Human Rights—in National and International Law" rightly points out that international conventional law must go through the process of *transformation* into the municipal law before the international treaty can become an internal law.<sup>(1)</sup>

**B**

**C**

**D** From the national point of view the national rules alone count.....With regard to interpretation, however, it is a principle generally recognised in national legal system that, in the event of doubt, the national rule is to be interpreted in accordance with the State's international obligations.

**E** The position has been spelt out correctly in a *Kerala ruling*<sup>(\*)</sup> on the same point. In that case, a judgment-debtor was sought to be detained under O. 21, r. 37 C.P.C. although he was seventy and had spent away on his illness the means he once had to pay off the decree. The observations there made are apposite and may bear excerption :

**F** The last argument which consumed most of the time of the long arguments of learned counsel for the appellant is that the International Covenants on Civil and Political Rights are part of the law of the land and have to be respected by the Municipal Courts. Article 11, which I have extracted earlier, grants immunity from imprisonment to indigent but honest judgment-debtors.

**G** The march of civilization has been a story of progressive subordination of property rights to personal freedom; and a by-product of this subordination finds noble expression in the declaration that "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." This revolutionary change in the regard for the human person is spanned by the possible shock that a resuscitated Shylock would suffer if a modern Daniel were to come to judgment

**H**

(1) p. 13.

(2) *Xavier v. Canara Bank Ltd.*, 1969 KLT 927 at 931, 933.

when the former asks the pound of flesh from Antonio's bosom according to the tenor of the bond, by flatly refusing the mayhem on the debtor, because the inability of an impecunious obligee shall not imperil his liberty or person under the new dispensation proclaimed by the Universal Declaration of Human Rights. Viewed in this progressive perspective we may examine whether there is any conflict between s. 51 CPC and Article 11 of the International Covenants quoted above. As already indicated by me, this latter provision only interdicts imprisonment if that is sought solely on the ground of inability to fulfil the obligation. Section 51 also declares that if the debtor has no means to pay he cannot be arrested and detained. If he has and still refuses or neglects to honour his obligation or if he commits acts of bad faith, he incurs the liability to imprisonment under s. 51 of the Code, but this does not violate the mandate of Article 11. However, if he once had the means but now has not or if he has money now on which there are other pressing claims, it is violative of the spirit of Article 11 to arrest and confine him in jail so as to coerce him into payment. . . . .

A  
B  
C  
D

The judgment dealt with the effect of international law and the enforceability of such law at the instance of individuals within the State, and observed :

E

The remedy for breaches of International Law in general is not to be found in the law courts of the State because International Law *per se* or *proprio vigore* has not the force or authority of civil law, till under its inspirational impact actual legislation is undertaken. I agree that the Declaration of Human Rights merely sets a common standard of achievement for all peoples and all nations but cannot create a binding set of rules. Member States may seek, through appropriate agencies, to initiate action when these basic rights are violated; but individual citizens cannot complain about their breach in the municipal courts even if the country concerned has adopted the covenants and ratified the operational protocol. The individual cannot come to Court but may complain to the Human Rights Committee, which, in turn, will set in motion other procedures. In short, the basic human rights enshrined in the International Covenants above referred to, may at best inform judicial institutions and inspire legislative action within member-States; but apart from such deep reverence, remedial action

F  
G  
H

**A** at the instance of an aggrieved individual is beyond the area of judicial authority.

While considering the international impact of international covenants on municipal law, the decision concluded :

**B** Indeed the construction I have adopted of s. 51, CPC has the flavour of Article 11 of the Human Rights Covenants. Counsel for the appellant insisted that law and justice must be on speaking terms—by justice he meant, in the present case, that a debtor unable to pay must not be detained in civil prison. But my interpretation does put law and justice on speaking terms. Counsel for the respondent did argue that International Law is the vanishing point of jurisprudence is itself vanishing in a world where humanity is moving steadily, though slowly, towards a world order, led by that intensely active, although yet ineffectual body, the United Nations Organisation. Its resolutions and covenants mirror the conscience of mankind and insominate, within the member States, progressive legislation; but till this last step of actual enactment of law takes place, the citizen in a world of sovereign States, has only inchoate rights in the domestic Courts under these international covenants.

**E** While dealing with the impact of the Dicean rule of law on positive law, Hood Phillips wrote—and this is all that the Covenant means now for Indian courts administering municipal law<sup>(1)</sup>

**F** The significance of this kind of doctrine for the English lawyer is that it finds expression in three ways. First, it influences legislators. The substantive law at any given time may approximate to the “rule of law”, but this only at the will of Parliament. Secondly, its principles provide canons of interpretation which express the individualistic attitude of English courts and of those courts which have followed the English tradition. They give an indication of how the law will be applied and legislation interpreted. English courts lean in favour of the liberty of the citizen, especially of his person : they interpret strictly statutes which purport to diminish that liberty, and presume that Parliament does not intend to restrict private rights in the absence of clear words to the contrary.

**H**

---

(1) O. Hood Phillips' Constitutional and Administrative Law 6th Edn. p. 40.

The positive commitment of the States Parties ignites legislative action at home but does not automatically make the Covenant an enforceable part of the *corpus juris* of India. **A**

Indeed, the Central Law Commission, in its Fifty Fourth Report, did cognise the Covenant, while dealing with s. 51 C.P.C. :<sup>(1)</sup>

The question to be considered is, whether this mode of execution should be retained on the statute book, particularly in view of the provision in the International Covenant on Civil and Political Rights prohibiting imprisonment for a mere non-performance of contract. **B**

The Law Commission, in its unanimous report, quoted the key passages from the *Kerala ruling* referred to above and endorsed its ratio. 'We agree with this view' said the Law Commission and adopting that meaning as the correct one did not recommend further change on this facet of the Section. It is important to notice that, interpretationally speaking, the Law Commission accepted the dynamics of the changed circumstances of the debtor :<sup>(2)</sup> **C**

However, if he once had the means but now has not, or if he has money now on which there are other pressing claims, it is violative of the spirit of Article 11 to arrest and confine him in jail so as to coerce him into payment. **D**

This is reiterated by the Commission : **E**

Imprisonment is not to be ordered merely because, like Shylock, the creditor says :<sup>(3)</sup>

"I crave the law, the penalty and forfeit of my bond."

The law does recognise the principle that "Mercy is reasonable in the time of affliction, as clouds of rain in the time of drought."<sup>(4)</sup> **F**

We concur with the Law Commission in its construction of s. 51 C.P.C. It follows that quondam affluence and current indigence without intervening dishonesty or bad faith in liquidating his liability can be consistent with Art. 11 of the Covenant, because then no detention is permissible under s. 51, C.P.C. **G**

Equally meaningful is the import of Art. 21 of the Constitution in the context of imprisonment for non-payment of debts. The high

(1) p. 38.

(2) *ibid* p. 41.

(3) Merchant of Venice, Act, 4, Scene 1.

(4) Ecclesiasticus, 35-20. **H**

**A** value of human dignity and the worth of the human person enshrined in Art. 21, read with Arts. 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. *Maneka Gandhi's case*<sup>(1)</sup> as developed further in *Sunil Batra v. Delhi Administration*<sup>(2)</sup>, *Sita Ram & Ors. v. State of U.P.*<sup>(3)</sup> and *Sunil Batra v. Delhi Administration*<sup>(4)</sup> lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of *daridra Narayana*, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of Art. 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Art. 11 of the Covenant. But this is precisely the interpretation we have put on the Proviso to s. 51 C.P.C. and the lethal blow of Art. 21 cannot strike down the provision, as now interpreted.

The words which hurt are "or has had since the date of the decree, the means to pay the amount of the decree". This implies, superficially read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Art. 11 (of the Covenant) and Art. 21 (of the Constitution). The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, sauced law with justice, harmonised s. 51 with the Covenant and the Constitution.

The question may squarely arise some day as to whether the Proviso to s. 51 read with O. 21, r. 37 is in excess of the Constitutional

**H** (1) [1978] 1 S.C.R. 248.  
 (2) [1978] 4 S.C.C. 494.  
 (3) [1979] 2 S.C.R. 1085.  
 (4) [1980] 2 S.C.R. 557.

mandate in Art. 21 and bad in part. In the present case since we are remitting the matter for reconsideration, the stage has not yet arisen for us to go into the vires, that is why we are desisting from that essay.

In the present case the debtors are in distress because of the blanket distraint of their properties. Whatever might have been their means once, that finding has become obsolete in view of later happenings; Sri Krishnamurthi Iyer for the respondent fairly agreed that the law being what we have stated, it is necessary to direct the executing court to re-adjudicate on *the present means of the debtors vis a vis* the present pressures of their indebtedness, or alternatively whether they have had the ability to pay but have improperly evaded or postponed doing so or otherwise dishonestly committed acts of bad faith respecting their assets. The court will take note of other honest and urgent pressures on their assets, since that is the exercise expected of the court under the proviso to s. 51. An earlier adjudication will bind if relevant circumstances have not materially changed.

We set aside the judgment under appeal and direct the executing court to decide *de novo* the means of the judgment-debtors to discharge the decree in the light of the interpretation we have given.

P.B.R.

*Appeal allowed.*

BRAHMDEO CHAUDHARY

A

v.

RISHIKESH PRASAD JAISWAL AND ANR.

JANUARY 22, 1997

[DR. A.S. ANAND AND S.B.MAJMUDAR, JJ.]

B

*Civil Procedure Code, 1908—Order XXI, Rules 35, 97, 98, 99, 101, 105—Stranger to the decree—Occupying decretal premises in his own right—Resisting execution of the decree—Approaches the executing court to adjudicate upon his right—Held: The executing court is bound to adjudicate upon the objections raised by the stranger under Order XXI, Rule 97—Can not refuse to adjudicate upon the objections raised by the stranger before handing over possession—Asking the stranger to move application under Order XXI, Rule 99 after handing over possession will result in patent breach of natural justice.*

C

D

A decree was passed in favour of respondent No.1, in a suit for eviction filed by him against respondent No. 2. Respondent No.1 obtained warrant for delivery of possession from the Executing court against Respondent No. 2. When the bailiff went to the spot to execute the warrant, he was resisted by the appellant. The decree-holder, respondent No. 1, made an application on the 6th May, 1991, praying for issuance of warrant for delivery of possession with the aid of armed force. Executing Court directed execution of the warrant for possession by affording help of police force to the decree-holder. At this stage the present appellant filed an application before the Execution Court to stay the operation of the warrant and to decide his objections. The executing court dismissed the application without adjudicating upon the objections of the appellant on merits. It took the view that the remedy of the appellant was to move an application under Order XXI, Rule 99 after he was dispossessed and as that stage had not reached the request of the appellant to adjudicate his claim could not be entertained. On appeal, the High Court confirmed this view. Hence the present appeal.

E

F

G

Allowing the appeal, this Court

**HELD :1.1.** When resistance is offered by a purported stranger, who claims an independent right, title and interest in the decretal property,

H

- A the Executing Court can not tell such obstructionist that he must first hand over possession and then only his remedy is to move an application under Order XXI, Rule 99 of the Code of Civil Procedure and pray for restoration of possession. It is but natural that a stranger to the decree claiming independent right on the decretal property can offer resistance before getting actually dispossessed. [473-H; 474-A]
- B

- 1.2 Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. The High Court has totally ignored the scheme of Order XXI, Rule 97 by taking the view that the only remedy of such stranger to the decree lies under Order XXI, Rule 99 and he has no *locus standi* to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. This view taken by the High Court results in patent breach of Principles of natural justice as the grievance of the obstructionist would not be considered on merits. [474-C-G]
- C
- D

- 1.3 On the contrary, the statutory scheme envisaged by Order XXI, Rule 97 provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and get proper adjudication before the Executing Court. If a decree-holder is obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order-XXI, Rule 35 then the decree-holder has to move an application under Order XXI, Rule 97 for removal of such obstruction and after hearing the decree-holder as well as the obstructionist, the Court can pass appropriate orders after adjudicating upon the controversies between the parties as enjoined by Order XXI, Rule 97, sub-rule(2) read with Order XXI, Rule 98 and such order passed would be treated as a decree under Order XXI, Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree. [472-E-G]
- E
- F
- G

- 1.4. When the stranger is already dispossessed, then his remedy would lie in filing an application under Order XXI, Rule 99 'claiming for restoration of possession. If such an application is allowed after adjudication, then as enjoined by Order XXI, Rule 98, sub-rule(1), the Executing
- H

Court can direct the stranger applicant under Order XXI, Rule 99 to be put in possession or if his application is found to be substance less it has to be dismissed. Such an order passed by the executing Court disposing of the application one way or the other under Order XXI Rule 98 sub-Rule(1) would be deemed to be a decree as laid down by Order XXI Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order XXI Rule 101, in order to prevent multiplicity of proceedings and parallel proceedings. [472-H; 473-A-D]

2. The application of Respondent No. 1, the decree holder, dated 6th May, 1991 praying for issuance of warrant for delivery of possession with the aid of armed force, was in substance for removal of obstruction offered by the appellant under Order XXI, Rule 97 and had to be adjudicated upon as enjoined by Order XXI Rule 101 and Rule 98. As the Executing Court refused to adjudicate upon the claim of the appellant who obstructed to the execution proceedings, it had clearly failed to exercise jurisdiction vested in it by law. The High Court, in revision also committed the same error by taking the view that such application was not maintainable. As such, neither the Executing Court, nor the High Court in revision had considered the objection of the appellant on merits. Consequently the impugned judgment of the High Court as well as the order of the Executing Court are quashed and set aside and proceedings are remanded to the Court of Munsif to redecide the application of respondent No.1, decree holder dated 6th May, 1991 by treating it to be one under Order XXI Rule 97 for removal of obstruction of the appellant and after hearing the decree-holder as well as the appellant to adjudicate the claim of the appellant and to pass appropriate orders under Order XXI, Rule 97, sub-rule (2) CPC read with Order XXI, Rule 98. [477-F-H; 478-C-D]

*Bhanwar Lal v. Satyanarain and Anr.*, [1995] 1 SCC 6, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12088 of 1996.

From the Judgment and Order dated 17.5.96 of the Patna High Court in C.R. No. 381 of 1996.

S.B. Sanyal and Akhilesh Kumar Pandey for the Appellant.

A Ugra Shankar Prasad and Manish Mohan the Respondents.

The Judgment of the Court was delivered by

B S.B. MAJMUDAR, J. In this appeal by special leave the appellant has posed a short question for our consideration. It runs as under :

C "Whether the appellant who claims to be a stranger, occupying decretal premises in his own right and who has offered resistance to the execution of the decree obtained by the decree-holder against the judgment-debtor qua such property can request the Executing Court to adjudicate upon his resistance and obstruction without being insisted upon that first he must hand over possession and then only move an application under Order XXI Rule 99 Code of Civil Procedure ('CPC' for short)?"

D The High Court agreeing with the Executing Court has negated the aforesaid request of the appellant by holding that such stranger to the decree who has put forward his obstruction in the execution proceedings has the only remedy under Order XXI Rule 99, CPC after his obstruction is first removed and he is dispossessed of the premises. This Court granted special leave to appeal to the appellant under Article 136 of the Constitution of India and granted stay of dispossession by its order dated 17th September 1996. Shri Sanyal, learned senior counsel for the appellant has raised a serious grievance against the aforesaid view of the High Court.

F For resolving the aforesaid controversy between the appellant on the one hand and respondent No. 1 decree-holder on the other a few introductory facts deserve to be noted at the outset.

G Respondent No. 1 filed an Eviction Suit No. 54 of 1988 in relation to six and a half dhurs of the suit land against respondent No. 2 and his mother Bachani Devi. A decree was passed in favour of respondent No. 1 against the judgment-debtor respondent No. 2 in 1988 by the Court of Munsif II, Munger. Respondent No. 1 filed execution proceedings in 1990 against respondent No. 2 Judgment-debtor. These proceedings were registered as Execution Case No. 25 of 1990. On 25th April 1991 respondent No. 1 decree-holder obtained warrant for delivery of possession from the Executing Court against respondent No. 2. When the bailiff went on spot to execute the warrant on 28th April 1991 he was resisted by the

present appellant as well as his brothers Sitaram Choudhary and Jago Choudhary along with 20- 25 persons and because of the resistance offered by them and on account of abuses and throwing of bricks and stones indulged into by them it was impossible to execute the warrant for possession. Under these circumstances the decree-holder by his application dated 6th May 1991 requested that help of magistrate' and armed force be made available at his cost for execution of the decree. It appears that the said application remained lingering on the file of Executing Court for number of years and ultimately the Executing Court directed execution of the warrant for possession by affording help of police force to the decree-holder. It was at that stage that the present appellant filed a written application on 22nd January 1996 before the Executing Court to stay operation of the said warrant and to decide his objections. By a rejoinder dated 1st February 1996 respondent No. 1 decree-holder raised the question of maintainability of such an application before handing over actual possession to the decree-holder. The Executing Court without adjudicating upon the objections of the appellant on merits and without deciding whether the obstruction or resistance offered by him was legally justified of not dismissed the appellant's application dated 22nd January 1996 by order dated 15th February 1996. The Executing Court took the view that the remedy of the appellant was to move an application under Order XXI Rule 99, CPC only after he was dispossessed and as that stage was not still reached the request of the appellant to adjudicate his claim could no be entertained. It is this order of the Executing Court which has come to be confirmed by the High Court of Judicature at Patna by the impugned order dated 17th May 1996.

In the background of the aforesaid factual matrix it is necessary to have a look at the relevant statutory provisions governing the controversy between the parties. As respondent No. 1 decree-holder seeks to execute his decree for possession of immovable property against judgment-debtor respondent No. 2 he has rightly invoked provisions of Orders XXI, CPC by putting the decree for possession of immovable property into execution. His application for issuance of a fresh warrant for possession with the police aid as moved by him on 6th May 1991 purports to invoke the provision of Order XXI Rule 35, CPC which reads as under :

"35. Decree for immovable property. - (1) Where a decree is for the delivery of any immovable property, possession thereof shall

A he 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, if necessary, by removing any person bound by the decree who refuses to vacate the property.

B (2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

C (3) Whether possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession."

E A mere look at the aforesaid provision shows that warrant for possession can be straightaway sought against persons occupying immovable property which is subject-matter of decree by the decree-holder provided such persons who are occupying the suit property are judgment-debtors or persons claiming through the former. We are concerned with the situation in which the appellant resisted the execution proceedings on the ground that he was a stranger to the decree and claimed an independent interest

F in the suit immovable property possession of which was decreed in favour of respondent No. 1 decree-holder. The Nazir in his report dated 28th April 1991 has noted that the warrant for possession could not be executed on spot on account of the resistance and obstruction offered by the appellant, amongst others. Once that report was received by the Executing Court respondent No. 1 decree-holder naturally became alive to the fact

G of such resistance on spot by the appellant, amongst others. Thereafter when he moved the application on 6th May 1991 for issuance of fresh warrant for possession with the help of police force though the application purported to be under order XXI Rule 35 it would strictly not fall within

H that provision as the decree-holder wanted to bypass the obstruction and resistance offered by a stranger to the decree, namely, the appellant who

was not claiming any right, title or interest through the judgment-debtor. Whether his claims was right or wrong on merit is a different matter. But once such resistance was offered by him the proper procedure which was required to be followed by respondent No. 1 decree-holder was the one contemplated by Order XXI Rule 97, CPC. The said provision reads as under :

"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 in 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."

On the undisputed facts on record it has, therefore, to be held that because of the resistance or obstruction offered by the appellant, amongst others, on 28th April 1991 the application moved by the respondent decree-holder on 6th May 1991 was necessarily to be one falling within the scope and ambit of Order XXI Rule 37. It is pertinent to note that the resistance and/or obstruction to possession of immovable property as contemplated by Order XXI Rule 97, CPC could have been offered by any person. The words 'any person' as contemplated by Order XXI 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. It is not in dispute between the parties that no decree for possession has been obtained by respondent No. 1 against the appellant. He is, therefore, *prima facie* a stranger to the decree. When he offered obstruction or resistance to the execution of the decree he would squarely fall within the sweep of the words 'any person' as found in Order XXI Rule 97 sub-rule (1). Consequently it must be held that respondent No. 1's application dated 6th May 1991 though seeking only re-issuance 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 spot. Thus it was

A squarely covered by the sweep of Order XXI Rule 97 sub-rule (1). 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. We may in this connection also refer to the  
 B Schedule to the CPC, Appendix E which gives various forms for summons to be issued to parties in execution proceedings especially form No. 40 which deals with 'Summons to appear an answer charge of obstructing execution of decree (0.21, R.97)'. The said form reads as under:

"No. 40

C  
 Summons To Appear And Answer Charge of Obstructing  
 Execution of Decree (0.21, R 97)

(Title)

D To

Whereas, the decree-holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession :

E You are here by summoned to appear in this Court on the day of 19, at A.M., to answer the said complaint.

Given under my hand and the seal of the Court, this day of 19.

Judge."

F It is, therefore, clear that in an application under Order XXI Rule 97 moved by a decree-holder who complains about the resistance or obstruction offered by any person to the decree-holder in his attempt at obtaining possession of property and who wants such obstruction or resistance to be removed which otherwise is an impediment in his way, a lis arises between  
 G the decree-holder applicant under Order XXI Rule 97 on the one hand and such obstructionist or resisting party on the other, to whom summons has been issued by the Court as per Form No. 40. When such a lis arises, it has to be adjudicated upon as enjoined by Order XXI Rule 97 sub-rule (2). The procedure for adjudicating such a lis has to be culled out from  
 H the remaining succeeding Rules of Order XXI. This directly takes us to

the consideration of Order XXI Rule 101 which reads as under :

"101. Question to be determined. - All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceedings on an application under Rule 97 or Rule 93 of 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."

Now it is obvious that such questions relating to the right, title and interest in the property arising between the parties to any proceedings under Order XXI Rule 97 or Rule 99 have to be adjudicated upon by following an identical gamut of procedure by the Executing Court. The said gamut of procedure is laid down by Order XXI Rule 98 which reads as under :

"98. Orders after adjudication.- (1) Upon the determination of the questions referred to in Rules 101, the Court shall, in accordance with such determination and subject to be 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 proceedings, 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

A may extend to thirty days."

It is now time for us to consider Order XXI Rule 99 which reads as under:

B "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.

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

A conjoint reading of Order XXI Rules 97, 98, 99 and 101 projects the following picture :

D (1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order XXI Rule 35 then the decree-holder has to move an application under Order XXI Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the Court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI Rule 98. It is obvious that after such adjudication if

E it is found that the resistance or obstruction was occasioned without just cause by the judgment-debtor or by some other person at his instigation or on his behalf than such obstruction or resistance would be removed as per Order XXI Rule 98 sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would

F be treated as a decree under Order XXI Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate

G appellate court against such deemed decree.

H (2) If for any reason a stranger to the decree is already dispossessed

of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order XXI Rule 99, CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order XXI Rule 98 sub-rule (1), CPC the Executing Court can direct the stranger applicant under Order XXI Rule 99 to be put in possession of the property or if his application is found to be substanceless is has to be dismissed. Such an order passed by the Executing Court disposing of the application one way or the other under Order XXI Rule 98 sub-rule (1) would be deemed to be a decree as laid down by Order XXI Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order XXI Rule 101.

In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI Rule 99. This view of the High

- A Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the
- B decretal property even after losing possession as per Order XXI Rule 99. Order XXI Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI Rule 99 on the other hand deals with the
- C subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest *dehors* the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and
- D interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme
- E of Order XXI Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under order XXI Rule 99 and he has no *locus standi* to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent
- F breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard
- G on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court,
- H therefore, would fail also on the ground of non-compliance with basic

principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI Rules 97 to 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.

In this connection we may also profitably refer to a judgment of the Bench of three learned judges of this Court in the case of *Bhanwar Lal v. Satyanarain and Another*, [1995] 1 SCC 6. In that case the Bench consisting of K. Ramaswamy, S.C. Agrawal and N. Venkatachala, JJ., had to consider a parallel fact situation. One Satyanarain had obstructed to the delivery of possession of the suit immovable property which was sought to be obtained in execution by the appellant decree-holder. After such an obstruction was offered by Satyanarain the decree-holder moved an application under Order XXI Rule 35 for police assistance to remove obstruction caused by Satyanarain. The Executing Court directed the decree-holder to make an application under Order XXI Rule 97. This Court took the view that the very application under Order XXI Rule 35 sub-rule (3) for police assistance for removal of obstruction caused by Satyanarain had to be treated to be an application under Order XXI Rule 97 and such an application was maintainable and could not be said to be beyond limitation. In this connection the following pertinent observations were made by this Court :

"The crux of the question is whether the application filed on 25.5.1979 by the appellant, though purported to be under Order 21, Rule 35(3) against Satyanarain, is convertible to one under Order 21, Rule 97. Order 21, Rule 35(3) provides that :

'35. (3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility

A to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.'

B A reading of Order 21, Rule 35(3) postulates that the person in possession of the immovable property to be delivered under the decree must be per force bound by the decree. Admittedly, Satyanarain was not a judgment-debtor and that therefore, he is not bound by the decree unless he claims right, title or interest through the judgment-debtor, Ram Kishan, the person resisting delivery of possession must be bound by the decree for possession. In other words the resistor must claim derivative title from the Judgment-debtor. The court gets power under Order 21, Rule 97 to remove such obstruction or resistance and direct its officer to put the decree-holder in possession of the immovable property after conducting enquiry under Rule 97.

D

Order 21, Rule 97 provides thus :

E '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 in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

F (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."

G The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102. 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 set up his own right, title or interest *dehors* the judgment-debtor and he resists execution of a decree, then the court

H

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. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.

When the appellant had made the application on 25.5.1979 against Satyanarain, in law it must be only the application made under Order 21, Rule 97(1) of CPC. The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule. On technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of *res judicata* which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost."

In view of the aforesaid settled legal position, therefore, and in the light of the statutory scheme discussed by us earlier it must be held that respondent No. 1 decree-holder's application dated 6th May 1991 praying for issuance of warrant for delivery of possession with the aid of armed force, was in substance for removal of obstruction offered by the appellant and others under Order XXI Rule 97, CPC and had to be adjudicated upon as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI 101 and Order XXI Rule 98. In this connection the Court had also to follow the procedure laid down by Order XXI Rule 105 which enjoins the Executing Court to which an application is made under any of the foregoing Rules of the Order to fix a date of hearing of the application. As the Executing Court refused to adjudicate upon the obstruction and the claim of the appellant who obstructed to the execution proceedings it had clearly failed to exercise jurisdiction vested in it by law. The High Court in revision also committed the same error by taking the view that such an application was not maintainable. It is of course true as submitted by learned counsel for the decree-holder that in paragraph 4 of the judgment under appeal the

- A High Court has noted that there was some discrepancy about the Khasra Number. But these are passing observations. On the contrary in the subsequent paragraphs of the judgment the High Court has clearly held that such an application by the objector was not maintainable and his only remedy was to move an application under Order XXI Rule 99 after handing over possession and consideration of objection to delivery of possession by a stranger to the decree at any earlier stage was premature.
- B It must, therefore, be held that neither the Executing Court nor the High Court in revision had considered the objection of the appellant against execution on merits. Consequently the impugned judgment of the High Court as well as the order of the Executing Court in Civil Execution Case
- C No. 25 of 1990 dated 15th February 1996 are quashed and set aside and proceedings are remanded to the Court of Munsif II, Munger to re-decide the application of respondent No. 1 decree-holder dated 6th May 1991 by treating it to be one under Order XXI Rule 97 removal of obstruction of appellant and after hearing the decree-holder as well as the appellant to adjudicate the claim of the appellant and to pass appropriate orders under
- D Order XXI Rule 97 sub-rule (2), CPC read with Order XXI Rule 98, CPC as indicated in earlier part of this judgment.

- E Before parting with this case we may mention one apprehension voiced by learned counsel appearing for the decree-holder. He submitted the Nazir has noted in his report dated 28th April 1991 that when he went to execute the decree he was resisted on spot by Brahmdeo Chaudhary, that is the present appellant, as well as by Sitaram Chaudhary and Jago Chaudhary who are found to be brothers of the appellant and some other persons and therefore, these other persons also would one by one come forward to further obstruct the execution proceedings which would be indefinitely delayed. This submission through *prima facie* looking attractive on a closer scrutiny does not remain well sustained. Even though the Nazir's report mentions the obstructions offered by Sitaram Chaudhary, Jago Chaudhary, Brahmdeo Chaudhary and others, only the appellant
- F objected to the order passed by the Executing Court on respondent No. 1's application dated 6th May 1991 for issuance of a fresh warrants for delivery of possession with the aid of police force. Only he put forward his written objections on 22nd January 1996. Neither of his brothers, namely, Sitaram Choudhary or Jago Chaudhary nor anyone else filed an objection to the said application for issuance of fresh warrant for possession with the
- G police aid. Therefore, it must be held that the only objectionist to remain
- H

in the field claiming to be a stranger having any right, title and interest in the suit property is the appellant and no one else. The others who might have resisted on spot on 28th April 1991 must be treated to have given up their obstructions and resistance subsequently and have gone out of picture. It must, therefore, be held that only the appellant is the sole surviving obstructionist whose claim regarding the alleged independent right, title and interest in the decretal property has to be adjudicated upon by the Executing Court under XXI Rule 97 sub-rule (2), CPC pursuant to the present order. The Executing Court shall not entertain objection or obstruction from any other party or person. It is also necessary to direct the executing Court, to which these proceedings are being remanded, to adjudicate upon the claim of the appellant to the decretal property as per the provisions of Order XXI Rule 97 sub-rule (2), CPC read with Order XXI Rule 98 within a period of three months from the receipt of the writ of the order at its end as the decree is of 1988 and the execution proceedings now would be pending for about nine years.

The appeal is accordingly allowed. There will be no order as to costs in the facts and circumstances of the case.

H.K.

Appeal allowed.

SHREENATH AND ANR.

A

v

RAJESH AND ORS.

APRIL 13, 1998

[K. VENKATASWAMI AND A.P. MISRA, JJ.]

B

*Code of Civil Procedure, 1908: Order 21 Rules 97(1) & (2), 98, 99, 100, 101 and 103 (prior to, and after, 1976 Amendment).*

*Mortgaged property—Vacant possession—Execution of decree—Tenants in possession of the property obstructed decree-holder and filed an application/objection under R.-97 on the ground that they were not parties to the suit and that they had independent legal right not affected by the mortgage or redemption thereof—Held: Such application/objection maintainable both under the pre and post-1976 amendment—Distinction between pre and post-1976 amendment explained—Further, the maintainability of such application/objection not affected by new R. 99 or old R. 100.*

C

D

*Order 21 Rule 97(1)—Words “any person”—Scope of—Held: Include even person not bound by the decree.*

E

*Interpretation of Statutes :*

*Procedural law—Interpretation of—Held: Where more than one interpretation is possible, the one which curtails the procedure and not the one which eludes or frustrates the recipient of justice is to be adopted—Further, procedural law is always subservient to, and in aid of, justice.*

F

*Words and Phrases :*

*“Any person”—Meaning of—In the context of O. 21 R. 97(1) of the Code of Civil Procedure, 1908.*

G

**The respondent filed a suit for the redemption of his mortgaged property, which was decreed. The decree directed delivery of vacant possession of the mortgaged property. In the said suit, the appellants were not arrayed as parties. As the respondent put the decree in execution in which the appellants, who were in possession of the property as tenants, obstructed the**

H

**A** respondent and filed an application/objection under Order 21 Rule 97 of the Code of Civil Procedure, 1908 on the ground that the appellants were not arrayed as parties to the suit and that they had independent legal right to the property not affected either by the mortgage or redemption thereof.

**B** The Executing court held that the application/objection filed by the appellants was not maintainable under Order 21 Rule 97 CPC. Hence this appeal.

Allowing the appeal, this Court

**C** HELD : 1. Under Order 21 Rule 35(1) of the Code of Civil Procedure, 1908 the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. Under Order 21 Rule 36 the decree-holder gets the symbolic possession. Order 21 Rule 99 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". This may be either by the person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree-holder, in such a case, may make an application to the Executing Court complaining such resistance for delivery of possession of the property. Rule 97(2) after the 1976 substitution empowers the Executing Courts when such claim is made to proceed to adjudicate upon the applicant's claim in accordance with provisions contained therein. This refers to Order 21 Rule 101 (as amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21 Rule 97 or Rule 99 should be determined by the Court and not by a separate suit. By the amendment, one has not to go for a fresh suit but all matters pertaining to that property even if obstructed by a stranger is adjudicated in the execution proceedings. The expression "any person" in Rule 97(1) is used deliberately for widening the scope of power so that the Executing Court could adjudicate the claim made in any such application under Order 21 Rule 97. Thus by the use of the words "any person" it includes all person resisting the delivery of possession, claiming right in the property even those not bound by the decree, including tenants or other persons claiming right on their own including a stranger. So, under Order 21 Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to relegate itself to the long drawn out arduous procedure of a fresh suit.

**D**

**E**

**F**

**G**

**H**

This is to salvage the possible hardship both to the decree-holder and other persons claiming title on their own right to get it adjudicated in the very execution proceedings. [717-B-H; 718-A]

2. Provisions of Rule 97(1) before and after the 1976 Amendment are the same but after the 1976 Amendment all disputes relating to the property made under Rules 97 and 99 is to be adjudicated under Rule 101, while under unamended provision under Rule 97(2), the Executing Court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 the Court puts back a decree-holder in possession where the Court finds obstruction was occasioned without any just cause while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the Court has to dismiss the decree-holder's application. Thus even prior to 1976 right of any person claiming right on his own or as a tenant, not party to the suit, such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. This saves him from a long litigation. So a tenant or any person claiming a right in the property, on his own, if resists delivery of possession to the decree-holder the dispute and his claim have to be decided after the 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he has to file a suit to establish his right. But now after the amendment one need not file a suit even in such cases as all disputes are to be settled by the Executing Court itself finally under Rule 101. [719-E-H; 720-A]

3. Thus, both either under the old law or the present law the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under Order 21 Rule 97, has to be decided by the Executing Court itself. The provision of old Rule 100 or new Rule 99 will not defeat the right of such person to get his objection decided under Rule 97 which is a stage prior to his dispossession or a case where he is in possession. [720-B-D]

*Noorduddin v. Dr. K.L. Anand*, [1995] 1 SCC 242 and *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*, [1997] 3 SCC 694, relied on.

*Smt. Usha Jain v. Manmohan Bajaj*, AIR (1980) Vol. 67 MP 146, overruled.

**A**      **4. In interpreting any procedural law, where more than one interpretation is possible, the one, which curtails the procedure without eluding the justice, is to be adopted. The procedural law is always subservient to, and is in aid of, justice. Any interpretation, which eludes or frustrates the recipient of justice, is not to be followed. [713-C-D]**

**B**      **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2929 of 1985.**

From the Judgment and Order dated 20.2.85 of the Madhya Pradesh High Court in C.R. No. 406 of 1983.

**C**      S.K. Gambhir for the Appellants.

H.K. Puri and J.M. Khanna for the Respondents.

The Judgment of the Court was delivered by

**D**      **MISRA, J.** The seekers of justice many a time has to take a long circuitous routes, both on account of hierarchy of Courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breaths tearness of receiving the fruits of that justice for which he has been aspiring to receive.

**E** To reach this stage is in itself an achievement and satisfaction as he, by then has passed through a long arduous journey of the procedural law with may hurdles replica of mountain certain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is

**F** deluded back into the horizon. The creation of hierarchy of Courts was for a reasonable objective for conferring greater satisfaction to the parties that errors, if any, by any of the lower Courts under the scrutiny of a higher Court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seekers in his journey to justice. But this obviously is one of the causes of delay in

**G** justice. Of course, under this pattern the party wrongfully gaining within permissible limits also stretches and litigation an much as possible. Thus, this has been the cause of anxiety and concern of various authorities, Legislators and Courts. How to eliminate such a long consuming justice? We must confess that we have still to go long way before true satisfaction in this

**H** regard is received. Even after one reaches the stage of final decree, he has

to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice. A

The Courts within its limitations have been interpreting the procedural laws so as to conclude all possible disputes pertaining to the decretal property which is within its fold in an execution proceeding i.e., including what may be raised later by way of another bout of litigations through a fresh suit. Similarly legislatures equally are also endeavouring by amendments to achieve the same objective. the present case is one in this regard. Keeping this in view, we now proceed to examine the present case. B

In interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding the justice is to be adopted. The procedural law is always subservient to, and is in aid to justice. Any interpretation which eludes or frustrates the receipt of justice is not to be followed. C

This appeal arises out of the judgment and order of the High Court of Madhya Pradesh, Bench at Indore, in Civil Revision No. 406 of 1983. D

The question raised is, whether the third party in possession of a property claiming independent right as a tenant not party to a decree under execution could resist such decree by seeking adjudication of his objections under order 21, Rule 97 of the Civil Procedure code? E

The respondent No. 1, Rajesh, filed a suit for the redemption of his mortgage against respondent No.2, Prem Shanker, which was decreed. The decree directed the delivery of vacant possession of the mortgaged property to the applicant (Respondent No.1). In the said suit, admittedly, the present appellants were not parties. The decree-holder put his decree in execution in which the present appellants obstructed on the ground that vacant possession cannot be delivered in execution because they were the tenants in the shop from the year 1952 much before the execution of the mortgage which was in the year 1962, hence, only symbolical possession can be given. There has been two rounds of proceedings in execution. Initially, the Executing Court held that the decree-holder was not entitled to take actual possession in execution of the decree against the non-applicants. The case of the decree-holder is that in the suit it was held that the mortgagor had to deliver vacant possession to the mortgagee. Hence he is entitled to get back vacant possession. Thus he made strong plea for a vacant possession in terms of F G H

- A the decree. For him, it is submitted that a similar objection was taken by the judgment debtor Prem Shanker that only symbolic possession could be given to the decree-holder. The objection was negated by the trial court, appellate court, and even by the High Court in the second appeal. Hence, the executing court cannot go behind the decree. The appellants case is they were not parties to those proceedings. However, this objection of the decree-holder was rejected in the first round by the Executing Court and the Revisional Court holding that the person resisting *viz.* the present appellants were not parties to the suit nor there is any decree against them. It seems subsequently, the decree-holder again moved another application in the aforesaid execution case No. 1A of 19970-81 for delivery of vacant possession. The present appellants also moved an application/objections under Order 21, Rule 97 C.P.C. resisting that they cannot be dispossessed in terms of the said decree, as they were not parties to the said suit nor they are deriving any right and title through the Judgement debtor. They claim separate and independent legal right, not affected either by the mortgage or redemption of the mortgage.
- B
- C
- D It is not clear as under what circumstances the second application for actual possession was made by the decree-holder after the matter was earlier disposed of. Since this point seems not raised either before the Executing Court or the High Court, we are not advertng to this point. We find the Executing Court in the second round on consideration of a subsequent decision of the Full Bench of the *M.P. High Court in Smt. Usha Jain and others v. Manmohan Bajaj and others*, AIR (1980) Vol 67 M.P. 146, held that the appellants had no right to object to the decree under order 21, Rule 97. The said full Bench held:-
- E

F “The executing Court has no jurisdiction to start an enquiry suo motu or at the instance of a third party other than the decree-holder/auction-purchaser under 0.21, Rule 97. This rule is merely permissive and not mandatory so that the decree-holder/auction-purchaser need not resort to it against his will and may even apply for fresh warrant under 0.21, R. 35, C.P.C. Executing Court is not bound to stay its hands the moment a third party files an objection to the execution nor the stay would continue till an unwilling decree-holder/auction-purchaser is forced to apply for investigation into the right or title claimed by the third party and negative the claim therein. If the Executing Court were to stay its hands till investigation into a third party’s claim is not finally decided then it would result in depriving

G

H the decree-holder of his possession by filing repeated spurious claims.

No enquiry into the title or possession of a third party is contemplated at any rate at his instance either under Rules 35 and 36 or Rules 95 and 96 of Order 21, C.P.C. when the decree-holder or the auction-purchase applies for obtaining possession. Subsequently when the decree-holder or auction-purchaser is met with obstruction or resistance in obtaining possession, one of the options open to him is to apply under Rule 97 but that provision is merely permissive and not mandatory and it is open to the decree-holder/auction-purchaser to apply instead for a fresh warrant of possession. An enquiry at the instance of a third party in possession is contemplated only under Order 21, R. 100 after he was dispossessed and not before it.

The omission by the executing Court to investigate into the objection filed by a third party does not result in injustice to the third party. It cannot be said that he would have no remedy to protect his possession and have his title judicially investigated before his dispossession his only remedy then being under Order 21, Rule 100 after dispossession. Another remedy available to such a third party is to institute an independent civil suit for a declaration of his title claiming therein the relief of temporary injunction to protect his possession."

The High Court upheld the Executing Court's order following the said Full Bench decision of the M.P. High Court. Hence this appeal. The only question raised is, whether the Full Bench decision is correctly decided. In view of this Full Bench decision, objection of the appellant was rejected without considering the points raised on merit or other objections.

In order to appreciate the controversy, Order 21, Rule 35, Order 21, Rule 36 and Order 21, Rule 97 are quoted hereunder :-

*"O. 21, R. 35: Decree for immovable property :-*

(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, if necessary, be removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable

A property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

B (3) Where a possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

C *O. 21, R. 36 : Decree for delivery for immovable property when in occupancy of tenant:-*

D Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

E *O. 21, R. 97 : Resistance or obstruction to possession of immovable property :-*

F (1) Where the holder of a decree for the possession of immovable property the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

G (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.”

This sub-clause (2) was substituted by the Amending Act 1976. Earlier sub-clause (2) was :

H “The Court shall fix a day of investigating the matter and shall

summon the party against whom the application is made to appear and answer the same.” A

Under sub-clause 1 Order 21, Rule 35, the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by the decree. Order 21, Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the Court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21, Rule 99 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by “any person”. This may be either by the person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree holder, in such a case, may make an application to the Executing Court complaining such resistance, for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the Executing Courts when such claim is made to proceed to adjudicate upon the applicants claim in accordance with provisions contained hereinafter. This refers to Order 21, Rule 101 (As amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21, Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit. By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstructed by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression “any person” under sub-clause (1) is used deliberately for widening the scope of power so that the Executing Court could adjudicate the claim made in any such application under Order 21, Rule 97. Thus by the use of the words ‘any person’ it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, including tenants or other persons claiming right on their own including a stranger. B  
C  
D  
E  
F  
G

So, under order 21, Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to relegate itself to the long drawn out arduous procedure of a H

- A fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that order 21, Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21, Rule 36 only symbolic possession is given where tenant is in actual possession. Order 21, Rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. 'Any person', as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including stranger.

Prior to the 1976 Amending Act, provisions under Order 21, Rules 97 to 101 and 103 were different which are quoted hereunder :-

- D "97 (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 in obtaining possession of the property he may make an application to the Court complaining of such resistance or obstruction.
- E (2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.
- F 98. Where 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, 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 to be detained in the civil prison for a term which may extend to thirty days.
- G 99. Where the court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the
- H Court shall make an order dismissing the application.

100. (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 or where such property has been sold in execution of a decree, by purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made and answer the same.

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 and rule 101 may institute a suit to establish the right which he claims to the present possession of the property, but, subject to the result of such suit (if any), the order shall be conclusive."

So far sub-clause (1) of Rule 97 the provision is same but after 1976 amendment all disputes relating to the property made under Rules 97 and 99 is to be adjudicated under Rule 101, while under unamended provision under sub-clause (2) of Rule 97, the Executing Court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 the Court puts back decree-holder in possession where the Court finds obstruction was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the Court has to dismiss the decree-holder application. Thus even prior to 1976 right of any person claiming right on his own or as a tenant, not party to the suit such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. By this, he is saved from a long litigation. So a tenant or any person claiming a right in the property, on his own, if resists delivery of possession to the decree-holder the dispute and his claim has to be decided after 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. However, under the old law, in cases order is passed against the person resisting possession under Rule 97 read with

A Rule 99 then by virtue of Rule 103, as it then was, he has to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the Executing Court itself finally under Rule 101.

B We find both either under the old law or the present law the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under Order 21, Rule 97, has to be decided by the Executing Court itself.

C Rule 100 of the old law, as referred in the aforesaid Full Bench decision of the Madhya Pradesh High Court is a situation different from what is covered by Rule 97. Under Rule 100 (old law) and Order 99 the new law covers cases where persons other than judgment-debtor is dispossessed of immovable property by the decree-holder, of course, such cases are also covered to be decided by the Executing Court. but this will not defeat the right of such

D person to get his objection decided under Rule 97 which is a stage prior to his dispossession or a case where he is in possession. In other words, when such person is in possession the adjudication to be under Rule 97 and in case dispossessed adjudication to be under rule 100 (old law) and Rule 99 under the new law. Thus a person holding possession of an immovable property on his own right can object in the execution proceeding under Order 21, Rule 97.

E One has not to wait for his dispossession to enable him to participate in the execution proceedings. This shows that such person can object and get adjudication when he is sought to be dispossessed by the decree-holder. For all the aforesaid reasons, we do not find the Full Bench in *Smt. Usha Jain*, (supra) correctly decided the law.

F In *Noorduddin v. Dr. K.L. Anand*, [1995] 1 SCC 242 it is held :-

G “Para 8: Thus the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject or right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code

H

Amendment Act, 1976. right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.”

In *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and Another* [1997] 3 SCC 694, the question raised was whether a stranger occupying the premises on his own right when offered resistance to the execution of the decree obtained by the decree holder can or cannot request the Executing Court to adjudicate his claim without being insisted upon that first he must handover the possession and then move an application under Order 21, Rule 97. It is held in para 9 :-

“Para 9 : In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of the decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the executing court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order 21, Rule 97, sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21, Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21, Rule 97.. .. .”

In view of the aforesaid finding and the law being well settled the interpretation given by the aforesaid Full Bench of the M.P. High Court in the case of *Usha Jain v. Manmohan Bajaj* (supra) cannot be held to be a good law. As we have recorded above, both the Executing Court and the High Court have rejected the application of the applicant under Order 21, Rule 97 only on the basis of the said Full Bench decision, hence the said order cannot be sustained. Accordingly, both the orders dated 20th February, 1985 passed by the High Court in Civil Revision No. 406 of 1983 and the order dated 20th April, 1983 passed by Executing Court in execution case No. 1-A/70/81 is herewith quashed.

A We direct the Executing Court to consider and dispose of the objections and the application of the appellants under Order 21, Rule 97 after giving opportunity to the parties in accordance with law. The appeal is accordingly allowed. On the facts and circumstances of the case, cost on the parties.

B V.S.S. Appeal allowed.

## **Jahurul Islam vs Abul Kalam And Others on 23 November, 1993**

**Equivalent citations: AIR1994SC1403, AIR 1994 SUPREME COURT 1403, 1994 AIR SCW 823, 1995 (1) SCC(SUPP) 464, (1993) 2 CAL LJ 229, 1995 HRR 418, 1995 SCC (SUPP) 1 464, (1994) 1 CALLT 1**

**Author: G.N. Ray**

**Bench: G.N. Ray**

### ORDER

1. Mr. Jahurul Islam, petitioner, in this contempt application instilled a Suit being Title Suit No. 112 of 1982 in the Second Court of learned Subordinate Judge, Alipore, against the respondent No. 1, Abul Kalam for declaration of title, recovery of khas possession of the suit property being premises No. 70, Beck Bagan Row, Calcutta, and for permanent injunction. The said Abul Kalam also instituted a Title Suit in the Second Court of learned Munsif being Title Suit No. 123 of 1983 against the petitioner, Jahurul Islam, for permanent injunction restraining the said Jahurul Islam for interfering with the possession of the said Abul Kalam in respect of the disputed property. The aforesaid suit No. 123 of 1983 instituted by Abul Kalam was transferred to the Second Court of learned Subordinate Judge and was renumbered as Suit No. 209 of 1982. Both the suits were analogously heard and the suit instituted by Abul Kalam was dismissed with costs and the suit instituted by Jahurul Islam was decreed with costs on December 9, 1987. It was inter alia held by the learned Assistant District Judge that the Urdu receipt (Exbt. A) filed by Abul Kalam in support of his tenancy right was mutilated document with so many tampering and interpolations that it led to suggest that it was a spurious document. The learned Assistant District Judge not only dismissed the Title Suit No. 209 of 1982 but he also initiated the proceedings being Misc. Judicial Case No. 2 of 1988 against Abul Kalam for filing the said forged rent receipt in the suit. The said Misc. Judicial Case is stated to be pending in the Second Court of the Assistant District Judge, Alipore. The said Abul Kalam thereafter preferred two appeals before the High Court at Calcutta against the judgment and decree passed in Suit No. 112 of 1982 and Suit No. 209 of 1982 which were numbered as F.A. No. 78 of 1989 and F.A. No. 97 of 1990. The Division Bench of the Calcutta High Court dismissed both the said appeals on September 17, 1990 and the High Court inter alia came to the finding that the rent receipts filed by Abul Kalam was tampered and the name of the original tenant, Abdul Shakoor, was erased out in the receipt and the High Court also came to the finding that Abul Kalam was not the tenant. The High Court also negated the contention of Abul Kalam that he had perfected his title by adverse possession.

2. The petitioner, Jahurul Islam, put the decree for eviction into execution which is numbered as Title Execution Case No. 2 of 1988. The said Title Execution Case was, however, stayed during the pendency of the appeal before the Calcutta High Court and after the disposal of the said appeals, the proceedings of the said Execution Case were commenced. Abul Kalam preferred two special leave petitions before this Court against the decree passed by the High Court in the said first appeals

which were numbered as Special Leave Petition (Civil) Nos. 9452-53 of 1992. Both the said special leave petitions were heard on August 26, 1992 and were dismissed on the finding that there was no ground for interference. This Court, however, on the prayer of the petitioner in the said special leave petitions granted time till March 31, 1993 to vacate the disputed premises subject to the condition of his filing the usual undertaking within four weeks. It was also indicated in the Order that if there were any arrear of rent the same should be paid within two months from the said date.

3. Although on the prayer of Abul Kalam, time to vacate till March 31, 1993 was, given by this Court, and although the contemner, respondent No. 1, Abul Kalam, enjoyed the benefit of extended time to vacate, he did not file any undertaking before this Court and he also failed and neglected to pay the arrears of rent up to March 31, 1993 @ Rs. 1500/- per month as directed by this Court. The decree-holder, Jahurul Islam, however, made an application on November 20, 1992 before the Executing Court to the effect that in view of the direction of this Court, the execution of decree should not be proceeded with till March, 31, 1993.

4. After the dismissal of the special leave petitions of Abul Kalam, the respondent No. 15, Ahsan Alam, who is stated to be the nephew of Abul Kalam, filed a suit in the Court of learned Second Munsif, Alipore, being Suit No. 143 of 1993 claiming right of tenancy in respect of a portion of the suit premises covered by the decree under Execution. The said Ahsan Alam obtained an interim Order of status quo in the said Suit No. 143 of 1993. Such interim Order, however, was vacated on July 9, 1993 on contest by Jahurul Islam. The respondent Nos. 13 and 14, namely, Mohd. Nabi Hasan and Mohd. Samir, filed a suit No. 114 of 1993 in the Second Court of learned Munsif, Alipore, inter alia claiming tenancy right in respect of a portion of the disputed premises and alleging that they had been paying the rent to the said Abul Kalam in respect of their tenancy. The prayer for interim Order made by the said two plaintiffs was rejected by the learned Munsif but on appeal the learned District Judge, 24 Paraganas (South) passed an ex parte interim Order directing the parties to maintain the status quo. The said interim Order to maintain status quo was passed on April 16, 1993 and the learned District Judge directed that the said interim Order continues until further Orders. The decree-holder, Jahurul Islam, made an application on May 25, 1993 for vacating the interim Order of status quo. The learned District Judge fixed the hearing of the said application on January 6, 1994, namely, after more than seven months. The prayer of the petitioner, Jahurul Islam, for advancing the date of hearing was not acceded to by the learned District Judge and the matter was adjourned till January 6, 1994.

5. The petitioner has contended that in view of the expiry of the time granted by this Court on March 31, 1993, the Executing Court should have taken all steps for executing the decree and should have given delivery of possession to the petitioner. It has also been contended by the petitioner that the learned District Judge should not have passed the interim Order of status quo when his attention was specifically drawn to the Order of this Court. It has been very strongly contended by the learned Counsel for the petitioner that the learned District Judge has in fact committed contempt of this Court when despite his attention being drawn to the Order of this Court, he refused to hear the application for vacating the interim Order and/or advance the date of hearing but stubbornly stuck to the earlier Order and fixed the date of hearing on January 6, 1994 which was beyond a period of seven months from the date of the application.

6. It may be stated that although the respondents Nos. 6 and 13 to 15 have been claiming tenancy rights in respect of the portions of the disputed premises which the subject matter of the execution, it has been admitted by all the respondents that they had been paying the rent to Abul Kalam.

7. Mr. Sanghi, learned Senior Counsel, appearing for the petitioner, Jahurul Islam, has very strongly contended that the respondent No. 1, Abul Kalam, has resorted to a very sharp practice by trying to frustrate the decree obtained by Jahurul Islam and despite obtaining time from this Court, the said Abul Kalam failed and neglected to file the under taking before this Court and/or to pay rents as directed in the Order. Mr. Sanghi has submitted that since Abul Kalam has obtained extension of time from this Court and has enjoyed such extension of time, he must be held guilty for contempt of Court by not delivering peaceful vacant possession of the entirety of the disputed premises covered by the decree under execution after the expiry of the time granted by this Court and non-filing of the undertaking as directed by this Court is of no consequence. Mr. Sanghi has also submitted that it is apparent from the facts and circumstances of the case that the respondent No. 1, Abul Kalam, has deliberately set up the other respondents to file title Suits only in 1993 after dismissal of special leave petitions on false allegations in Order to prevent due execution of the decree obtained by the petitioner, Jahurul Islam. Mr. Sanghi has also contended that it has been categorically held that Abul Kalam was in illegal possession in respect of the disputed premises which is the subject matter of the said Title Suit by forging rent receipt in the name of SIC and he did not get any tenancy right or the alleged thika tenancy right in respect of the said premises. It is, therefore, imperative on the part of the said Abul Kalam to deliver peaceful and vacant possession of the disputed premises without any demurrer in compliance with, the direction of this Court. Mr. Sanghi has submitted that the respondents Nos. 13 to 15 who are opposing the execution of the decree by falsely claiming interest in the disputed premises as tenants have been set up by the said Abul Kalam and this Court should direct for execution of the decree by delivering peaceful possession of the entirety of the disputed premises which is the subject matter of the said title execution case by evicting all the respondents and any other person who may be found in actual possession of any portion of the disputed premises. In this connection, Mr. Sanghi has referred to the decisions of this Court reported in (sic) and the case reported in AIR 1992 SC 1537 by contending that under similar circumstances this Court directed for delivery of peaceful possession of the disputed premises to the decree-holder with police help, if necessary.

8. The learned Counsel appearing for the respondents Nos. 13 to 15, have, however, submitted that they were not parties to the suit instituted by the petitioner, Jahurul Islam, against Abul Kalam and as such they are not bound by the decree passed in the said suit. It has been contended by the learned Counsel for respondents Nos. 6 and 13 to 15 that since the said respondents are claiming tenancy right in portions of the disputed premises not through Abul Kalam but independent of the right, title and interest of Abul Kalam, they should not be evicted and thrown out of the possession. It has been contended by the learned Counsel for respondents Nos. 13 to 15 that if before their suits are finally decided, they are dispossessed by executing the decree in question, they would suffer irreparable loss and injury. It has also been contended by the learned Counsel for the contesting respondents that even if it is assumed that Abul Kalam has committed any contempt of this Court or has deliberately attempted to frustrate the direction of this Court, such consideration should not weigh with the Court in giving any direction for recovery of possession of the entirety of the disputed

premises because the execution of such decree will amount to virtual dismissal of their suits thereby causing irreparable loss and injury to the respondents.

9. It may be noted here that the learned Counsel for the respondent No. 1, Abul Kalam, has submitted that since he is not in possession of the entirety of the disputed premises being the subject matter of the execution proceedings, he cannot deliver possession of the entirety of such disputed premises but he is willing to deliver peaceful possession of the portion under his occupation in view of the fact that he is bound by the decree passed against him. He has also submitted that the arrears of rent should be paid by him within such time as this Court may fix.

After considering the respective contentions of the learned Counsel for the parties and the affidavits filed by respondent No. 6, Ms. Hind Barrel Co. and the respondents Nos. 13 to 15, it appears to us that in the facts and circumstances of the case, the petitioner is entitled to a direction from the Court that the decree should be executed immediately by the Executing Court and delivery of the entirety of the suit premises covered by the decree under execution should be delivered to the decree-holder, the petitioner, Jahurul Islam, by the Executing Court by evicting the respondent No. 1, Abul Kalam and the other respondents including respondents Nos. 6 and 13 to 15 and any other person in possession of any portion of the disputed premises, if necessary, with the police help. It may be indicated here that similar direction was passed in a case reported in AIR 1992 SC 1537. In the said case, this Court granted time and stayed the execution of the decree after the dismissal of the special leave petition with a direction to file undertaking to hand over the possession on the expiry of the period granted by this Court. the judgment debtor neither filed the undertaking nor paid the rent and also failed to hand over the possession. The decree-holder thereafter made an application for contempt' against the judgment-debtor. It has been held by this Court to the following effect (at p. 1538):

The short question, therefore, is whether the respondent is guilty of contempt of Court. We have already extracted the Order passed by this Court on February 17, 1986. No doubt there is no violation of any specific direction contained in the Order. Nevertheless we cannot agree with the respondent that the remedy will be only to execute the decree for eviction. He was granted three months' time on condition that he will file an undertaking and pay the arrears of rent as well-as future compensation. In so far as he derived specific advantages under the Order, we are of the view, the proper course will be to issue such directions as were issued in an identical case reported in *Firm Ganpat Ram Rajkumar v. Kalu Ram*. It was held in the said decision:

This Court dismissed the special leave petition and granted time of six months on the plea that the petitioner-firm' would file an undertaking. All this could not have happened if the present plaintiffs in the Narnaul Suit had not consented or allowed it to be passed or stood by. It is difficult to accept the position that they did not know. In the facts of the case, we. are of the opinion that they deliberately did not object in this Court passing the Order and thereby allowed the firm to. mislead this Court, They are, therefore, bound to see that the Order of this Court is complied with.

Though contempt is a serious matter and it interferes with the right of those who are found guilty of contempt no Court should allow any party to mislead the Court and thereby frustrate its Order. In the aforesaid view of the matter, we are of the opinion that though perhaps the respondents could not be found guilty of violating any undertaking as there was none, in the facts and circumstances of the case the Court should ensure compliance with its Order dated 24-8-87 and see that vacant and peaceful possession is given to the applicant in the interest of justice.

In the aforesaid view of the matter, we direct that learned Senior Sub-Judge Narnaul (Haryana) to cause deliver up the vacant possession of the shop situated at Subzimandi, Narnaul, District Mofejindergarh (Haryana), if necessary with the help of police forthwith. The learned Senior Sub-Judge, Narnaul is also directed to report compliance immediately.

Similar direction in the present case would meet the ends of justice. Therefore, we hereby direct the learned Addl. Munsif of Shahjahanpur to cause delivery of vacant possession of the shop No. 289 situated in Bazar Bahadurganj, Shahjahanpur under City Board Shahjahanpur to the applicants, if necessary with the help of police on or before 15th December, 1991. The learned Munsif is also directed to report compliance immediately.

We make it clear that the Executing Court will direct for delivery of the peaceful possession of the entirety of the disputed premises covered by the decree under execution to the petitioner, if necessary, by the assistance of the police.

10. Although prima facie we are not satisfied with the bona fide of the contentions made by the respondents Nos. 13 to 15 in their title suits and it appears to us that they were not entitled to any interim Order by which the execution of decree by delivering vacant possession of the premises covered by the decree under execution is interfered with, we make it clear that we have not expressed any firm opinion on the merits of the title suits instituted by the respondents Nos. 13 to 15 and the same should be disposed of on their merits. We also keep on record our disapproval of the interim Order passed by the learned District Judge, 24 Paraganas (South) as referred to hereinbefore and the manner in which the application for vacating interim Order was dealt with by the learned District Judge. It appears to us that in view of the reported decisions of this Court as indicated hereinbefore, the learned District Judge should not have passed the interim Order and in any event should have vacated the same when the petitioner apprised him of the facts and circumstances of the case. It was unfortunate that the learned District Judge postponed the hearing of the application for interim injunction to a very distant date with inexplicable stubbornness. It may be indicated here that very recently in similar circumstances, this Court hauled up both the applicants for interim Order and the presiding Judge passing interim Order despite the direction of this Court to hand over peaceful and vacant possession in Contempt Applications Nos. 235-236 of 1993 in Special Leave Petitions (Civil) Nos. 10425-26 of 1991 and disposed of the contempt proceeding after the applicant and the Judge appeared in person and tendered unqualified apology.

11. However, in view of the unqualified apology tendered by the respondents-contemners, we do not propose to pass any further Order in the contempt application.

12. For the aforesaid reasons, we direct the Executing Court to execute the decree and deliver peaceful and vacant possession to the decree-holder, Jahurul Islam, with the police help, if necessary and report compliance within six weeks from today. Post this matter on 9th February, 1994.

RAHUL S SHAH

A

v.

JINENDRA KUMAR GANDHI & ORS.

(Civil Appeal Nos. 1659–1660 of 2021)

APRIL 22, 2021

B

[S.A. BOBDE, CJI, L. NAGESWARA RAO AND  
S. RAVINDRA BHAT, JJ.]

*Constitution of India: Arts. 142, 141 and 144 – Delay in the execution proceedings and abuse of process of execution court – Frivolous attempts by unsuccessful litigants to putting up spurious objections and setting up third parties, to object, delay and obstruct the execution of a decree – Urgent need to reduce the delay – In view thereof, to avoid controversies and multiple issues emanating from the rights claimed by third parties, the Court must play an active role in deciding all such related issues to the subject matter during adjudication of the suit itself and ensure that a clear, unambiguous, and executable decree is passed in any suit – Thus, in larger public interest to subserve the process of justice, issuance of few mandatory directions to all courts dealing with suits and execution proceedings – Also issuance of directions to all the High Courts to reconsider and update all rules relating to execution of decrees, made under exercise of its powers u/Art. 227 and s. 122 CPC within stipulated period – Code of Civil Procedure, 1908 – Ord, XXI r. 2, 11, 22, 30 to 36, 97, 98, 99, ss. 47, 51.*

C

D

E

*The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing (1871–72) 14 Moore’s I. A. 605; Shub Karan Bubna @ Shub Karan Prasad Bubna v Sita Saran Bubna (2009) 9 SCC 689 : [2009] 14 SCR 40; Ghan Shyam Das Gupta v. Anant Kumar Sinha AIR 1991 SC 2251 : [1991] 1 Suppl. SCR 119 – referred to.*

F

G

**Case Law Reference**

(1871–72) 14 Moore’s I.A. 605	referred to	Para 23
[2009] 14 SCR 40	referred to	Para 23
[1991] 1 Suppl. SCR 119	referred to	Para 40

H

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1659-1660 of 2021.

From the Judgment and Order dated 16.01.2020 of the High Court of Karnataka, at Bengaluru in W.P. No.39296/2016 [GM-CPC] & W.P. No.39382/2016.

B With

Civil Appeal Nos.1661-1662 And 1663-1664 of 2021.

Arunava Mukherjee, Shailesh Madiyal, Ms. Rakhi M., Paras Jain, T. Harish Kumar, Advs. for the appearing Parties.

C The following Order of the court was passed :

**ORDER**

1. Leave granted.

D 2. The present appeals arise out of the common judgment and order dated 16<sup>th</sup> January, 2020 of the Karnataka High Court which dismissed several Writ Petitions. The course of the litigation highlights the malaise of constant abuse of procedural provisions which defeats justice, i.e. frivolous attempts by unsuccessful litigants to putting up spurious objections and setting up third parties, to object, delay and obstruct the execution of a decree.

E 3. The third respondent (hereafter referred to as 'Narayanamma') had purchased a property measuring 1 Acre (Survey No. 15/2) of Deevatige Ramanahalli, Mysore Road, Bengaluru (hereafter referred to as 'suit property') under the sale deed dated 17.03.1960. The suit land was converted and got merged in the municipal limits of Bengaluru and was assigned with Municipal Corporation No. 327 and 328, Mysore Road, Bengaluru. Narayanamma sold 1908 square yard of the suit property in Municipal Corporation (Survey No. 327) to 2<sup>nd</sup> and 3<sup>rd</sup> respondents (hereafter referred to 'Jitendra' and 'Urmila') under a sale deed dated 13.05.1986. This was demarcated with the sketch annexed to the sale deed. The adjacent portion of property, Survey No. 327 was sold to Shri Moolendra Kumar Gandhi and Smt. Baby Gandhi by another sale deed dated 13.05.1986. This property was also demarcated in the sketch and clearly shows its dimensions and boundaries annexed to the sale deed. Therefore, the first two respondents, Shri Moolendra Kumar Gandhi and Smt. Baby Gandhi became absolute owners of the suit

H

property with the totally admeasuring of 3871 square yards. Thus, Narayanamma had sold about 34,839 square feet of the property out of 1 Acre land (43,860 square feet) owned by her. Subsequently, after the sale of the major portion of the said property to the first two respondents and their brother, Narayanamma who is the mother of A. Ramachandra Reddy the fourth respondent (hereafter called “the vendors”) filed a suit<sup>1</sup> for declaration that the two sale deeds in favour of the first two respondents (also called “purchasers” or “decree-holders”) as well as against Shri Moolendra Kumar Gandhi etc. were void. The vendors and Shri Anjan Reddy (deceased respondent no. 8) on 25.03.1991 executed a registered partition deed. This document did not advert to the sale deed executed in favour of the purchasers and Shri Moolendar Kumar Gandhi and Smt. Baby Kumari Gandhi. The purchasers were restrained by an injunction from entering the property which Narayanamma claimed was hers.

4. During the pendency of the suit for declaration, the first purchasers filed two suits<sup>2</sup> against the vendors for possession. During the pendency of these suits on 11.02.2000 by two separate sale deeds Shri Dhanji Bhai Patel and Shri Govind Dhanji Patel purchased 7489 square feet and 7650 square feet respectively, out of the residue of the property owned by Narayanamma. While so, during the pendency of the suits instituted by the purchasers, the vendors again sold the suit property i.e. the land to the present appellant (Rahul Shah) and three others (Respondents no. 5-7) by four separate sale deeds.<sup>3</sup>In the possession suits the vendors filed counter claims (dated 18.04.1998). During the pendency of proceedings the purchasers sought for transfer and mutation of property in their names which were declined by the Municipal Corporation; this led to their approaching the High Court in Writ Petition No. 19205/1992 which was disposed of with a direction<sup>4</sup> that after adjudication of the injunction suit (filed by the vendors) the *khata* be transferred.

5. The proceedings in the injunction suit filed by the vendors and the other two suits filed by the purchasers were clubbed together. The City Civil Judge, Bangalore by a common judgment dated 21.12.2006 allowed and decreed the suits for possession preferred by the purchasers

<sup>1</sup> O.S. No. 986/1987

<sup>2</sup> O.S. Nos. 9077/ 1996 and 9078/1996

<sup>3</sup> Dated 09.11.2001, 12.12.2001, 05.12.2002 and 20.10.2004

<sup>4</sup> Dated 05.11.1998

A

B

C

D

E

F

G

H

A and dismissed the vendor's suit for injunction. The decree holders preferred execution proceedings.<sup>5</sup> They filed applications under Order XXI Rule 97 of the Code of Civil Procedure (CPC) since the judgment debtors/vendors had sold the property to the appellant and respondents no. 4 to 7. The appellant i.e. a subsequent purchaser filed objections.

B 6. During the pendency of the proceedings the front portion of the suit property bearing Municipal Corporation No. 327, Mysore road, Bangalore became the subject matter of the acquisition for the Bangalore Metro Project. The decree holders (the first two respondents) preferred objections to the proposed acquisition and further claimed the possession.

C In the meanwhile, aggrieved by the dismissal of the suit and decreeing the suit for possession, Narayanamma filed first appeals in the High Court<sup>6</sup>. In these proceedings it was brought to the notice of the High Court that the suit properties had been sold to the appellant and respondents no. 4 to 7. By an order<sup>7</sup> the High Court directed the vendors to furnish particulars with respect to the sale, names of the purchaser and area sold etc.

D By common judgment dated 22.10.2009 the High Court dismissed all the appeals pending before it. The Special Leave Petition preferred by the vendors<sup>8</sup> was also dismissed by this Court on 23.07.2010.

E 7. Apparently, during the pendency of execution proceedings before the trial Court the vendors again sold the properties in favour of Shri P. Prem Chand, Shir Parasmal, Shri Kethan S. Shah & Ors. and Shri Gopilal Ladha & Shri Vinay Maheshwari by separate sale deeds<sup>9</sup>. This was brought to the notice of the High Court which had dismissed the appeal preferred by the vendors.

F 8. During the pendency of the proceedings before the High Court Narayanamma, the appellant and respondents no. 4 to 7 filed indemnity bonds claiming that there was no dispute with respect to the suit property and claimed the compensation in respect of portions that were acquired. These were brought to the notice of the High Court which passed an order in W.P. No. 9337/2008. The court considered all the materials and  
G held that the compensation could not have been dispersed to the vendors,

---

<sup>5</sup> Execution Case Nos. 458-459/2007

<sup>6</sup> R.F.A. No. 661-663/ 2007

<sup>7</sup> Dated 10.04.208

<sup>8</sup> S.L.P. (C) Nos. 16349-13651/2010

H <sup>9</sup> Dated 09.11.2001, 12.12.2001, 05.12.2002 and 20.10.2004

the appellant and Respondents no. 4 to 7. The High Court issued directions to them to deposit the amounts. An appeal was preferred by the appellant and the said respondents, against that order, which was rejected by the Division Bench.<sup>10</sup> Consequently, an enquiry was held and order was passed by the Land Acquisition Officer on 01.08.2011 directing the appellant, the vendor and others to redeposit the amounts. By an order passed in another Writ Petition No. 2099/2011<sup>11</sup> the High Court held that the decree holder/purchasers were entitled to transfer of *khata* of property in their names and directed to hold an inquiry against the Revenue Officer. Since the orders of the High Court, with respect to the deposits of amounts, were not complied with, contempt proceedings were taken.

9. The High Court in another order dated 19.04.2013 directed Narayanamma and respondents no. 4 to 7 to deposit the amounts. That order in contempt proceedings (C.C.C. No. 280/2011) was challenged before this Court in a special leave petition<sup>12</sup> which was dismissed on 05.11.2014. Thereafter, apparently in compliance with the High Court's direction for transfer of *khata* the municipal and revenue records reflect the names of the decree-holder/purchasers.

10. The execution proceedings initiated by the decree holders resulted in the court requiring parties to lead evidence, in view of the obstruction by the appellant and respondents no. 4 to 7, by its order dated 23.04.2010. When obstruction proceedings were pending under Order XXI Rule 97, the judgment debtor i.e. the vendors initiated criminal proceedings in 2016 against the decree holders; these were stayed by the High Court on 20.06.2016 and later quashed on 16.03.2017. The judgment debtors had alleged forgery of certain documents. The High Court directed appointment of Court Commissioner to identify and measure the property. At the time of disposal of the criminal proceedings High Court directed that the Commissioner's report along with the objections of the Judgment debtors ought to be forwarded to the Executing Court.

11. In the meanwhile, by an order the Executing Court had appointed the Taluka Surveyor of BBMP as the Court Commissioner and directed him to visit the spot and survey and fix the boundaries of decretal property. Recall of these orders was sought by the judgment

---

<sup>10</sup> Dated 28.10.2009

<sup>11</sup> Dated 17.07.2013

<sup>12</sup> SLP (C) No. 18031/2013

A debtors; they also sought for reference to forensic examination by a Handwriting Expert of the sale documents. These two review applications were dismissed; and on 13.06.2017 the Executing Court declined the application for forensic examination of documents and also rejected the obstructers' resistance to execution.

B 12. All these orders led to initiation of five writ petitions on behalf of the appellant, and the vendors etc. Three First appeals<sup>13</sup> were preferred by obstructers challenging the decision of the Executing Court dated 15.02.2017. By impugned common order all these Writ Petitions and appeals were dismissed.

C 13. It is argued by Mr. Shailesh Madiyal on behalf of the appellant (Rahul Shah) that the impugned order has the effect of diluting the order of the Executing Court dated 23.04.2010 with respect to survey of the entire property. It was pointed out by the counsel for the appellant that there were disputes with respect to boundaries and identity of the properties as between parties. Referring to the order, it was submitted that the Court had noticed that the High Court in earlier Writ Petitions had directed the Special Land Acquisition Officer to hold an enquiry and if necessary refer the matter to Civil Court under Section 30 of the Land Acquisition Act. In view of all these disputes, questions especially related to the boundaries and the imprecise nature of the extent and location of the disputed properties, the impugned order should be interfered with and the reliefs sought by the appellant be granted. Learned Counsel submitted that subsequently by order dated 31.10.2014 the Executing Court erroneously held that Sketch Exhibit P-26 was drawn by Revenue Authorities whereas in fact it was introduced by handwritten sketch given by the decree holders.

F 14. Learned counsel submitted that decree holder's efforts in all the proceedings were to confuse the identity of the property and therefore had sought clubbing of both execution cases; this request was rejected by the Executing Court after concluding that the property sought to be executed in two cases were different and further that rights claimed too were distinct.

G 15. Learned counsel for the appellant in the second set of petitions, i.e. SLP (C) No. 11859-11860 of 2020 and SLP (C) No. 11792-11793 of 2020, on the other hand urged that the High Court as well as the Executing

---

H <sup>13</sup> R.F.A. Nos. 441, 468 and 469/2017

Court fell into error in holding that what was sought by the obstructer (i.e. the appellant Gopilal Ladha) was far in excess of what was left after decree holders had purchased and therefore the conveyances had overlapped. A

16. Mr. Arunava Mukherjee appearing for the second set of appellants also reiterated the submissions of Mr. Shailesh Madiyal that the decree holders had intentionally confused the identity of the property. He highlighted that the High Court acted in error in rejecting the appellants' request for subjecting documents to forensic examination by handwriting experts. It was submitted that this aspect was completely overlooked because the appellants' had raised serious doubts with respect to the genuineness and authenticity of the signatures of the documents. B C

17. The respondents urged that this Court should not interfere with the findings of the High Court. Learned counsel reiterated that numerous proceedings were taken out and that the judgment debtors had sold the very same property three times over – at least two times after the decree holders purchased their portions of the property and during the pendency of the suits filed by them. The judgment debtors had sought a declaration that the sale deeds executed in favour of the decree holders were not genuine and lost. Thereafter, the judgment debtor and some of the obstructers succeeded in collecting compensation in respect of the portion of the property that had been acquired. Ultimately, those amounts had to be disbursed by the Court orders. The judgment debtors/ vendor even sought forensic examination and initiated the criminal proceedings that were quashed by the High Court. The High Court took note of all these circumstances and passed a just order, requiring the appointment of a Court Commissioner to identify and measure the properties. While doing so the Executing Court has been asked to take into consideration all the materials on record including the reports submitted by the previous Court Commissioner Mr. Venkatesh Dalwai. D E F

**Discussion and conclusions:**

18. It is quite evident from the above discussion that the vendor and her son (judgment debtors) after executing the sale deed in respect of a major portion of the property, questioned the transaction by a suit for declaration. The decree holders also filed a suit for possession. During the pendency of these proceedings, two sets of sale deeds were executed. G H

- A The vendors' suit was dismissed – the decree of dismissal was upheld at the stage of the High Court too. On the other hand, the purchasers' suit was decreed and became the subject matter of the appeal. The High Court dismissed the first appeal; this Court dismissed the Special Leave Petition. This became the background for the next stage of the proceedings, i.e. execution. Execution proceedings are now being
- B subsisting for over 14 years. In the meanwhile, numerous applications including criminal proceedings questioning the very same documents that was the subject matter of the suit were initiated. In between the portion of the property that had been acquired became the subject matter of land acquisition proceedings and disbursement of the compensation. That
- C became the subject matter of writ and contempt proceedings. Various orders of the Executing Court passed from time to time, became the subject matter of writ petitions and appeals - six of them, in the High Court. All these were dealt with together and disposed of by the common impugned order.
- D 19. A perusal of the common impugned order shows that High Court has painstakingly catalogued all proceedings chronologically and their outcomes. The final directions in the impugned order is as follows:
- (a) the other challenge by the JDrs and the*
- E *Obstructors having been partly favoured, the impugned orders of the Executing Court directing Delivery Warrant, are set at naught, and the matter is remitted back for consideration afresh by appointing an expert person/official as the Court Commissioner for accomplishing the identification &*
- F *measurement of the decreetal properties with the participation of all the stake-holders, in that exercise subject to all they bearing the costs & fees thereof, equally;*
- (b) it is open to the Executing Court to take into consideration the entire evidentiary material on record hitherto including the Report already submitted by the Court Commissioner Shri*
- G *Venkatesh Dalwai,*
- (c) the amount already in deposit and the one to be deposited by the Obstructors in terms of orders of Co-ordinate Benches of this Court mentioned in paragraph 8 supra shall be released to the parties concerned, that emerge victorious in the*
- H *Execution Petitions;*

(d) the JDrs shall jointly pay to the DHrs collectively an exemplary cost of Rs. 5,00,000/- (Rupees five lakh) only in each of the Execution Petitions within a period of eight weeks, regardless of the outcome of the said petitions; and, if, the same is not accordingly paid, they run the risk of being excluded from participation in the Execution Proceedings, in the discretion of the learned judge of the Court below; and, (e) the entire exercise including the disposal of the Execution Petitions shall be accomplished within an outer limit of six months, and the compliance of such accomplishment shall be reported to the Registrar General of this Court.

No costs qua obstructors.

**Sd/-  
JUDGE**

20. The contentions of the Special Leave Petition mainly centre around one or the other previous orders of the Executing Court with regard identification of the property and boundary etc and the subjecting documents to forensic examination. As is evident from the reading of the final order, the High Court has adopted a fair approach requiring the Executing Court to appoint a Court Commissioner to verify the identity of the suit properties and also consider the materials brought on record including the reports of the previous local commission. In the light of this, the arguments of the present appellants are unmerited and without any force. The Court also finds that the complaint that documents ought to be subjected to forensic examination, is again insubstantial. The criminal proceedings initiated during the pendency of the execution proceedings – in 2016 culminated in the quashing of those proceedings. The argument that the documents are not genuine or that they contain something suspicious ex-facie appears only to be another attempt to stall execution and seek undue advantage. As a result, the High Court correctly declined to order forensic examination. This Court is of the opinion that having regard to the totality of circumstances the direction to pay costs quantified at Rs. 5 lakh (to be complied by the judgment debtor) was reasonable, given the several attempts by the decree holder to ensure that the fruits of the judgment secured by them having been thwarted repeatedly. As a result, the direction to pay costs was just and proper.

21. The High Court has directed the Executing Court to complete the process within six months. That direction is affirmed. The parties

A are hereby directed to cooperate with the Executing Court; in case that court finds any obstruction or non-cooperation it shall proceed to use its powers, including the power to set down and proceed ex-parte any party or impose suitably heavy costs. Therefore, in light of the above observations these appeals are liable to be dismissed.

B 22. These appeals portray the troubles of the decree holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree. As on 31.12.2018, there were 11,80,275 execution petitions pending in the subordinate courts. As this Court was of the considered view that some remedial measures have to be taken to reduce the delay in disposal of execution petitions, we proposed certain suggestions which have been furnished to the learned counsels of parties for response. We heard Mr. Shailesh Madiyal, learned counsel for the petitioner and Mr. Paras Jain, learned counsel for the respondent.

D 23. This court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Counsel in *The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing*<sup>14</sup> which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in *Shub Karan Bubna @ Shub Karan Prasad Bubna v Sita Saran Bubna*<sup>15</sup>, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or the Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be handmaid of justice and sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.

24. In respect of execution of a decree, Section 47 of CPC contemplates adjudication of limited nature of issues relating to execution

---

<sup>14</sup> (1871-72) 14 Moore's I.A. 605

<sup>15</sup> (2009) 9 SCC 689

i.e., discharge or satisfaction of the decree and is aligned with the consequential provisions of Order XXI. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. *Firstly*, the question must be the one arising between the parties and *secondly*, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

A

B

25. These provisions contemplate that for execution of decrees, Executing Court must not go beyond the decree. However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.

C

D

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order XXI Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment debtor sometimes misuses the provisions of Order XXI Rule 2 and Order XXI Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

E

F

27. This is anti-thesis to the scheme of Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order I and Order II which relate to Parties to Suits and Frame of Suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.

G

28. Order I Rule 10(2) empowers the Court to add any party who ought to have been joined, whether as a plaintiff or defendant, or whose

H

A presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. Further, Order XXII Rule 10 provides that in cases of assignment, creation or devolution of any interest during the pendency of the suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come to be devolved.

B  
29. While CPC under Rules 30 to 36 of Order XXI provides for execution of various decrees, the modes of execution are common for all. Section 51 of CPC lists the methods of execution as by delivery of property; by attachment and sale; by arrest and detention in civil prison; by appointing a receiver or in any other manner as the nature of relief granted may require. Moreover, Order XL Rule 1 contemplates the appointment of the Receiver by the Court. In appropriate cases, the Receiver may be given possession, custody and/or management of the property immediately after the decree is passed. Such expression will assist in protection and preservation of the property. This procedure within the framework of CPC can provide assistance to the Executing Court in delivery of the property in accordance with the decree.

C  
30. As to the decree for the delivery of any immovable property, Order XXI Rule 35 provides that 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, if necessary, by removing any person bound by the decree who refuses to vacate the property.

D  
31. As the trial continues between specific parties before the Courts and is based on available pleadings, sometimes vague description of properties raises genuine or frivolous third-party issues before delivery of possession during the execution. A person who is not party to the suit, at times claims separate rights or interests giving rise to the requirement of determination of new issues.

E  
32. While there may be genuine claims over the subject matter property, the Code also recognises that there might be frivolous or instigated claims to deprive the decree holder from availing the benefits of the decree. Sub-rule (2) of Rule 98 of Order XXI contemplates such situations and provides for penal consequences for resistance or obstruction occasioned without any just cause by the judgment debtor or by some other person at his instigation or on his behalf, or by the transferee, where such transfer was made during the pendency of the

H

suit or execution proceedings. However, such acts of abuse of process of law are seldom brought to justice by sending the judgment debtor, or any other person acting on his behalf, to the civil prison. A

33. In relation to execution of a decree of possession of immovable property, it would be worthwhile to mention the twin objections which could be read. Whereas under Order XXI Rule 97, a decree holder can approach the court pointing out about the obstruction and require the court to pass an order to deal with the obstructionist for executing a decree for delivering the possession of the property, the obstructionist can also similarly raise objections by raising new issues which take considerable time for determination. B C

34. However, under Order XXI Rule 99 it is a slightly better position, wherein a person, other than the judgment debtor, when is dispossessed of immovable property by the decree holder for possession of such property, files an application with objections. Such objections also lead to re-trial, but as the objector is already dispossessed, the execution of the decree is more probable and expeditious. In Order XXI Rule 97 the obstructionist comes up with various objections that ideally should have been raised at the time of adjudication of suit. Such obstructions for execution could be avoided if a Court Commissioner is appointed at the proper time. D

35. Having considered the abovementioned legal complexities, the large pendency of execution proceedings and the large number of instances of abuse of process of execution, we are of the opinion that to avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties, the Court must play an active role in deciding all such related issues to the subject matter during adjudication of the suit itself and ensure that a clear, unambiguous, and executable decree is passed in any suit. E F

36. Some of the measures in that regard would include that before settlement of issues, the Court must, in cases, involving delivery of or any rights relating to the property, exercise power under Order XI Rule 14 by ordering production of documents upon oath, relating to declaration regarding existence of rights of any third party, interest in the suit property either created by them or in their knowledge. It will assist the court in deciding impleadment of third parties at an early stage of the suit so that any future controversy regarding non-joinder of necessary party may be G H

A avoided. It shall ultimately facilitate an early disposal of a suit involving any immovable property.

37. It also becomes necessary for the Trial Court to determine what is the status of the property and when the possession is not disputed, who and in what part of the suit property is in possession other than the

B defendant. Thus, the Court may also take recourse to the following actions:

a) Issue commission under Order XXVI Rule 9 of CPC.

C A determination through commission, upon the institution of a suit shall provide requisite assistance to the court to assess and evaluate to take necessary steps such as joining all affected parties as necessary parties to the suit. Before settlement of issues, the Court may appoint a Commissioner for the purpose of carrying out local investigation recording exact description and demarcation of the property including the nature and occupation of the property. In addition to this, the Court may also appoint a Receiver under Order XL Rule 1 to secure the status of the property during the pendency of the suit or while passing a decree.

D E b) Issue public notice specifying the suit property and inviting claims, if any, that any person who is in possession of the suit property or claims possession of the suit property or has any right, title or interest in the said property specifically stating that if the objections are not raised at this stage, no party shall be allowed to raise any objection in respect of any claim he/she may have subsequently.

F c) Affix such notice on the said property.

d) Issue such notice specifying suit number etc. and the Court in which it is pending including details of the suit property and have the same published on the official website of the Court.

G 38. Based on the report of the Commissioner or an application made in that regard, the Court may proceed to add necessary or proper parties under Order I Rule 10. The Court may permit objectors or claimants upon joining as a party in exercise of power under Order I Rule 10, make a joinder order under Order II Rule 3, permitting such parties to file a written statement along with documents and lists of witnesses and proceed with the suit.

H

39. If the above suggested recourse is taken and subsequently if an objection is received in respect of “suit property” under Order XXI Rule 97 or Rule 99 of CPC at the stage of execution of the decree, the Executing Court shall deal with it after taking into account the fact that no such objection or claim was received during the pendency of the suit, especially in view of the public notice issued during trial. Such claims under Order XXI Rule 97 or Rule 99 must be dealt strictly and be considered/entertained rarely.

40. In *Ghan Shyam Das Gupta v. Anant Kumar Sinha*<sup>16</sup>, this Court had observed that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and the Judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the Court must not allow the judgment debtor or any person instigated or raising frivolous claim to delay the execution of the decree. For example, in suits relating to money claim, the Court, may on the application of the plaintiff or on its own motion using the inherent powers under Section 151, under the circumstances, direct the defendant to provide security before further progress of the suit. The consequences of non-compliance of any of these directions may be found in Order XVII Rule 3.

41. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.

42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce

---

<sup>16</sup> AIR 1991 SC 2251

- A documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.
3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.
- B 4. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.
- C 5. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.
- D 6. The Court must, before passing the decree, pertaining to
7. delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.
- E 8. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.
9. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
- F 10. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue
- G
- H

which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant. A

11. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits. B
12. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A. C
13. Under section 60 of CPC the term “...in name of the judgment-debtor or by another person in trust for him or on his behalf” should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property. D
14. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay. E
15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law. F
16. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts. G

H

- A 43. We further direct all the High Courts to reconsider and update all the Rules relating to Execution of Decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 of CPC, within one year of the date of this Order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of Information Technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.
- B

44. The appeals stand dismissed.

Nidhi Jain

Appeals dismissed.

[2025] 3 S.C.R. 540 : 2025 INSC 329

**Periyammal (Dead) Through LRs & Ors.**

**v.**

**V. Rajamani & Anr. Etc.**

(Civil Appeal Nos. 3640-3642 of 2025)

06 March 2025

**[J.B. Pardiwala\* and Pankaj Mithal, JJ.]**

### **Issue for Consideration**

Whether the courts below committed any error in upholding the objections raised by the respondent nos. 1 and 2 herein against execution of the decree on the claim of being in possession of the suit property in their capacity as cultivating tenants; Whether the respondent nos. 1 and 2 are entitled to the protection of the Tamil Nadu Cultivating Tenants' Protection Act, 1955 and could the Executing Court have decided the question of validity of the decree on this ground.

### **Headnotes<sup>†</sup>**

**Code of Civil Procedure, 1908 – s.47; Or. XXI, rr.97, 101 – Tamil Nadu Cultivating Tenants' Protection Act, 1955 – Objection raised by Respondent nos.1 and 2 against execution of the decree claiming to be in possession of the suit property in their capacity as cultivating tenants, upheld by courts below – Respondent nos.1 and 2, if entitled to the protection of the 1955 Act and whether the Executing Court could have decided the question of validity of the decree on this ground:**

**Held:** The decree in favour of the appellants granting specific performance with possession was affirmed by the High Court and the SLP against the order of the High Court also stood dismissed – Respondent Nos. 1 and 2 chose not to contest the original suit before the ASJ – They did not appear even before the High Court and Supreme Court in the appeals filed by the vendors (judgment debtors) – Further, the issues that ought to have been raised by the parties during the adjudication of the original suit cannot be determined by the executing court as such adjudication may undermine the decree itself – Respondent nos.1 and 2 could have filed a joint written statement stating that

---

\* Author

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

they are cultivating tenants at the stage of the original suit itself, but rather they raised the said issue in the form of objections at the stage of execution – Furthermore, respondent nos.1 and 2 failed to produce any documentary evidence as regards their claim of being cultivating tenants, even at the stage of their s.47 application – Present is a case of collusion between the vendors and the respondent nos.1 and 2 (nephews of the vendors), to deprive the appellants from availing the fruits of the decree in their favour – Even otherwise, the respondent nos.1 and 2 cannot claim protection of the special legislation of 1955 for the period during which they were not registered as tenants cultivating the suit properties – The certificate that they are in possession of the suit properties since 1974 does not establish any independent right of possession in their favour – Further, the certificate itself appears to have been obtained in collusion with the vendors who at the time of giving “no objection” had ceased to be the owners of the suit property – Respondent nos.1 and 2 are not the bona fide cultivating tenants of the suit property – Thus, there is no question of deciding the validity of the decree on the ground of being a nullity due to lack of jurisdiction of the civil court to evict cultivating tenants – The rejection by the High Court of the amendments to the execution petition filed by the appellants was erroneous, set aside – Impugned order and the order passed by the Executing Court, set aside. [Paras 60, 63-65, 68-71]

**Directions by Supreme Court – Inordinate delay by the Executing Courts in deciding execution petitions:**

**Held:** In view of the direction in Rahul S. Shah case requiring the execution proceedings to be completed within six months from the date of filing, High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions – High Courts to issue an administrative order or circular directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side – The data along with the figures of pendency and disposal thereafter collected by all the High Courts to be forwarded to the Registry of the Supreme Court with individual reports. [Paras 74, 75, 77]

## **Digital Supreme Court Reports**

### **Code of Civil Procedure, 1908 – s.47; Or.XXI rr.97, 101 – s.47 vis-à-vis Or.XXI r.97 – Questions to be determined by the Court executing decree – Resistance or obstruction to possession of immovable property:**

**Held:** If an application u/Or.XXI, r.97 is made, then its determination will be under r.101 – r.103 further provides that where any application has been adjudicated upon u/rr.98 or 100, the order made thereon shall have the same force and will be subject to the same conditions as to an appeal or otherwise as if it were a decree – U/s.47 all questions relating to the execution, discharge or satisfaction of the decree, have to be determined by the executing court whereas u/r. 101 all questions including question relating to right, title or interest in the property arising between the parties to the proceedings have to be determined by the executing court – s.47 is a general provision whereas Or.XXI, rr.97 and 101 deal with a specific situation – Moreover, s.47 deals with executions of all kinds of decrees whereas Or.XXI, rr.97 and 101 deal only with execution of decree for possession – Apart from that, earlier, i.e., prior to the amendment, every order falling u/s. 47 was appealable (as the terms ‘decree’ included the order u/s.47) whereas now only certain orders as provided for u/Or. XXI have been made appealable – In the present case, the application of the respondents No.1 and 2 u/s.47 was in substance an application for determination of their possessory rights under Or XXI, r.97. [Para 52 ]

### **Civil Procedure Code, 1908 – s.47 – Or.XXI, r.101 – Harmonious construction – Questions to be determined by the Court executing decree:**

**Held:** A harmonious reading of s.47 with Or.XXI r.101 implies that questions relating to right, title or interest in a decretal property must be related to the execution, discharge or satisfaction of the decree – Thus, only matters arising subsequent to the passing of the decree can be determined by an executing court u/s.47 and Or.XXI R.101. [Para 62]

### **Code of Civil Procedure, 1908 – Or. XXI, r.97 – Resistance or obstruction to possession of immovable property – Application u/Or. XXI, r.97 – Nature:**

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

**Held:** An application u/Or. XXI, r.97 may be made in respect of obstruction raised by any person in obtaining possession of the decretal property– Courts adjudicating such application have to do so in accordance with r.101 and hold a full-fledged inquiry to determine all questions including questions relating to right, title or interest in the property arising between the parties. [Para 42]

**Words and Phrases – Civil Procedure Code, 1908 – Or. XXI, rr.35, 97-101 – Decree for immovable property – Resistance or obstruction to possession of immovable property – “any person” – Interpretation of:**

**Held:** In execution of decree for possession of immovable property, the executing court delivers actual physical possession of the decretal land to the decree holder – r.35 confers jurisdiction on the executing Court to remove any person, who is bound by the decree and who refuses to vacate the property – “any person who is bound by the decree”, clearly mandates that removal can only be of a person who is bound by the decree – Further, rr.97 to 101 deal with situation when execution is obstructed or resisted by “any person” claiming right, title or interest in the property – The words “any person” include even a stranger to a decree resisting the decree of possession as not being bound by a decree or by claiming independent right, title or interest to the property – Thus, r.97 not only provides remedy to a decree holder in obtaining possession of an immovable property but also to a stranger who obstructs or resists delivery of possession of the property by claiming derivative title from the judgment debtor or independent right, title or interest in the decretal property – Whereas, r.99 gives right to a third party claiming right, title or interest in the property to seek restoration of the decretal property. [Paras 48, 49]

**Case Law Cited**

*Silverline Forum Pvt. Ltd. v. Rajiv Trust and Anr.* [1998] 2 SCR 587 : (1998) 3 SCC 723; *C.F. Angadi v. Y.S. Hirannayya* [1972] 2 SCR 515 : (1972) 1 SCC 191; *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman* [1971] 1 SCR 66 : (1970) 1 SCC 670; *Rahul S. Shah v. Jinendra Kumar Gandhi* [2021] 4 SCR 279 : (2021) 6 SCC 418 – relied on.

*Shreenath & Anr. v. Rajesh & Ors.* [1998] 2 SCR 709 : (1998) 4 SCC 543; *State of Bihar & Ors. v. Bihar Rajya Bhumi Vikas Bank*

## Digital Supreme Court Reports

*Samiti* [2018] 7 SCR 1147 : (2018) 9 SCC 472; *Salem Advocate Bar Association v. Union of India* [2005] Supp. 1 SCR 929 : (2005) 6 SCC 344; *Rajinder Kumar v. Kuldeep Singh* [2014] 2 SCR 356 : (2014) 15 SCC 529; *Topanmal Chhotamal v. Kundomal Gangaram*, AIR 1960 SC 388; *Smriti Debbarma v. Prabha Ranjan Debbarma* [2023] 1 SCR 355; *Sunder Dass v. Ram Prakash* [1977] 3 SCR 60 : (1977) 2 SCC 662; *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal* [1997] 1 SCR 463 : (1997) 3 SCC 694; *NSS Narayan Sarma & Ors. v. Goldstone Exports (P) Ltd. & Ors.* [2001] Supp. 5 SCR 327 : (2002) 1 SCC 662; *Samir Singh and Anr. v. Abdal Rab* [2014] 10 SCR 1004 : (2015) 1 SCC 379; *Bhanwar Lal v. Satyanarain* [1994] Supp. 4 SCR 208 : (1995) 1 SCC 6; *Bhoj Raj Garg v. Goyal Education and Welfare Society & Ors.*, **Special Leave Petition (C) Nos. 19654 of 2022 – referred to.**

### List of Acts

Civil Procedure Code, 1908; Tamil Nadu Cultivating Tenants' Protection Act, 1955.

### List of Keywords

Section 47 and Order XXI Rule 97-103 of Code of Civil Procedure, 1908; Execution petition, Objections against execution of the decree; Discharge or satisfaction; Cultivating tenants; Decretal property; Executing court; Right of possession; Collusion; Lack of jurisdiction; Objection at the stage of execution; Execution proceedings; Agreement of sale; Amendment application; Possession of immovable property; Resistance or obstruction; Frustrate and defeat decree; Validity of decree; Revenue authorities; Dispossession; Transferee pendente lite; Right, title or interest in property; Independent right of possession; Judgment debtor; Notice of execution of the sale deed; Bona fide and genuine; Original vendors; Third party; "any person"; Stranger to a decree.

### Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3640-3642 of 2025

From the Judgment and Order dated 18.12.2019 of the High Court of Judicature at Madras in CRPNPD No. 4311 of 2011 and CRPNPD Nos. 2150 and 2151 of 2015

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.****Appearances for Parties***Advs. for the Appellants:*

Senthil Jagadeesan, Sr. Adv., Punit Manoj Agarwwal, Ms. Mrinal Kanwar, Vaibhav.

*Advs. for the Respondents:*

Rahul Jain, Vishnu Shankar Jain.

**Judgment / Order of the Supreme Court****Judgment****J.B. Pardiwala, J.**

For the convenience of exposition, this judgment is divided into the following parts: -

**INDEX\***

<b>A. FACTUAL MATRIX .....</b>	<b>6</b>
<b>B. SUBMISSIONS OF THE APPELLANTS .....</b>	<b>22</b>
<b>C. SUBMISSIONS OF THE RESPONDENT NOS. 1 &amp; 2 ....</b>	<b>25</b>
<b>D. ISSUES TO BE DETERMINED .....</b>	<b>32</b>
<b>E. ANALYSIS .....</b>	<b>33</b>
<b>(i) Relevant statutory provisions .....</b>	<b>33</b>
<b>(ii) Nature of application under Order XXI Rule 97 .....</b>	<b>37</b>
<b>(iii) Section 47 of the CPC vis-à-vis Order XXI Rule 97 of the CPC .....</b>	<b>51</b>
<b>F. CONCLUSION .....</b>	<b>77</b>

1. Leave granted.
2. *“The seeker of justice many a time has to take long circuitous routes, both on account of hierarchy of courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breathes*

\* Ed. Note: Pagination as per the original Judgment.

## Digital Supreme Court Reports

*fear of receiving the fruits of that justice for which he has been aspiring to receive. To reach this stage is in itself an achievement and satisfaction as he, by then has passed through a long arduous journey of the procedural law with many hurdles replica of mountain terrain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings, the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of the hierarchy of courts was for a reasonable objective for conferring greater satisfaction to the parties that errors, if any, by any of the lower courts under the scrutiny of a higher court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seeker in his journey to justice. But this obviously is one of the causes of delay in justice. Of course, under this pattern the party wrongfully gaining within permissible limits also stretches the litigation as much as possible. Thus, this has been the cause of anxiety and concern of various authorities, legislators and courts. How to eliminate such a long consuming justice? We must confess that we have still to go a long way before true satisfaction in this regard is received. Even after one reaches the stage of final decree, he has to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice.*

*The courts within their limitation have been interpreting the procedural laws so as to conclude all possible disputes pertaining to the decretal property, which is within its fold in an execution proceeding, i.e., including what may be raised later by way of another bout of litigations through a fresh suit. Similarly, legislatures equally are also endeavouring by amendments to achieve the same objective. The present case is one in this regard. Keeping this in view, we now proceed to examine the present case.*

*In interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted. The procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.” [Shreenath & Anr. v. Rajesh & Ors reported in (1998) 4 SCC 543]*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

3. We are tempted to preface our judgment with the above quoted observations of this Court made almost three decades back, as the situation remains the same even today. It is said that the woes for the litigants in this country start once they are able to obtain a decree in their favour and are unable to execute and reap its fruits for years together.
4. These appeals arise from a common judgment and order passed by the High Court of Judicature at Madras dated 18.12.2019 in Civil Revision Petition (NPD) No. 4311 of 2011 (“**first revision petition**”) and Civil Revision Petition (NPD) No. 2151 of 2015 (“**second revision petition**”) filed by the appellants herein under Section 115 of the Code of Civil Procedure, 1908 (the “**CPC**”) by which the High Court rejected the revision petitions and thereby affirmed the orders passed by the Additional Subordinate Judge, Salem (“**ASJ**”) one allowing the application filed by the respondent Nos. 1 and 2 herein, respectively, under Section 47 of the CPC and rejecting the application filed by the appellants herein seeking amendment in the execution petition.

**A. FACTUAL MATRIX**

5. One Ayyavoo Udayar, the father of the appellants herein entered into an agreement of sale dated 30.06.1980 with Ramanujan and Jagadeesan, the respondent nos. 3 and 4 herein (the “**vendors**”) respectively, whereby the respondents agreed to sell the property under dispute (the “**suit property**”) for Rs. 67,000/-. An earnest money of Rs. 10,000/- was paid by Ayyavoo Udayar while entering the agreement of sale. It was agreed between the parties that the balance of Rs. 57,000/- would be paid on or before 15.11.1980 upon receipt of which, the vendors would execute the sale deed.
6. On 15.11.1980, Ayyavoo Udayar issued a telegram to the vendors requesting that they should receive the balance consideration and execute the sale deed. The vendors sent a reply stating that they would execute the sale deed on 20.11.1980, however, no sale deed was executed even on the said date. Since the vendors did not come forward to execute the sale deed despite notice and talks of settlement, Ayyavoo Udayar was compelled to file the O.S. No. 514 of 1983 before the Subordinate Judge, Salem praying for specific performance of agreement of sale i.e. the execution and registration of the sale deed in respect of the suit properties and delivery of

### Digital Supreme Court Reports

actual physical possession of the same. The relief prayed for in the plaint by the original plaintiff Ayyavoo Udayar is reproduced below:

*“Therefore the plaintiff prays that this Honourable Court may be pleased to pass a decree for specific performance.*

- (a) Directing the defendants 1 and 2 to execute and register the sale deed in respect of the entire suit properties for the sum of Rs. 67,000/- and deliver actual possession of the entire suit properties to the plaintiff, and if the defendants 1 and 2 fail to execute the sale deed;*
- (b) The Court may be pleased to execute and register the sale deed in respect of the entire suit properties for Rs. 67,000/- in favour of the plaintiff and order delivery of possession of the suit properties to the plaintiff;*
- (c) Directing the defendants 1 and 2 to pay the costs of the suit;*
- (d) Directing the defendants 1 and 2 to deduct the value of the trees cut by them after the date of the suit agreement;*
- (e) Granting such other relief or reliefs as the court may deem fit and necessary under the circumstances of the case and thus render justice.”*

7. Ayyavoo Udayar impleaded the respondent Nos. 1 and 2 respectively herein in the O.S. No. 514 of 1983 along with the vendors. The respondent nos. 1 and 2 herein are the sons of the vendors’ sister and were inducted into the suit properties to give an appearance that they were in possession of the said properties. Ayyavoo Udayar impleaded the respondent nos. 1 and 2 in order to avoid any possible obstruction by them and to enable the appellants herein to take delivery of possession of the suit properties without multiplicity of proceedings. However, the respondent Nos. 1 and 2 herein thought fit not to contest suit and allowed the suit to proceed *ex parte* against them. The relevant portion of the plaint is reproduced below:

*“10. Now that the time for filing the suit is likely to expire the plaintiff has been for the past one month requesting*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*the mediators and the defendants 1 and 2 to see that the sale deed is executed and property delivered to the plaintiff after completing the registration formalities. But the defendants 1 and 2 would not heed to the words of the plaintiff nor to that of the mediators like Muthusami Udayar son of Arunachala Udayar of Masinaickampatti and Chinnasami Udayar of Ayothiappattinam. **On the other hand the 1st defendant seems to have inducted the defendants 2 and 3 into the suit properties to make it appear that they (defendants 3 and 4) are in possession of the suit properties. The defendants 3 and 4 are the 1st defendant's sister's sons. They are obliged to the defendants 1 and 2.** All the defendants are now, for the past one week giving out in the village by they would not on any account allow the plaintiff to have the sale deed executed in his favour or to enter into the suit property by any means. Hence the plaintiff is constrained to file this suit for specific performance. **The defendants 3 and 4 are added in order to avoid any possible obstruction by them and to enable the plaintiff to take delivery of possession without multiplicity of proceedings.**"*

(Emphasis supplied)

8. The Additional Subordinate Judge, Salem on 02.04.1986 decreed the original suit as prayed for and directed the vendors to execute the sale deed within one month of the passing of the decree, failing which the court would execute the sale deed. Aggrieved by the said judgment and decree, the vendors preferred an appeal before the High Court. A single judge partly allowed the appeal and modified the decree to some extent. The respondent Nos. 1 and 2 did not appear in the appeal proceedings as well.
9. The second appeal preferred by the vendors before a division bench of the High Court was also dismissed on 19.03.2004 subject to the condition that the appellants herein would deposit a further sum of Rs. 67,000/- as consideration within a period of one month from the date of the order. Though the respondent Nos. 1 and 2 herein were parties to the second appeal yet they did not participate during the course of the hearing. Pursuant to the High Court's direction, the appellants deposited a sum of Rs. 67,000/- on 19.04.2004.

**Digital Supreme Court Reports**

10. Thereafter, the vendors filed a special leave petition before this Court challenging the judgment of the High Court dated 19.03.2004, which came to be dismissed on 20.01.2006. The vendors thereafter preferred a review petition against the said order which also came to be dismissed by this Court on 18.04.2006.
11. In the meantime, the appellants filed R.E.P. No. 237 of 2004 for execution of the sale deed in respect of the suit properties and for delivery of possession thereof. All the respondents herein were impleaded in the said execution petition and the vendors were named as the persons against whom the execution of the decree was sought. The said petition was dismissed on 03.12.2004 by the ASJ on the ground that a special leave petition filed by the vendors before this Court remained pending.
12. The appellants, aggrieved by the dismissal of the execution petition, filed Civil Revision Petition (NPD) No. 2032 of 2005 before the High Court and simultaneously filed another R.E.P. No. 244 of 2005 for getting the sale deed executed in respect of the suit properties and for delivery of possession thereof. The High Court *vide* its order dated 21.02.2006 allowed the CRP (NPD) No. 2032 of 2005 observing that the ASJ had provided no reason for dismissing the execution petition of the appellants except that the special leave petition filed by the respondents herein remained pending. Since the special leave petition before this Court came to be disposed on 20.01.2006, the order of the ASJ dated 03.12.2004 was set aside.
13. Consequent to the order of the High Court dated 20.01.2006, the proceedings in respect of the R.E.P. No. 237 of 2004 were restored and the appellants withdrew the R.E.P. No. 244 of 2005.
14. Thereafter, the vendors filed Civil Revision Petition (NPD) No. 1865 of 2007 before the High Court challenging the order of the ASJ accepting the deposit of Rs. 67,000/- made by the appellants on 19.04.2004 on the ground that such deposit was not made within a period of thirty days as per the order dated 19.03.2004 of the High Court. This revision petition came to be dismissed by the High Court on 10.07.2007 and it was observed that the appellants herein were late by one day in depositing the amount of Rs. 67,000/- because 18.04.2004 was the last day to deposit the amount and it was a holiday. Since the appellants had deposited the amount on the next working day, the deposit was considered as well within time.

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

15. On 17.08.2007, the Executing Court executed a registered sale deed in favour of the appellants on behalf of all the respondents to the original suit including the respondent Nos. 1 and 2 herein who were in possession of the property but did not hold any title in respect thereof.
16. Aggrieved by the inclusion of the names of respondent Nos. 1 and 2 in the sale deed, the vendors filed the Civil Revision Petition (NPD) No. 3916 of 2007 before the High Court for deletion of the names of the respondent Nos. 1 and 2 herein. The appellants also filed a memo in this regard and agreed to the deletion of the names of the respondent Nos. 1 and 2 from the sale deed. The High Court, by way of its order dated 08.01.2008 allowed the deletion of the names of the two respondents and directed the Executing Court to carry out the requisite rectifications to the sale deed in this regard. Accordingly, a rectification deed dated 25.01.2008 came to be executed removing the names of the respondent Nos. 1 and 2 herein as the vendors from the sale deed.
17. On 12.02.2008, the Executing Court passed an order for delivery of possession of the suit property to the appellants herein. Pursuant to the said order, the appellants along with the Village Administrative Officer, Surveyor and Court Amin reached at the site of the property to give effect to the order for delivery of possession. However, the handing over of the possession of the property was obstructed by the respondent No. 1 herein who threatened to self immolate himself if anybody dared to enter the property. As the delivery of possession could not be effected, a delivery warrant and obstruction report were filed before the ASJ on 20.02.2008.
18. Subsequently, the respondent Nos. 1 and 2 herein filed an application dated 12.03.2008 under Section 47 of the CPC ("**R.E.A. 163 of 2011**") before the ASJ on the following grounds:
  - (1) no notice regarding execution of the sale deed and delivery of possession was served upon them due to which they were unable to avail a fair chance of putting forth their objections;
  - (2) since their names were deleted from the sale deed so executed, the same was not binding upon them and the executing court had illegally added their names in the list of parties in the order for delivery of possession;
  - (3) the appellants herein had acted fraudulently.

### Digital Supreme Court Reports

An interim relief was also prayed for by the respondent Nos. 1 and 2 herein to stay the operation of the execution order, which directed delivery of possession of the suit property to the appellants.

19. After filing the execution application, the respondent Nos. 1 and 2 herein filed a petition before the Tehsildar, Vazhapadi for inclusion of their names in the cultivation account for the suit property retrospectively from 1974 submitting that they were in possession of the same since 1967. The series of orders delivered in this regard are detailed below:
  - a) The Tehsildar, Vazhapadi *vide* order dated 18.10.2008 held that the respondent Nos. 1 and 2 herein were in possession of the suit property and ordered that their names be entered in the cultivation account of the same. The Tehsildar, however, gave no finding regarding inclusion of the respondents' names retrospectively from 1974.
  - b) The respondent Nos. 1 and 2 herein, aggrieved by the order dated 18.10.2008, filed W.P. No. 5032/09 before the Telsildar, Vazhapadi to get their names registered in the cultivation account in respect of the suit property from 1974 onwards. While the hearing of the writ petition was going on, the vendors, whose names were registered as pattadharars for the suit property, gave a statement that the respondent Nos. 1 and 2 had been in possession of the said land for a long time and that the vendors did not have any objection to the inclusion of their names in the cultivation account of the suit property. Upon examination of relevant documents and the Village Administrative Officer, the Tehsildar recorded that as the respondent Nos. 1 and 2 had been in enjoyment of the suit property for a long time, the inclusion of their names in the cultivation account for the year 2008 was correct. However, their names cannot be entered in the cultivation account as persons being in possession of the suit property from 1974 onwards.
  - c) Aggrieved by the non-inclusion of their names in the cultivation account for the suit property retrospectively from 1974, the respondent Nos. 1 and 2 herein appealed to the Revenue Divisional Officer. It was held by the Revenue Divisional Officer *vide* order dated 29.10.2009 that there is no provision in law to enter the names of the respondent Nos. 1 and 2 in the

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

cultivation accounts retrospectively from 1974 as such accounts had already been closed and hence, no alteration could be made therein. The respondents were granted leave to file an application before the Tehsildar for issuance of a certificate that they were in possession of the suit property since 1974.

20. The R.E.A. No. 163 of 2011 was initially rejected by the ASJ. Consequently, the respondent Nos. 1 and 2 herein filed Civil Revision Petition (NPD) No. 2354 of 2008 before the High Court. The High Court *vide* order dated 25.04.2011 set aside the ASJ's order, which rejected the execution application and observed that the same was not passed on merits. The High Court directed the lower court to dispose of the Execution Application filed under Section 47 of the CPC read with Section 151 thereof and pass appropriate orders within the time specified in the order.
21. Pursuant to the directions of the High Court, the ASJ *vide* order dated 12.08.2011 allowed R.E.A. No. 163/2011 of the respondent Nos. 1 and 2 herein and held as follows:
  - a) The High Court, while executing the sale deed, ordered for deletion of the names of the respondent Nos. 1 and 2 herein as they were not the vendors who had title to sell the suit property.
  - b) The respondent Nos. 1 and 2 by way of oral and documentary evidence have established that they were in possession of the suit property. On the other hand, the appellants herein did not examine any independent witnesses to establish that the respondent Nos. 1 and 2 were not in possession of the suit property.
  - c) Further, in both the execution petitions namely R.E.P. No. 237 of 2004 and R.E.P. No. 244 of 2005, the appellants did not seek any relief for delivery of possession from the respondent Nos. 1 and 2.
  - d) The appellants can take over possession only after taking appropriate legal steps/proceedings.
22. Aggrieved by the order of the ASJ, the appellants filed Civil Revision Petition (NPD) No. 4311 of 2011 (hereinafter referred to as the "**first revision petition**") before the High Court. The grounds taken in the said petition are summarized below:

**Digital Supreme Court Reports**

- a) The order of the ASJ dated 12.08.2011 rejecting the appellants' prayer on the ground that no notice of execution of the sale deed by the court was served to the respondent Nos. 1 and 2, was erroneous since notice to show cause against execution is necessary only in certain circumstances as laid down in Order XXI Rule 22 of the CPC. It was submitted that no notice was mandatory in the case on hand as the execution petition was filed by the decree-holder within two years of the confirmation of the decree by the High Court.
- b) The Executing Court failed to consider that the respondent Nos. 1 and 2 were impleaded as defendants in O.S. No. 514 of 1983 and were aware of the decree passed against them therein on 02.04.1986. Further, the respondent Nos. 1 and 2, by their own admission, were fully aware of the decree for delivery of possession passed against them and as such the allegations that they were not aware of the events subsequent thereto cannot be a ground to obstruct the execution of decree by way of a petition under Section 47 of the CPC.
- c) Subsequent to the execution of agreement to sell between the appellants and vendors, the respondent no. 1 herein had filed an O.S. No. 1384 of 1980 for permanent injunction against Ayyavoo Udayar, the vendors, respondent no. 2 herein as well as his father, Venkatasamy Naidu. The said suit was subsequently dismissed. However, such actions of the respondent No. 1 would indicate that the contesting respondents herein were aware about the agreement to sell before the institution of the suit for specific performance in which they were parties. Therefore, the respondent Nos. 1 and 2 had no good reason to contend that they were not aware of the proceedings especially when they continued to remain parties to the dispute in the original suit till it attained finality by way of a judgment of this Court.
- d) The Executing Court also did not take into consideration the fact that the execution application of the respondent Nos. 1 and 2 could not have been allowed because a sale deed had already been executed by the ASJ in favour of the appellants and against the vendors. The prayer for delivery of possession was a consequential relief. The rejection of the said prayer by the Executing Court based on hyper technical objections raised

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

by the respondent Nos. 1 and 2, could have been cured by amending the prayer in R.E.P. No. 237 of 2004.

23. A week after the first revision petition i.e. on 08.11.2011, the appellants filed the R.E.A. No. 14 of 2012 under Order VI Rule 17 read with Section 151 of the CPC for amendments in the R.E.P. No. 237 of 2004. The appellants sought to record that the respondents' SLP and Review Petition pursuant to the proceedings in the original suit for specific performance, came to be dismissed by this Court. Further, the appellants sought amendment of the prayer made in the execution petition asking for execution of the sale deed on behalf of the vendors and delivery of possession against all the respondents. The vendors in their counter-statement alleged that the said execution application was preferred by the appellants with a *mala fide* intention and seeking amendment to the array of parties against whom execution was prayed for, after a lapse of seven and a half years was legally untenable.
24. The appellants, on 10.04.2013, sought for one another amendment by way of R.E.A. No. 145 of 2013 seeking to disclose about the other execution petitions filed after R.E.P. No. 237 of 2004. The vendors filed a counter-statement to the same alleging that said amendment application was filed with an ulterior motive of delaying the execution proceedings. The respondent Nos. 1 and 2 herein also filed a counter submitting that they were not parties to the R.E.P. No. 237 of 2004 as they were not issued notice regarding the same. They came into knowledge of the execution proceedings only after the court Amin visited the property to deliver possession of the property to the appellants.
25. The ASJ *vide* two separate orders dated 24.04.2015 allowed the execution petition on the ground that the appellants had not made any prayer in the execution petition against the respondent Nos. 1 and 2 and since the respondent Nos. 1 and 2 had proved their possession of the suit property, the appellants could take possession only after taking necessary legal steps. It was held that since the appellants had not preferred any appeal or revision against the order dated 12.08.2011, the same had become final and binding on the parties. As a result, the orders allowing R.E.P. 237 of 2004 would have no effect and therefore, the question of amendment of the same did not arise. The appellants challenged the order dated 24.04.2015 by

## Digital Supreme Court Reports

way of Civil Revision Petition (NPD) No. 2151 of 2015 (hereinafter referred to as the “**second revision petition**”).

### ***Impugned Order of the High Court***

26. The High Court vide its common order (the “**impugned order**”) held as follows:
- a) The ASJ’s order allowing the respondents’ execution application under Section 47 was correct on the aspect of serving of notice. The appellants although were aware of the fact that the respondent Nos. 1 and 2 were in possession of the suit property yet they did not ask the court to serve notice to the said respondents. Since no notice was provided to the respondent Nos. 1 and 2, the court could not have passed a direction for delivery of possession.
  - b) The appellants did not take any steps to amend the execution petition R.E.P. No. 237 of 2004 till the disposal of the respondents’ execution application R.E.A. No. 163 of 2011 under Section 47 of the CPC. Once the said application was allowed, there remained no execution proceedings pending so far as the respondent Nos. 1 and 2 were concerned. Therefore, the amendment applications filed in R.E.A. No. 14 of 2012 and R.E.A. No. 145 of 2015 were held to be non-maintainable.
  - c) The appellants did not prefer any appeal against the order of the ASJ dated 12.08.2011 allowing the application under Section 47 of the CPC, till 2015 and no reasons were assigned by the appellants for such delay.
  - d) Thus, the High Court held that there was no material irregularity in the orders of the ASJ dated 12.08.2011 and 24.04.2015 respectively and upheld the same.

### **B. SUBMISSIONS OF THE APPELLANTS**

27. Mr. Senthil Jagadeesan, the learned senior counsel appearing on behalf of the appellants submitted that the High Court could be said to have committed a serious error in passing the impugned order for the following reasons:
- a. The appellants had not filed any appeal or revision against the order of the ASJ allowing the application under Section 47 of

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

the CPC, till 2015. However, the appellants had challenged the said order by preferring the first revision petition as early as 31.10.2011 and the same was decided by the High Court by way of the impugned order.

- b. The appellants had filed the execution petition on 19.07.2004 that is, after four months of confirmation of the decree in the original suit by the High Court. The learned counsel invited our attention to the provision in Order 21 Rule 22 of the CPC, which stipulates that a notice to show cause against execution is required to be served compulsorily only if the application for such execution is made, *inter alia*, more than two years after the date of the decree. He submitted that in view of the said provision, no separate notice was required to be issued to the judgment debtors in the case on hand as the execution petition was filed well within the time period of two years.
  - c. The contention of the respondent Nos. 1 and 2 that they were not aware about the execution petition was erroneously accepted by the High Court. The High Court failed to notice that the respondent Nos. 1 and 2 had appeared through their counsel in CRP No. 2032 of 2005 by way of which the R.E.P. No. 237 of 2004 was restored. Therefore, the respondents were fully aware about the resumption of proceedings before the Executing Court but still chose not to participate therein. Though served with the summons in the original suit proceedings, yet they chose not to appear, contest or challenge the decree therein as well.
  - d. The appellants' application for amending the execution petition was squarely within the framework of the decree and ought to have been allowed by the High Court in light of the judgments of this Court in ***State of Bihar & Ors. v. Bihar Rajya Bhumi Vikas Bank Samiti*** reported in (2018) 9 SCC 472 and ***Salem Advocate Bar Association v. Union of India*** reported in (2005) 6 SCC 344. It has been held in these decisions that rules of procedure are made to advance the cause of justice and not to defeat it. The courts ought to adopt such construction of rules or procedure that prevents miscarriage of justice.
28. Mr. Jagadeesan further submitted that a clear case of collusion between the vendors and the respondent Nos. 1 and 2 is made

### Digital Supreme Court Reports

out. The attempt is to frustrate the decree and thereby deprive the appellants of its fruits. The same is evident from the following facts:

- a) The names of the respondent Nos. 1 and 2 were deleted from the sale deed executed by the Executing Court at the behest of the vendors, who facilitated the filing of objections by respondent Nos. 1 and 2 by getting their names removed from the sale deed.
- b) The respondent Nos. 1 and 2 applied for registration of their names in the cultivation account of the suit property only in 2008 that is, four years after the confirmation of the decree by the High Court. Though they had prayed for inclusion of their names in the revenue records from 1974 onwards, yet the revenue authorities allowed for such inclusion only from 2008 onwards. Further, their names were included in the revenue records solely because of the “no objection” from the vendors and not because of any independent right that they possessed.

#### **C. SUBMISSIONS OF THE RESPONDENT NOS. 1 & 2**

29. Mr. Rahul Jain, the learned counsel appearing on behalf of the respondent Nos. 1 and 2 addressed himself on the following points:
  - i. The decree travelled beyond the judgment,
  - ii. No effective proceedings were instituted by the appellants against the respondent Nos. 1 and 2 herein,
  - iii. The respondent Nos. 1 and 2 have a lawful title and have been in lawful and uninterrupted possession of the suit properties since 1967,
  - iv. The appellants had not instituted any suit for recovery of possession, and
  - v. The civil courts inherently lacked jurisdiction to decide the question of possession as the respondent Nos. 1 and 2 were cultivating tenants.
30. The learned counsel submitted that the original suit was for specific performance of the agreement of sale of the suit property and respondent Nos. 1 and 2 were not parties to the said agreement. They were impleaded in the original suit stating that they were in possession of the suit property. Even though the appellants were

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

aware of the said fact, yet they did not pray for dispossession of the respondent Nos. 1 and 2 and no pleadings were made against them.

31. Further, the trial court's order dated 02.04.1986, having considered the issue of possession, decreed the suit "as prayed for". The decree of the trial court dated 02.04.1986 is reproduced below:

*"This suit coming on 21.3.1986 for final hearing before me in the presence of Thiru. A. Duraisami, Counsel for the plaintiff and of G. Perumal counsel for the defendants and having stood over till this day for consideration this court doth order and decree as follows:-*

1. *that the defendants 1 and 2 do execute the sale deed for Rs. 67000/- in favour of the plaintiff in respect of the entire suit properties described hereunder within one month from this date and register the same;*
2. *that the plaintiff to deposit the balance of Rs. 57000/- into court to perform the sale agreement;*
3. *that the defendants 1 and 2 are at liberty to withdraw the said sum from the court: after executing the sale deed and register it in favour of the plaintiff.*
4. *that the defendants do deliver possession of the suit properties to the plaintiff; (...)*"

32. The learned counsel submitted that while Clause 4 of the decree directed that "*the defendants do deliver possession of the suit properties to the plaintiff*", such general language should be read within the context of the wordings in the other directions issued by the decree, the reasoning of the trial court in its judgment, and the specific prayer sought in the original plaint, as the suit was for specific performance.

33. Mr. Jain relied on the decision of this Court in **Rajinder Kumar v. Kuldeep Singh** reported in (2014) 15 SCC 529 to submit that the question of alternative reliefs does not arise in case of a suit for specific performance, when it is decreed as prayed for. The relevant portion of the judgment relied upon is reproduced below:

*"21. If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to*

**Digital Supreme Court Reports**

*the alternative relief would arise. Therefore, there is no question of any ambiguity. As held by this Court in Topanmal Chhotamal v. Kundomal Gangaram and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties.”*

34. As regards the question whether the appellants had instituted an effective proceeding against the respondent Nos. 1 and 2, the learned counsel submitted that:
- a. The respondents were not a necessary party to the original suit for specific performance as they were neither parties to the agreement of sale nor *lis pendens* purchasers of the suit properties. The appellants sought no relief of possession against the respondent Nos. 1 and 2 in the original suit despite impleading them as parties because they were in actual physical possession of the suit properties.
  - b. In R.E.P. 237 of 2004, the appellants sought relief only against the vendors and not against the respondent Nos. 1 and 2 despite impleading them in the execution petition. Further, no notice was served to the said respondents and as a result, the respondents were not afforded an opportunity to be heard by the Executing Court.
  - c. The respondent Nos. 1 and 2 were also not parties to the sale deed registered by the Executing Court and their names were deleted therefrom without any objection by the appellants.
35. The learned counsel, with a view to establish that the respondent Nos. 1 and 2 were in lawful and uninterrupted possession of the suit properties since 1967, submitted as follows:
- a. The respondent Nos. 1 and 2 stated that their father was in possession of the suit property since 1967 and was cultivating

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

the land. After his demise in 1983, the respondents have been in continuous possession of the suit property.

- b. Further, the order of the Revenue Divisional Officer dated 29.10.2009 held that the respondent Nos. 1 and 2 have been in enjoyment of suit property for over 40 years and the certificate of possession issued in this regard recognizes the same.
36. On the question whether the appellants were supposed to bring a separate suit for recovery of possession, Mr. Jain submitted that:
- a. The appellants, despite being aware that the respondent Nos. 1 and 2 were in possession of the suit property, brought no suit for recovery of possession against them. The onus was on the appellants to establish that they had a better title to the suit property as against the continuous possession claimed by the respondent Nos. 1 and 2.
  - b. The learned counsel relied on this Court's decision in ***Smriti Debbarma v. Prabha Ranjan Debbarma*** reported in **2023 SCC OnLine SC 9** to contend that the appellants could not have claimed possession by way of mere execution proceedings without first establishing a better title to the properties in question. The relevant portion of the judgment relied upon is reproduced below:

*“(…) The defendants cannot be dispossessed unless the plaintiff has established a better title and rights over the Schedule ‘A’ property. A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner. A decree of possession cannot be passed in favour of the plaintiff on the ground that defendant nos. 1 to 12 have not been able to fully establish their right, title and interest in the Schedule ‘A’ property. The defendants, being in possession, would be entitled to protect and save their possession, unless the person who seeks to dispossess them has a better legal right in the form of ownership or entitlement to possession.”*
  - c. Further, the appellants, being the decree holders, failed to file an application to seek recovery of possession under Order XXI

### Digital Supreme Court Reports

Rule 97, after having been obstructed by the respondents. Such process could not have been circumvented by the appellants by seeking an amendment to their execution petition, especially after the respondents' Section 47 application had already been allowed by the Executing Court.

37. Mr. Jain further submitted that the respondent Nos. 1 and 2 are cultivating tenants in continuous possession of the suit property and accordingly are protected under Sections 3 and 6 of the Tamil Nadu Cultivating Tenants' Protection Act, 1955 respectively which imposes a bar on the jurisdiction of the civil courts in matters of eviction of cultivating tenants.
38. The learned counsel relied on this Court's decision in ***Sunder Dass v. Ram Prakash*** reported in (1977) 2 SCC 662 to submit that a challenge to the validity of a decree can be set up even at the stage of execution proceedings, in cases where the civil court inherently lacks jurisdiction. The relevant portion of the judgment relied upon is reproduced below:

*"3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh v. Chaman Paswan [AIR 1954 SC 340 : (1955) 1 SCR 117] and Seth Hiralal Patni v. Sri Kali Nath [AIR 1962 SC 199 : (1962) 2 SCR 747]. It is, therefore, obvious that in the present case, it was*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent.”*

39. In the last, the learned counsel submitted that the Executing Court and High Court were correct in allowing the application under Section 47 to afford the respondent Nos. 1 and 2 to prove their long and continuous possession of the suit property as cultivating tenants.

**D. ISSUES TO BE DETERMINED**

40. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:
- (i) Whether the courts below committed any error in upholding the objections raised by the respondent nos. 1 and 2 herein against execution of the decree on the claim of being in possession of the suit property in their capacity as cultivating tenants?
  - (ii) Whether the respondent Nos. 1 and 2 are entitled to the protection of the Tamil Nadu Cultivating Tenants’ Protection Act, 1955 and could the Executing Court have decided the question of validity of the decree on this ground?

**E. ANALYSIS**

- (i) Relevant statutory provisions
41. Before advertng to the rival submissions canvassed on either side, we must refer to few relevant provisions of the CPC, which read thus :-  
Section 47 reads as follows:

***“47. Questions to be determined by the Court executing decree.***

*(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of*

### Digital Supreme Court Reports

*the decree, shall be determined by the Court executing the decree and not by a separate suit.*

*(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.*

*Explanation 1.-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.*

*Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and*

*(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."*

Order XXI, Rule 35 reads as follows:

***"35. Decree for immovable property.-***

*(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, if necessary, by removing any person bound by the decree who refuses to vacate the property.*

*(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum, or other customary mode, at some convenient place, the substance of the decree.*

*(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”*

Order XXI, Rule 97 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 in 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 the upon the application in accordance with the provisions herein contained.”*

Order XXI, Rule 98 reads as follows:

**“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 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*

## Digital Supreme Court Reports

*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.”*

Order XXI, Rule 99 reads as follows:

**“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.”*

Order XXI, Rule 100 reads as follows:

**“100. Order to be passed upon application complaining of dispossession.**

*Upon the determination of the 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.”*

Order XXI, Rule 101 reads as follows:

**“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*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*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.”*

Order XXI, Rule 103 reads as follows:

**“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.”*

(ii) Nature of application under Order XXI Rule 97

42. It is a settled position of law that an application under Order XXI Rule 97 may be made in respect of obstruction raised by any person in obtaining possession of the decretal property. The courts adjudicating such application have to do so in accordance with Rule 101 and hold a full-fledged inquiry to determine all questions including questions relating to right, title or interest in the property arising between the parties.
43. This Court in ***Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*** reported in (1997) 3 SCC 697, has held that :-

*“4. (...) A conjoint reading of Order XXI Rules 97, 98, 99 and 101 projects the following picture:*

*(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order XXI Rule 35, then the decree-holder has to move an application under Order XXI Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the Court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without*

## Digital Supreme Court Reports

*just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order XXI Rule 98 sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a decree under Order XXI Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.*

*(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order XXI Rule 99, CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order XXI Rule 98 sub-rule (1) CPC the Executing Court can direct the stranger applicant under Order XXI Rule 99 to be put in possession of the property or if his application is found to be substanceless it has to be dismissed. Such an order passed by the Executing Court disposing of the application one way or the other under Order XXI Rule 98 sub-rule (1) would be deemed to be a decree as laid down by Order XXI Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order XXI Rule 101.*

*5. In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re- issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI Rule 99. Order XXI Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final*

## Digital Supreme Court Reports

*stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him With respect the High Court has totally ignored the scheme of Order XXI Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order XXI Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard or merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non- compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree- holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI Rules 97 and 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

**6.(...) 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 set 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. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person (...)**

(Emphasis supplied)

44. In ***Shreenath (supra)***, the application under Order XXI Rule 97 was filed by the tenants who were not parties to the suit. The question was whether the tenants could maintain an application under Order XXI Rule 97. This Court while interpreting the words ‘any person’ held that any person includes even persons not bound by the decree. Paragraphs 10 and 11 read thus :-

*“10. Under sub-clause 1 order 21, Rule 35, the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by he decree. Order 21, Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the Court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21, rule 99 conceives of resistance or obstruction*

## Digital Supreme Court Reports

*to the possession of immovable property when made in execution of a decree by “ any person”. this may be either by the person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree holder, in such case, may make an application to the Executing Court complaining such resistance, for delivery of possession of the property. **Sub-clause (2) after 1976 substitution empowers the executing Courts when such claim is made to proceed to adjudicate upon the applicants claim in accordance with provisions contained hereinafter. This refers to Order 21, Rule 101 (As amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21, Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit, By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstructed by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression “any person” under sub-clause (1) is used deliberately for widening the scope of power so that the Executing court could adjudicate the claim made in any such application under order 21, Rule 97. Thus by the use of the words ‘any person’ it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.***

**11. So, under Order 21, Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to relegate itself to the long drawn out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that order 21, Rule 35 deals with cases of delivery of possession of an immovable property to the decree-**

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

**holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21, Rule 36 only symbolic possession is given where tenant is in actual possession. Order 21, rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. 'Any person', as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including stranger.**

(Emphasis supplied)

45. In ***Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr.*** reported in **1998 (3) SCC 723**, a three Judge Bench of this Court has observed that a third party to the decree including the transferee pendente lite can offer resistance or obstruction and his right has to be adjudicated under Order XXI Rule 97 of CPC. The relevant portion of the said judgment is reproduced below:

*“9. At the outset, we may observe that it is difficult to agree with the High Court that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption “Resistance to delivery of possession to decree-holder or purchaser”. Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by-“any person” in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.*

**10. 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**

### Digital Supreme Court Reports

**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 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.**

--XXX--

**14. It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refused 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 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)

46. This Court, in ***NSS Narayan Sarma & Ors. v. Goldstone Exports (P) Ltd. & Ors.***, reported in (2002) 1 SCC 662, has held as under:-

*“15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree holder entitled to possession of the property encounters obstruction from any person. From the provisions in these rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with all issues relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that 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. **On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession***

### Digital Supreme Court Reports

**of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting the relevant issues arising in the case.**

--XXX--

19. From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree.”

(Emphasis supplied)

47. In **Samir Singh and Anr. vs. Abdul Rab**, reported in (2015) 1 SCC 379, this Court, after considering its previous judgment in **Brahmadeo Chaudhary (supra)** has held thus:-

“26. The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. **It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property.** The self-contained Code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order XXI, Rule 101 provides for the determination of necessary issues. Rule 103 clearly

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree.*

*Thus, it is a deemed decree. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different. (...)*

(Emphasis supplied)

48. A conjoint reading of the relevant provisions and the principles laid down by this Court makes it clear that in execution of decree for possession of immovable property, the executing court delivers actual physical possession of the decretal land to the decree holder. Rule 35 confers jurisdiction on the executing Court to remove any person, who is bound by the decree and who refuses to vacate the property. The words “any person who is bound by the decree”, clearly mandate that removal can only be of a person who is bound by the decree. Rules 97 to 101 deal with situation when execution is obstructed or resisted by “any person” claiming right, title or interest in the property. The words “any person” include even a stranger to a decree resisting the decree of possession as not being bound by a decree or by claiming independent right, title or interest to the property.
49. Thus, Rule 97 not only provides remedy to a decree holder in obtaining possession of an immovable property but also to a stranger who obstructs or resists delivery of possession of the property by claiming derivative title from the judgment debtor or independent right, title or interest in the decretal property. Whereas, Rule 99 gives right to a third party claiming right, title or interest in the property to seek restoration of the decretal property. Suffice it to say that the remedy under Rule 99 is available when a person claiming right to the decretal property is already dispossessed.
50. Rule 101 enjoins upon the executing Court dealing with application under Rule 97 or 99 to determine all questions including questions relating to right, title or interest in the property, arising between the parties and relevant to the adjudication of the application. As held by this Court in **Silverline Forum (supra)** the question that

## Digital Supreme Court Reports

the executing court is obliged to determine under Rule 101 must possess to adjuncts viz. (i) that such question should have legally arisen between the parties and (ii) such question must be relevant for consideration and determination between the parties. Upon adjudication of such questions, the executing court is under an obligation to pass appropriate order as contemplated under Rule 98 or 100, as the case may be. When eventually such order is passed, it would be treated as decree and no separate Suit would lie against such order. It therefore follows that the only remedy is to prefer an appeal before the appropriate court against such deemed decree.

(iii) Section 47 of the CPC vis-à-vis Order XXI Rule 97 of the CPC

51. Under Section 47 of the CPC, questions arising between the parties to the suit relating to the execution, discharge or satisfaction of the decree are covered whereas under Order XXI, Rule 97 read with rule 101 of the CPC, questions including those relating to right, title or interest in the property arising between the parties to the proceeding on an application under Rule 97 or Rule 99 of Order XXI are to be determined by the executing court. The language of Rule 97 provides that where the holder of a decree for possession of immovable property is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction. The language used is “obstructed by any person”. It may be by the judgment-debtor or by a third person. Sub-rule (2) of the said Rule 97 further provides that where an application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions thereunder contained. Sub-rule (2) of Rule 98 of Order XXI, further provides that 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, he shall direct that the applicant be put into, possession of the property. Rule 101 of Order XXI provides as under:

**“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*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*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.”*

52. Thus the cumulative effect of all these rights read together is that if an application under Order XXI, Rule 97 is made, then its determination will be under Rule 101 and then Rule 103 further provides that where any application has been adjudicated upon under Rules 98 or 100, the order made thereon shall have the same force and will be subject to the same conditions as to an appeal or otherwise as if it were a decree. Under Section 47 of the CPC all questions relating to the execution, discharge or satisfaction of the decree, have to be determined by the executing court whereas under Rule 101 all questions including question relating to right, title or interest in the property arising between the parties to the proceedings have to be determined by the executing court. Section 47 is a general provision whereas Order XXI Rules 97 and 101 deal with a specific situation. Moreover, Section 47 deals with executions of all kinds of decrees whereas Order XXI, Rules 97 and 101 deal only with execution of decree for possession. Apart from that, earlier, i.e., prior to the amendment, every order falling under Section 47 was appealable (as the terms ‘decree’ included the order under Section 47 of the CPC) whereas now only certain orders as provided for under Order XXI have been made appealable.
53. In such circumstances referred to above the application of the respondents No. 1 and 2 under Section 47 of the CPC bearing R.E.A. No. 163 of 2011 was in substance an application for determination of their possessory rights under Order XXI Rule 97.
54. This Court in ***Bhanwar Lal v. Satyanarain***, reported in (1995) 1 SCC 6, has held that even an application filed under Section 47 would be treated as an application under Order XXI Rule 97 and an adjudication is required to be conducted under Rule 98. Dispossession of the applicant from the property is not a condition for declining to entertain the application. The relevant portion of the judgment is reproduced below:

### Digital Supreme Court Reports

*“5. The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102. **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 set 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.** Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.*

*6. When the appellant had made the application on 25-5-1979 against Satyanarain, in law it must be only the application made under Order 21, Rule 97(1) of CPC. **The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule.** On technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of res judicata which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost.*

*7. In the above view we have taken, the High Court has committed grievous error of jurisdiction and also patent illegality in treating the application filed by the appellant as barred by limitation and the third one on res judicata. **Once the application, dated 25-5-1979 was made, the Court should have treated it to be one filed under***

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

**Order 21, Rule 97(1) CPC.** *The question of res judicata for filing the second and third applications does not arise. Under these circumstances the appellate court, though for different reasons was justified in directing an enquiry to be conducted for removal of the obstruction or resistance caused by Satyanarain under Order 21 Rules 35(3) and 97(2) and Order 21, Rules 101 and 102 of CPC.”*

(Emphasis supplied)

55. Before we proceed further, we must look into some part of the reasonings of the Executing Court as well as the High Court.
56. The Executing Court in its order dated 12.08.2011 observed as under:

*“1. The petition is filed by the petitioners against the respondents under Section 47 CPC stating that they are in possession of the suit properties; that their objections should be enquired into and that the execution petition should be dismissed.*

2. Gist of the Petition:

*The petitioners are defendants, in O.S.No.514/83. It was decided against the petitioners. The petitioners are not aware of anything that has happened after the judgement dated 2.4.86. On 20.2.08 the Court Amin, Respondents, the Village Administrative Officers and few others came to the suit property, tried to vacate the petitioners and take possession. In E.P.No.237/04, the petitioners were not served with any notice. When they approached their Advocate and stated the details, he told that the E.P. was filed against Ramanujam and Jagadeesan.*

*Thereafter, the petitioners have filed this petition of objection. The respondents have filed R.E.P.No.237/04 praying for execution of the Sale Deed for the suit property. The petitioners are added for namesake and no notice is served upon the petitioners. Having impleaded these petitioners in the execution petition, not sending notice to them is legally unsustainable. The respondents have filed E.P.No.244/05 adding the petitioners as parties. But notice is not sent to the petitioners. The E.P. was closed as not pressed.*

### Digital Supreme Court Reports

*On the basis of C.R.P.No.2032/05, E.P.No.237 /04 is taken on file. When the Revision is pending before the High Court, the respondents have filed an execution petition. The respondents have not approached the court with clean hands. Even after E.P.No.237 /04 is taken on file, no notice was sent to the petitioners. A sale deed dated 17.8.2007 was executed on behalf of the petitioners also. Thereafter, another deed was written on 25.1.08 by removing the names of the petitioners. The sale deed will not bind the petitioners. To show that the suit properties are in the possession and enjoyment of the petitioners from 1967 till date, the Adangal register is filed. The petitioners will be put to irreparable loss if delivery is ordered. The petition is to be allowed.*

*3. The gist of the Counter Statement filed by the 7th respondent adopted by the respondents 1 to 6 and 8 is as follows:*

*The petition filed by the petitioners is not maintainable. The petitioners are parties to O.S.No.514/83 and also the subsequent proceedings thereafter. The petitioners are the 1st defendant Ramanujam's sister's sons. The 1st petitioners filed a suit in O.S.No.1384/1980 against Ayyavu Udayar, Ramanujam and others for permanent injunction. In the said suit, Ramanujam objected the claim of the petitioners and the suit was dismissed on 29.7.1982. As the petitioners were continuously troubling the father of the respondents, they were added as defendants 3 and 4 in the suit O.S.No.514/83. The defendants 1 and 2 filed an appeal A.S.No.469/86 before the High Court adding the petitioners also as parties. After the death of Ayyavu Udayar, these respondents were added as respondents 4 to 11 therein. On 29.9.2000, the column 6 of the decree in O.S.No.514/83 was removed and the appeal was dismissed. During the pendency of the appeal, the 1st respondent and his son entered into an agreement with Arivazhagan to sell the property.*

*Against the dismissal of the appeal, the defendants 1 and 2 filed L.P.A. No.62/2001 against the petitioners and the*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*respondents. As per the Order in LPA, the respondents deposited a further sum of Rs.67,000/- before the Court on 19.4.04. During the pendency of E.P.No.237/04, the defendants 1 & 2 filed SLP No.18184/2004 before the Supreme Court against the petitioners and the legal heirs of Ayyavu Udayar. when a Memo was filed before this Court about the pendency of the SLP, this Court dismissed the E.P. After the High Court Order, the execution petition 237 / 04 was taken on file, on endorsement E.P.No.244/05 was dismissed as not pressed. The LPA was dismissed on 20.1.2006. The defendants 1 & 2 filed a review petition No.359/06 and the same was dismissed on 18.4.06. The petitioners are aware of all the proceedings upto the Supreme Court and they were also parties in the proceedings. The 1st petitioner Rajamani entered into an agreement with one P.R. Jayakumar, Advocate. O.S.No.197/87 is now pending as 327/10. The petitioners do not have rights over the suit properties. They do not have any rights w object delivery of possession. The petitioners are not in possession of title suit properties. The petition is to be dismissed.*

*4. Whether the petition is bound to be allowed?*

*5. On the side of the petitioners, PW-1 was examined and Exhibits P-1 to P-11 were marked. On the side of the respondents, R- 1 was examined and Exhibits R-1 to R-16 were marked.*

**6. ORDER:**

*Both the sides argued their case on the basis of the petition and the reply filed by them. The case records were considered. Stating that the petitioners are in possession of the suit properties of O.S.No.514/83, on the side of the petitioners, the 2nd petitioner Ethirajulu was examined as PW-1 and 11 documents were marked. The order passed by the Tahsildar and RDO and six cultivation accounts are there.*

*On the side of the respondents, the Jill respondent was examined as RW-1 and 16 documents were marked.*

**Digital Supreme Court Reports**

*On the side of the petitioners, it was argued that the petitioners are in possession and enjoyment of the suit properties and that Ramanujam & Jagadeesan are not in possession of the same. The petitioners have filed the cultivation account and the orders passed by the orders passed by the RDO and stated that they are in possession of the properties. The documents filed by the petitioners confirm the same. The petitioners have also stated that they are in possession of the properties from 1967.*

*On the side of the respondents, the arguments by the petitioners were vehemently opposed and it was stated that the petitioners do not have any right to object and oppose the delivery of possession. The Ld. Counsel for the petitioners argued that the respondents have filed two execution petitions viz., E.P.No.237 /04 and E.P.No.244/05. On perusal of the court records, it is seen that the respondents filed E.P.No.237 /04 in 2004, got the sale deed and for delivery of possession of property made prayer only against Ramanujam and Jagadeesan. and that the petitioners are simply added as parties therein. When Ramanujam and Jagadeesan filed a Memo before this Court that SLP is pending, E.P.No.237 /04 was dismissed by this court. Challenging that order, the respondents filed Revision Petition for restoration of E.P.No.237 /04. In the meantime, the respondents filed the second execution petition E.P.No.244/05 against Ramanujam and Jagadeesan. A prayer which is made in E.P.No.237 /04 is also made in the second execution petition. In both the petitions, even though the names of Rajamani and Ethirajulu are stated, the prayer is made only against Ramanujam and Jagadeesan alone. The Senior Counsel appearing for the respondents has also accepted the same. A perusal of the records also show that it is true that no relief is claimed against the petitioners in column 9 of the E.P. and that prayer is made in column 9 only against Ramanujam and Jagadeesan as accepted by the Senior Advocate.*

*The Learned Counsel for the petitioners argued that no notice was sent to the petitioners herein in the E.P. and that*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*notice was sent only to Ramanujam and Jagadeesan. A perusal of the court records also shows that notice is sent from the court in the execution petition only to Ramanujam and Jagadeesan. Even though the petitioners are shown as respondents 3 & 4 in the execution petition, no notice was sent to them, as no prayer was made against them. The Senior Advocate for the respondents has not denied the same. In E.P. No.237/04, the court has executed the sale deed on behalf of Ramanujam, Jagadeesan, Ethirajulu and Rajamani. Challenging the said order, Ramanujam and Jagadeesan filed a revision before the Hon'ble High Court. The Hon'ble High Court has also directed that the names of Rajamani and Ethirajulu may be removed and this court has also executed a rectification deed removing the names of the petitioners. The RW-1 has also accepted this fact in the cross examination. The 1st respondent has also accepted in the cross examination that Ramanujam and Jagadeesan filed C.R.P. before the High Court stating that it is not proper to execute the sale deed on behalf of all the 4 persons; that it is ordered by the High Court to remove the names of Rajamani and Ethirajulu and execute the sale deed and that as the names of Rajamani and Ethirajulu are removed, the sale deed is not binding so far as Rajamani and Ethirajulu are concerned. It is accepted on the side of the respondents that the order and the sale deed will not bind the petitioners. During the course of the argument by both sides, it was stated that O.S.No.52/11 is pending before this court; that O.S.No.608/08 was filed before the District Munsif Court and that on transfer, the same is pending as O.S.No.52/11. It is accepted by the respondents that a suit for partition in respect of 3.60 acres, which is one item of the suit property. So it is clear that the respondents have filed claiming half share in the undivided 3 acres and 60 cents.*

*When PW-1 was cross-examined on the side of the respondents, questions were asked about O.S.No.326/10, 327/10 and 328/10. No details were asked for about O.S.No.52/11. The petitioners by oral and documentary evidences have proved that they are in possession of the*

**Digital Supreme Court Reports**

*suit properties. The Senior Advocate on the side of the respondents has also admitted that when delivery was to be taken, the petitioners were in possession and that prevented the effecting of delivery, the petitioners stated that they will set fire to themselves by pouring kerosene. On the side of the respondents, no favourable answers were obtained by addressing detailed questions to PW-1. On perusal of the records, it is seen that the petitioners were added in all the proceedings only nominally and no specific prayer is made in the execution petition against the petitioners. While cross-examining PW 1 on the side of the respondents, suggestion was made that he is giving false evidence only to prevent the effecting of delivery and to drag on the proceedings and the PW-1 has denied the same. In RW 1's evidence, it is seen that the High Court has removed the names of Rajamani and Ethirajulu and as Rajamani and Ethirajulu are nominally added, it will not affect their rights. The judgement in O.S.No.514/83 will not bind the petitioners. In E.P. also, no notice was paid for sending notice to the petitioners. In E.P.No.237/04 and E.P.No.214/05, relief is claimed in column 9 only against Ramanujam and Jagadeesan.*

*On the side of the respondents, it is proved that the possession of the suit property is with Ramanujam and Jagadeesan. It is not stated in their reply that the possession of the suit property is with Ramanujam and Jagadeesan. No independent witness was examined to show that Rajamani and Ethirajulu are not in possession and that Ramanujam and Jagadeesan are in possession of the suit property. In both the execution petitions, no prayer is made against the petitioners for delivery of possession. The petitioners have proved that they are in possession. The respondents have not produced the records relating to the proceedings in prior litigations. It is not proved that the possession of the property is with Ramanujam and Jagadeesan. As the respondents have not asked for any prayer in the execution petition against the petitioners herein to prove that the petitioners are in possession, as no acceptable reason is stated for not making any*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*prayer against foe petitioners, which affects the case of the respondents, when the petitioners have proved their possessory rights over the suit properties and also as the respondents can take possession only after taking legal steps/ proceedings and also as the objections raised by the petitioners are acceptable, this court holds that in the interest of justice, the petition is to be allowed.”*

57. Thus, according to the Executing Court, although the respondent nos. 1 and 2 herein were impleaded as parties in the execution petition filed by the appellants herein yet no notice was sent to them as there was no prayer made against them. Secondly, according to the Executing Court the respondent nos. 1 and 2 have been able to establish that they are in possession of the suit properties. In such circumstances, the objections raised by the respondent Nos. 1 and 2 herein under Section 47 of the CPC were upheld.
58. The High Court while affirming the order passed by the Executing Court proceeded altogether on a different footing. The High Court held as under:

*“25. Even after knowing the possession of the respondents 3 and 4 / defendants, in the earlier occasion, after so many years, the decree holders, purposely did not ask the Court to send notice to respondents 3 and 4 / defendants. In fact the decree has also been passed against the respondents 3 and 4 / defendants, in which the respondents 3 and 4 / defendants, are directed to hand over possession to the decree holders. Only taking into consideration of the same, the learned First Additional Subordinate Judge, Salem, had allowed the REA No. 163 of 2011 vi de order dated 12.08.2011, by holding that since, no notice is served to respondents 3 and 4/ defendants, the Court cannot pass any order directing the respondents 3 and 4/ defendants, to deliver possession and thereby their right of possession, is no way effected. Therefore, this Court is of the considered view that the said proposition taken by the court below do not have any material irregularity.*

*26. However, it is the duty of the Court below to dismiss the REP No.237 of 2004, after allowing the application filed in REA No. 163 of 2011 (47 CPC). But the learned First*

## Digital Supreme Court Reports

*Additional Subordinate Judge, Salem, without following the consequential procedure, allowed the revision petitioners/decree holders to file applications for amending the execution petition. Since the right of the respondents 3 and 4/defendants are determined in REA No. 163 of 2011, the question of subsequent amendment in the same EP (REP No.237 of 2004) in Column No. 10 virtually does not arise on the date. So far as respondents 3 and 4 are concerned, no execution petition was pending. Under the said circumstances, amendment petitions are not maintainable. Therefore, this Court is of the firm view that the amendment applications filed in REA Nos. 14 of 2012 and 145 of 2013, are not maintainable in limine.*

*27. The decree holders should have taken steps to amend the execution petition atleast after seeing the defence set up by the respondents 3 and 4/defendants in the REA No. 163 of 2011. But they have not taken any steps to amend the execution petition till the disposal of application filed under Section 47 CPC. More than that, the decree holder / revision petitioners, after knowing the result of REA No. 163 of 2011 in the year 2011, till 2015 they have not preferred any appeal against the order passed in the petition filed under Section 47 CPC. The reason for not filing the appeal or revision, immediately, is not explained on the side of the revision petitioners/decree holders. Though the procedure is meant to advance cause of justice, it is for the litigants to watch the proceedings, then and there, without any delay, with care and vigil.*

*28. Therefore, in the light, of the above discussions, this Court is of the opinion that the impugned order passed in the petition filed under Section 47 CPC is not having any material irregularity and thereby, the order dated 12.08.2011 made in REA No.163 of 2011 in REP No.237 of 2004 in OS No.514 of 1983, is sustained and CRP No.4311 of 2011, is dismissed.*

*29. Further, as already observed, after allowing the application filed under Section 47 CPC, the Execution Petition has to be closed. But for the reasons best known,*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*the execution petition filed by the revision petitioners/ decree holders was kept alive and thereafter, the revision petitioners/ decree holders took the applications for amendment. In fact, the same is not maintainable. Therefore, the orders dated 24.04.2015 made in REA Nos.14 of 2012 and 145 of 2013 in REP No.237 of 2004 in OS No.514 of 1983, are also sustained and CRP Nos.2150 & 2151 of 2015, are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed."*

59. It appears that the Courts below proceeded absolutely on a wrong footing. What the courts below should have considered is the simple fact whether the obstruction at the end of the respondent nos. 1 and 2 of the execution of the decree of specific performance and possession of the suit property could be said to be bona fide and genuine. In other words, the consideration at the end of both the courts should have been whether the respondent nos. 1 and 2 herein being nephews of the original vendors are acting in collusion with each other only with a view to frustrate and defeat the decree.
60. We are of the view that the Courts below failed to consider the following:
- a. The respondent Nos. 1 and 2 respectively are nephews of the vendors and claim to have come into possession of the suit property in the year 1983 when the suit was first instituted by the appellants before the ASJ. They were impleaded in the original suit as the defendant Nos. 3 and 4 respectively.
  - b. The decree in favour of the appellants granting specific performance with possession was affirmed by the High Court on 19.03.2004 and the SLP against the order of the High Court stood dismissed on 20.01.2006. The respondent Nos. 1 and 2 respectively chose not to contest the original suit before the ASJ. They did not appear even before the High Court and this Court in the appeals filed by the vendors (judgment debtors).
  - c. The respondent Nos. 1 and 2 were also impleaded in the execution petition bearing R.E.P. No. 237 of 2004 and the order of the High Court dated 21.02.2006 indicates that they had appeared through their advocate and were aware about the said execution petition.

**Digital Supreme Court Reports**

- d. The Executing Court executed the sale deed on 17.08.2007 and ordered for delivery of possession of the suit property to the appellants. When such order was sought to be effected by the appellants along with the Village Administrative Officer, the respondent no. 1 obstructed the delivery of possession.
  - e. Thereafter, the respondent Nos. 1 and 2 respectively filed an execution application R.E.A. No. 163 of 2011 on 12.03.2008 alleging fraud on the part of the appellants saying that they were not aware about the execution proceedings. At this stage, the respondent no. 2 brought onto the record for the first time that he along with the respondent no. 1 were cultivating the land constituting the suit property.
  - f. The respondent Nos. 1 and 2 respectively, after seven months i.e. on 18.10.2008 filed a petition before the revenue authorities for inclusion of their names in the cultivation account of the suit property and prayed that the same be done retrospectively from the year 1974. Though, the revenue authorities only allowed for inclusion of their names from 2008 onwards yet they were granted certificate that they were in possession of the suit property from 1974 onwards. Such certificate was provided to them on the basis of the “no objection” given by the vendors (judgment debtors) as they were considered to be title holders of the said property. From the facts on record, it can be discerned that the revenue authorities were not made aware of the sale deed executed in favour of the appellants herein and that the title of the suit property stood transferred to them.
61. It further appears that the respondent Nos. 1 and 2 respectively, claiming to be cultivating tenants, had contended before the courts below that the civil court lacked jurisdiction to adjudicate on matters pertaining to possession of the suit property and eviction therefrom. The respondents submitted that the decree passed in the original suit was a nullity and therefore, the validity of the decree could be challenged even during the execution proceedings.
62. A harmonious reading of Section 47 with Order XXI Rule 101 implies that questions relating to right, title or interest in a decretal property must be related to the execution, discharge or satisfaction of the decree. The import of such a reading of the provisions is that only matters arising subsequent to the passing of the decree can

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

be determined by an executing court under Section 47 and Order XXI Rule 101. Such reasoning is reinforced by the decisions of this Court in **C.F. Angadi v. Y.S. Hirannayya** reported in (1972) 1 SCC 191 and **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman** reported in (1970) 1 SCC 670, wherein it has been held that while determining a question under Section 47, an executing court cannot go behind the decree and question the correctness of the same.

63. What flows from the position of law, as afore stated, is that the issues that ought to have been raised by the parties during the adjudication of the original suit cannot be determined by the executing court as such adjudication may undermine the decree itself. This Court in **Rahul S. Shah v. Jinendra Kumar Gandhi** reported in (2021) 6 SCC 418 has held that the benefit of Section 47 cannot be availed to conduct a retrial causing failure of realisation of fruits of the decree. The relevant portion of the judgment is reproduced below:

*“24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. **Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind.** Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.*

***25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the***

## Digital Supreme Court Reports

**litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.**

*26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.*

**27. This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial.** *Order 1 and Order 2 which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.”*

(Emphasis supplied)

64. In the present case, the appellants have pleaded in their plaint that the respondent Nos. 1 and 2 respectively were impleaded therein as defendants as they were in possession of the suit property. However, the respondent Nos. 1 and 2 chose not to contest the suit despite being aware of the prayer of the appellant for delivery of possession of the suit properties. They could have filed a joint written statement stating that they are cultivating tenants at the stage of the original suit itself, but rather raised the said issue in the form of objections at the stage of execution.
65. Furthermore, the respondent Nos. 1 and 2 failed to produce any documentary evidence as regards their claim of being cultivating tenants, even at the stage of their Section 47 application. Instead, they filed for registration of their names in the cultivation account of

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

the suit property only in 2008 and prayed for retrospective inclusion of their names from 1974. While the Revenue authorities declined the retrospective inclusion of the respondents' names as cultivating tenants from 1974, it allowed for their inclusion in the cultivation account of the suit property starting from 2008 onwards. The revenue authorities also ordered for grant of certificate to the respondent Nos. 1 and 2 certifying that they were in possession of the suit property from 1974 on the strength of the "no objection" provided by the vendors.

66. The respondent Nos. 1 and 2 are asserting their independent right to remain in possession of the suit land and consequent protection under the Tamil Nadu Cultivating Tenants' Protection Act, 1955, owing to their status of being cultivating tenants granted in 2008 by the Revenue authorities.
67. It is worthwhile to revisit the facts that the High Court and this Court had affirmed the decree of specific performance with possession in favour of the appellants in the year 2004 and 2006 respectively. Subsequently, the sale deed was executed by the Executing Court on 17.08.2007 thereby transferring title of the suit property to the appellants. Despite such confirmation of the decree and transfer of title in favour of the appellants, it is incomprehensible why a notice was sent to the vendors by the revenue authorities in 2008. Further, the vendors gave "no objection" to the grant of certificate of possession to the respondent Nos. 1 and 2 from 1974 despite not having any authority to do so in light of the sale deed dated 17.08.2007.
68. In our considered view, the aforesaid by no stretch of imagination can be construed to be a legal right of possession existing independently from the title of the vendors which has now stood transferred to the appellants. It is nothing but a case of apparent collusion between the vendors and the respondent Nos. 1 and 2 to deprive the appellants from availing the fruits of the decree in their favour.
69. Even otherwise, the respondent Nos. 1 and 2 cannot claim protection of the special legislation of 1955 for the period during which they were not registered as tenants cultivating the suit properties. In our view, the certificate that they are in possession of the suit properties since 1974 does not come to their aid. We say so, because the said certificate does not establish any independent right of possession in favour of the respondent Nos. 1 and 2. Further, the certificate itself appears to have been obtained in collusion with the vendors who

## Digital Supreme Court Reports

at the time of giving “no objection” had ceased to be the owners of the suit property.

70. In such circumstances referred to above, we find it extremely difficult to accept that the respondent Nos. 1 and 2 are *bona fide* cultivating tenants of the suit property and thus, the determination of the question of them being in possession of the same must necessarily go against them and in favour of the appellants. Therefore, there is no question of deciding the validity of the decree on the ground of being a nullity due to lack of jurisdiction of the civil court to evict cultivating tenants.
71. In such circumstances referred to above, we have reached the conclusion that the High Court committed an egregious error in passing the impugned order. We must now ensure that the appellants are able to reap the fruits of the decree. We are also of the view that the rejection by the High Court of the amendments to the execution petition filed by the appellants, was erroneous and deserves to be set aside.
72. Before we close this matter, we firmly believe that we should say something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.
73. It is worthwhile to revisit the observations in **Rahul S. Shah (supra)** wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:

*“42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:*

*42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.*

*42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.*

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

*42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.*

*42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.*

**42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.**

*42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.*

*42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.*

**42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.**

*42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by*

## Digital Supreme Court Reports

*resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*

**42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.**

*42.11. Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.*

**42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.**

*42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.*

*42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."*

(Emphasis supplied)

74. The mandatory direction contained in Para 42.12 of **Rahul S. Shah (supra)** requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in **Bhoj Raj Garg v. Goyal Education and Welfare Society & Ors.**, Special Leave Petition (C) Nos. 19654 of 2022.

**Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.**

75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.
76. Registry is directed to forward one copy each of this judgment to all the High Courts at the earliest.
77. The Registry shall notify this matter once again after seven months only for the purpose of reporting compliance of the directions issued by us referred to above.

**F. CONCLUSION**

78. In the result, the appeals succeed and are hereby allowed. The impugned judgment passed by the High Court is hereby set aside. The order passed by the Executing Court is also hereby set aside.
79. The Executing Court shall now proceed to ensure that vacant and peaceful possession of the suit property is handed over to the appellants in their capacity as decree holders and if necessary, with the aid of police. This exercise shall be completed within a period of two months from today without fail.
80. Pending applications, if any, shall stand disposed of.

*Result of the case:* Appeals allowed.

A SHUB KARAN BUBNA @ SHUB KARAN PRASAD  
BUBNA

v.

SITA SARAN BUBNA & ORS.  
(Special Leave Petition (C) No.17932 of 2009)

B AUGUST 21, 2009

[R.V. RAVEENDRAN AND B. SUDERSHAN REDDY, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

C ss.2(20) and 54, O. 20 r.18, O. 26 r.13 – Partition suit –  
D Preliminary decree passed – Application for final decree –  
E Resisted on the ground of limitation – HELD: Where an  
F application does not invoke the jurisdiction of court to grant  
any fresh relief based on a new cause of action, but merely  
reminds or requests the court to do its duty by completing the  
remaining part of the pending suit, there is no question of any  
limitation – Such an application is not one to which Limitation  
Act would apply – As declaration of rights or shares is only  
the first stage in a suit for partition, a preliminary decree does  
not have the effect of disposing of the suit – Suit continues to  
be pending until partition, that is, division by metes and  
bounds, takes place by passing a final decree – An  
application requesting the court to take necessary steps to  
draw up a final decree effecting a division in terms of the  
preliminary decree is neither an application for execution  
(falling under Article 136 of Limitation Act) nor an application  
seeking a fresh relief (falling under Article 137 of Limitation  
Act) – Code does not contemplate filing of an application for  
final decree – Therefore, when a preliminary decree is passed  
G in a partition suit, the proceedings should be continued by  
fixing dates for further proceedings till a final decree is passed  
–It is the duty and function of the court which in the normal  
course has to be performed by the court itself as a  
continuation of the preliminary decree – Performance of such

H

SHUB KARAN BUBNA @ SHUB KARAN PRASAD BUBNA 41  
v. SITA SARAN BUBNA

*function does not require a reminder or nudge from the litigant – The mindset should be to expedite the process of dispute resolution – The application filed by plaintiff for drawing up of a final decree was rightly held to be not subject to any period of limitation – Court concerned would expedite the final decree proceedings - Limitation.*

*Lalta Prasad v. Brahma Din AIR 1929 Oudh 456; Ramabai Govind v. Anant Daji AIR 1945 Bom. 338; Abdul Kareem Sab v. Gowlivada S. Silar Saheb AIR 1957 AP 40; A. Manjundappa v. Sonnappa & Ors. AIR 1965 Kar. 73; Sudarsan Panda & Ors. v. Laxmidhar Panda & Ors. AIR 1983 Orissa 121; Laxmi v. A.Sankappa Alwa AIR 1989 Ker. 289; Phoolchand vs. Gopal Lal AIR 1967 SC 1470; Hasham Abbas Sayyad v. Usman Abbas Sayyad & Ors. 2007 (2) SCC 355; and Bikoba Deora Gaikwad v. Hirabai Marutirao Ghorgare 2008 (8) SCC 198, relied on*

*DECREE – Preliminary decree and final decree – Concept of, in the context of partition suits and mortgage suits – HELD: There is a fundamental difference between mortgage suits and partition suits – In a preliminary decree in a mortgage suit (whether a decree for foreclosure under r.2 or a decree for sale under r.4 of O 34 CPC), the amount due is determined and declared and the time within which the amount has to be paid is also fixed and the consequence of non-payment within the time stipulated is also specified – A preliminary decree in a mortgage suit decides all the issues and what is left out is only the action to be taken in the event of non-payment of the amount – When the amount is not paid, plaintiff gets a right to seek a final decree for foreclosure or for sale – On the other hand, in a partition suit the preliminary decree only decides a part of the suit and, therefore, an application for passing a final decree is only an application in a pending suit, seeking further progress – In partition suits, there can be a preliminary decree followed by a final decree, or there can be a decree which is a combination of*

- A preliminary decree and final decree or there can be merely a single decree with certain further steps to be taken by the court – In fact several applications for final decree are permissible in a partition suit – The application for final decree as and when made is considered to be an application in a pending suit for granting the relief of division by metes and bounds –
- B Therefore, the concept of final decree in a partition suit is different from the concept of final decree in a mortgage suit – Consequently, an application for a final decree in a mortgage suit is different from an application for final decree in a partition suit.
- C

**SUIT:**

- Suit for partition – Partition – Concept of – HELD: ‘Partition’ is a re-distribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allottees – The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty –
- D A partition of a property can be only among those having a share or interest in it – A person who does not have a share in such property cannot obviously be a party to partition – ‘Separation of share’ is a species of ‘partition’ – When all co-owners get separated, it is a partition – Separation of share/s refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds – In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiff’s share in the suit properties, but also division of his share by metes and bounds – This involves three issues (i) whether the person seeking division has a share or interest in the suit property/properties; (ii) whether he is entitled to the relief of division and separate possession; and (iii) how and in what manner the property/properties should be divided by
- E
- F
- G
- H metes and bounds.

**LEGISLATION:**

*Suit – Filing of suit and securing relief to litigant – Proceedings in between – Need for legislation to avoid multiplicity of proceedings – HELD: Cases have been found where a suit is decreed or a preliminary decree is granted within a year or two and the final decree proceeding and execution takes decades for completion – This is an area which contributes to considerable delay and consequential loss of credibility of the civil justice system – Courts and lawyers should give as much importance to final decree proceedings and executions, as they give to the main suits – A conceptual change regarding civil litigation, is required so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant – It is hoped that the Law Commission and Parliament will bestow their attention on this issue and make appropriate recommendations/amendments so that the suit will be a continuous process from the stage of its initiation to the stage of securing actual relief – The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements – The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief – In so far final decree proceedings are concerned, there is no reason for even legislative intervention – As the provisions of the Code stand as on date, initiation of final decree proceedings does not depend upon an application for final decree for initiation (unless the local amendments require the same) – Practice and Procedure.*

**Case Law Reference:**

**AIR 1929 Oudh 456**      **relied on**      **para 8**  
**AIR 1945 Bom. 338**      **relied on**      **para 8**

A	AIR 1957 AP 40	relied on	para 8
	AIR 1965 Kar. 73	relied on	para 8
	AIR 1983 Orissa 121	relied on	para 8
B	AIR 1989 Ker. 289	relied on	para 8
	AIR 1967 SC 1470	relied on	para 8
	2007 (2) SCC 355	relied on	para 8
	2008 (8) SCC 198	relied on	para 8

C  
CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 17932/2009.

D  
From the Judgment and Order dated 15.1.2009 of the High Court of Judicature at Patna in C.R. No. 2216/2008.

S.B. Sanyal and Subhro Sanyal for the Petitioner.

The Order of the Court was delivered by

E  
F  
G  
R.V. RAVEENDRAN, J. The first respondent and his mother filed a suit for partition against petitioner and two others in the year 1960 in the court of the First Additional Judge, Muzaffarnagar, for partition and separate possession of their one-third share in the plaint schedule properties and for rendition of accounts. The suit was in respect of three non-agricultural plots and some movables. After contest the suit was decreed on 25.2.1964 directing a preliminary decree for partition be drawn in regard to the one-third share of the plaintiffs in the said plots and a final decree be drawn up through appointment of a Commissioner for actual division of the plots by metes and bounds.

H  
2. Feeling aggrieved the petitioner (and others) filed an appeal before the Patna High Court which was dismissed on 29.3.1974. The first respondent filed an application on 1.5.1987 for drawing up a final decree. The petitioner filed an application

on 15.4.1991 to drop the final decree proceedings as it was barred by limitation. The said application was dismissed by the trial court holding that once the rights/shares of the plaintiff had been finally determined by a preliminary decree, there is no limitation for an application for affecting the actual partition/division in accordance with the preliminary decree, as it should be considered to be an application made in a pending suit. The said order was challenged by the petitioner in a revision petition which was dismissed by the High Court order dated 15.1.2009. The petitioner has filed this special leave petition seeking leave to appeal against the said decision of the High Court.

3. The appellant contends that when a preliminary decree is passed in a partition suit, a right enures to the plaintiff to apply for a final decree for division of the suit property by metes and bounds; that whenever an application is made to enforce a right or seeking any relief, such application is governed by the law of limitation; that an application for drawing up a final decree would be governed by the residuary Article 137 of Limitation Act, 1963 ('Act' for short) which provides a period of limitation of three years; that as such right to apply accrues on the date of the preliminary decree, any application filed beyond three years from the date of preliminary decree (that is 12.3.1964) or at all events beyond three years from the date when the High Court dismissed the defendant's appeal (that is 29.3.1974) would be barred by limitation. Reliance was placed by the petitioner on the decision of this Court in *Sital Parshad v. Kishori Lal* [AIR 1967 SC 1236], the decision of the Privy Council in *Saiyid Jowad Hussain v. Gendan Singh* [AIR 1926 PC 93] and a decision of the Patna High Court in *Thakur Pandey v. Bundi Ojha* [AIR 1981 Patna 27] in support of his contention.

**The issue:**

4. 'Partition' is a re-distribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them, into

- A different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition.
- B 'Separation of share' is a species of 'partition'. When all co-owners get separated, it is a partition. Separation of share/s refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother. In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiff's share in the suit properties, but also division of his share by metes and bounds. This involves three issues: (i) whether the person seeking division has a share or interest in the suit property/properties; (ii) whether he is entitled to the relief of division and separate possession; and (iii) how and in what manner, the property/properties should be divided by metes and bounds?
- C
- D
- E

5. In a suit is for partition or separation of a share, the court at the first stage decides whether the plaintiff has a share in the suit property and whether he is entitled to division and separate possession. The decision on these two issues is exercise of a judicial function and results in first stage decision termed as 'decree' under Order 20 Rule 18(1) and termed as 'preliminary decree' under Order 20 Rule 18(2) of the Code. The consequential division by metes and bounds, considered to be a ministerial or administrative act requiring the physical inspection, measurements, calculations and considering various permutations/ combinations/alternatives of division is referred to the Collector under Rule 18(1) and is the subject
- F
- G
- H

matter of the final decree under Rule 18(2). The question is whether the provisions of Limitation Act are inapplicable to an application for drawing up a final decree.

6. Rule 18 of Order 20 of the Code of Civil Procedure ('Code' for short) deals with decrees in suits for partition or separate possession of a share therein which is extracted below:

*"18. Decree in suit for partition of property or separate possession of a share therein.— Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then, —*

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties, interested in the property and giving such further directions as may be required."

The terms 'preliminary decree' and 'final decree' used in the said rule are defined in Explanation to section 2(2) of the Code and reads thus :

"A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the

A suit. It may be partly preliminary and partly final.”

Section 54 of the Code dealing with partition of estate or separation of share, relevant for purposes of Rule 18(1) reads thus:

B “Where the decree is for the partition of an undivided  
estate assessed to the payment of revenue of the  
government, or for the separate possession of a share of  
C such an estate, the partition of the estate or the separation  
of the share shall be made by the Collector or any gazetted  
sub-ordinate of the Collector deputed by him in this behalf,  
in accordance with the law (if any) for the time being in  
force relating to the partition, or the separate possession  
of shares, of such estates.”

D Rule 13 of Order 26 of the Code dealing with  
Commissions to make partition of immovable property, relevant  
for purposes of Rule 18(2) reads thus:

E “Where a preliminary decree for partition has been  
passed, the Court may, in any case not provided for by  
section 54, issue a commission to such person as it thinks  
fit to make the partition or separation according to the  
rights as declared in such decree.”

F 7. We may now turn to the provisions of the Limitation Act,  
1963. Section 3 of the Act provides that subject to sections 4  
to 24, every suit instituted, appeal preferred and application  
made after the prescribed period shall be dismissed. The term  
‘period of limitation’ is defined as the period of limitation  
G prescribed for any suit, appeal or application by the Schedule  
to the Act (vide clause (j) of section 2 of the Act). The term  
“prescribed period” is defined as the period of limitation  
computed in accordance with the provisions of the said Act.  
The Third Division of the Schedule to the said Act prescribes  
the periods of limitation for Applications. The Schedule does  
H not contain any Article prescribing the limitation for an

application for drawing up of a final decree. Article 136 A prescribes the limitation for execution of any decree or order of civil court as 12 years when the decree or order becomes enforceable. Article 137 provides that for any other application for which no period of limitation is provided elsewhere in that division, the period of limitation is three years which would begin to run from the time when the right to apply accrues. It is thus clear that every application which seeks to enforce a right or seeks a remedy or relief on the basis of any cause of action in a civil court, unless otherwise provided, will be subject to the law of limitation. But where an application does not invoke the jurisdiction of the court to grant any fresh relief based on a new cause of action, but merely reminds or requests the court to do its duty by completing the remaining part of the pending suit, there is no question of any limitation. Such an application in a suit which is already pending, which contains no fresh or new prayer for relief is not one to which Limitation Act, 1963 would apply. These principles are evident from the provisions of the Code and the Limitation Act and also settled by a series of judgments of different High Court over the decades (See : for example, *Lalta Prasad vs. Brahma Din* [AIR 1929 Oudh 456], *Ramabai Govind v. Anant Daji* [AIR 1945 Bom. 338], *Abdul Kareem Sab vs. Gowlivada S. Silar Saheb* [AIR 1957 AP 40], *A. Manjundappa v. Sonnappa & Ors.* [AIR 1965 Kar. 73], *Sudarsan Panda & Ors. v. Laxmidhar Panda & Ors.* [AIR 1983 Orissa 121], *Laxmi v. A.Sankappa Alwa* [AIR 1989 Ker. 289]. We may also draw support from the judgments of this Court in *Phoolchand vs. Gopal Lal* [AIR 1967 SC 1470], *Hasham Abbas Sayyad v. Usman Abbas Sayyad & Ors.* [2007 (2) SCC 355] and *Bikoba Deora Gaikwad v. Hirabai Marutirao Ghorgare* [2008 (8) SCC 198].

8. Once a court passes a preliminary decree, it is the duty of the court to ensure that the matter is referred to the Collector or a Commissioner for division unless the parties themselves agree as to the manner of division. This duty in the normal course has to be performed by the court itself as a continuation

- A of the preliminary decree. Sometimes either on account of the pendency of an appeal or other circumstances, the court passes the decree under Rule 18(1) or a preliminary decree under Rule 18(2) and the matter goes into storage to be revived only when an application is made by any of the parties, drawing  
 B its attention to the pending issue and the need for referring the matter either to the Collector or a Commissioner for actual division of the property. Be that as it may.

C 9. The following principles emerge from the above discussion regarding partition suits :

(9.1.) In regard to estates assessed to payment of revenue to the government (agricultural land), the court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector  
 D (or his subordinate) to effect actual partition or separation in accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with section 54 of Code. Such  
 E entrustment to the Collector under law was for two reasons. First is that Revenue Authorities are more conversant with matters relating to agricultural lands. Second is to safeguard the interests of government in regard to revenue. (The second  
 F reason, which was very important in the 19th century and early 20th century when the Code was made, has now virtually lost its relevance, as revenue from agricultural lands is negligible). Where the Collector acts in terms of the decree, the matter does not come back to the court at all. The court will not interfere with the partitions by the Collector, except to the extent of any complaint of a third party affected thereby.

G (9.2.) In regard to immovable properties (other than agricultural lands paying land revenue), that is buildings, plots etc. or movable properties:

H (i) where the court can conveniently and without further enquiry make the division without the assistance of any

SHUB KARAN BUBNA @ SHUB KARAN PRASAD BUBNA 51  
v. SITA SARAN BUBNA [R.V. RAVEENDRAN, J.]

Commissioner, or where parties agree upon the manner of division, the court will pass a single decree comprising the preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

(ii) where the division by metes and bounds cannot be made without further inquiry, the court will pass a preliminary decree declaring the rights of the parties interested in the property and give further directions as may be required to effect the division. In such cases, normally a Commissioner is appointed (usually an Engineer, Draughtsman, Architect, or Lawyer) to physically examine the property to be divided and suggest the manner of division. The court then hears the parties on the report, and passes a final decree for division by metes and bounds.

The function of making a partition or separation according to the rights declared by the preliminary decree, (in regard to non-agricultural immovable properties and movables) is entrusted to a Commissioner, as it involves inspection of the property and examination of various alternatives with reference to practical utility and site conditions. When the Commissioner gives his report as to the manner of division, the *proposals* contained in the report are considered by the court; and after hearing objections to the report, if any, the court passes a final decree whereby the relief sought in the suit is granted by separating the property by metes and bounds. It is also possible that if the property is incapable of proper division, the court may direct sale thereof and distribution of the proceeds as per the shares declared.

(9.3.) As the declaration of rights or shares is only the first stage in a suit for partition, a preliminary decree does not have the effect of disposing of the suit. The suit continues to be pending until *partition*, that is division by metes and bounds,

A takes place by passing a final decree. An application requesting the court to take necessary steps to draw up a final decree effecting a division in terms of the preliminary decree, is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief B (falling under Article 137 of Limitation Act). It is only a reminder to the court to do its duty to appoint a Commissioner, get a report, and draw a final decree in the pending suit so that the suit is taken to its logical conclusion.

C 10. The three decisions relied on by the petitioner (referred to in para 3 above) are not relevant for deciding the issue arising in this case. They all relate to suits for mortgage and not partition. There is a fundamental difference between mortgage suits and partition suits. In a preliminary decree in a mortgage suit (whether a decree for foreclosure under Rule 2 D or a decree for sale under Rule 4 of Order 34 of the Code), the amount due is determined and declared and the time within which the amount has to be paid is also fixed and the consequence of non payment within the time stipulated is also specified. A preliminary decree in a mortgage suit decides all E the issues and what is left out is only the action to be taken in the event of non payment of the amount. When the amount is not paid the plaintiff gets a right to seek a final decree for foreclosure or for sale. On the other hand, in a partition suit the preliminary decrees only decide a part of the suit and therefore F an application for passing a final decree is only an application in a pending suit, seeking further progress. In partition suits, there can be a preliminary decree followed by a final decree, or there can be a decree which is a combination of preliminary decree and final decree or there can be merely a single decree G with certain further steps to be taken by the court. In fact several applications for final decree are permissible in a partition suit. A decree in a partition suit enures to the benefit of all the co-owners and therefore, it is sometimes said that there is really no judgment-debtor in a partition decree. A preliminary decree H for partition only identifies the properties to be subjected to

partition, defines and declares the shares/rights of the parties. That part of the prayer relating to actual division by metes and bounds and allotment is left for being completed under the final decree proceedings. Thus the application for final decree as and when made is considered to be an application in a pending suit for granting the relief of division by metes and bounds. Therefore, the concept of final decree in a partition suit is different from the concept of final decree in a mortgage suit. Consequently an application for a final decree in a mortgage suit is different from an application for final decree in partition suits.

**A suggestion for debate and legislative action**

11. The century old civil procedure contemplates judgments, decrees, preliminary decrees and final decrees and execution of decrees. They provide for a 'pause' between a decree and execution. A 'pause' has also developed by practice between a preliminary decree and a final decree. The 'pause' is to enable the defendant to voluntarily comply with the decree or declaration contained in the preliminary decree. The ground reality is that defendants normally do not comply with decrees without the pursuance of an execution. In very few cases, the defendants in a partition suit, voluntarily divide the property on the passing of a preliminary decree. In very few cases, defendants in money suits, pay the decretal amount as per the decrees. Consequently, it is necessary to go to the second stage that is levy of execution, or applications for final decree followed by levy of execution in almost all cases.

12. A litigant coming to court seeking relief is not interested in receiving a paper decree, when he succeeds in establishing his case. What he wants is relief. If it is a suit for money, he wants the money. If it is a suit for property, he wants the property. He naturally wonders why when he files a suit for recovery of money, he should first engage a lawyer and obtain a decree and then again engage a lawyer and execute the decree. Similarly, when he files a suit for partition, he wonders

- A why he has to first secure a preliminary decree, then file an application and obtain a final decree and then file an execution to get the actual relief. The common-sensical query is: why not a continuous process? The litigant is perplexed as to why when a money decree is passed, the court does not fix the date for payment and if it is not paid, proceed with the execution; when a preliminary decree is passed in a partition suit, why the court does not forthwith fix a date for appointment of a Commissioner for division and make a final decree and deliver actual possession of his separated share. Why is it necessary for him to remind the court and approach the court at different stages?

13. Because of the artificial division of suits into preliminary decree proceedings, final decree proceedings and execution proceedings, many Trial judges tend to believe that adjudication of the right being the judicial function, they should concentrate on that part. Consequently, adequate importance is not given to the final decree proceedings and execution proceedings which are considered to be ministerial functions. The focus is on disposing of cases, rather than ensuring that the litigant gets the relief. But the focus should not only be on early disposal of cases, but also on early and easy securing of relief for which the party approaches the court. Even among lawyers, importance is given only to securing of a decree, not securing of relief. Many lawyers handle suits only till preliminary decree is made, then hand it over to their juniors to conduct the final decree proceedings and then give it to their clerks for conducting the execution proceedings. Many a time, a party exhausts his finances and energy by the time he secures the preliminary decree and has neither the capacity nor the energy to pursue the matter to get the final relief. As a consequence, we have found cases where a suit is decreed or a preliminary decree is granted within a year or two, the final decree proceeding and execution takes decades for completion. This is an area which contributes to considerable delay and consequential loss of credibility of the civil justice system. Courts and Lawyers should give as much importance to final decree

proceedings and executions, as they give to the main suits. A

14. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant. We hope that the Law Commission and Parliament will bestow their attention on this issue and make appropriate recommendations/amendments so that the suit will be a continuous process from the stage of its initiation to the stage of securing actual relief. The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief. In money suits and other suits requiring a single decree, the process of suit should be a continuous process consisting of the first stage relating to determination of liability and then the second stage of execution and recovery, without any pause or stop or need for the plaintiff to initiate a separate proceedings for execution. In suits for partition and other suits involving declaration of the right and ascertainment/quantification of the relief, the process of the suit should be continuous, consisting of the first stage of determination and declaration of the right, second stage of ascertainment/division/ B  
C  
D  
E  
F  
G  
H

A quantification, and the third stage of execution to give actual relief.

**Conclusion**

B 15. In so far final decree proceedings are concerned, we see no reason for even legislative intervention. As the provisions of the Code stand at present, initiation of final decree proceedings does not depend upon an application for final decree for initiation (unless the local amendments require the same). As noticed above, the Code does not contemplate filing  
C an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the court. Performance of such function does not require a reminder or  
D nudge from the litigant. The mindset should be to expedite the process of dispute resolution.

E 16. In view of the foregoing, we are of the view that the application filed by the plaintiff in this case for drawing up of a final decree, was rightly held to be not subject to any period of limitation. We therefore dismiss this special leave petition as having no merit, with a request to expedite the final decree proceedings.

R.P.

Appeal dismissed.

1956

January 31

## JAI NARAIN RAM LUNDIA

v.

## KEDAR NATH KHETAN AND OTHERS.

[VIVIAN BOSE, JAFER IMAM and CHANDBASEKHARA  
AIYAR JJ.]

*Execution—Power of transferee Court—Decree for specific performance—Reciprocal conditions indissolubly linked together—Alteration in a material particular, if permissible—Code of Civil Procedure (Act V of 1908), ss. 47, 42, O. XXI, r. 32(1).*

An executing court cannot go behind a decree so as to vary its terms and when the obligations it imposes on the parties are reciprocal and inseverable, rendering partial execution impossible, the decree must be executed wholly as it stands or not at all. This is particularly true of a decree for specific performance where the party who seeks execution must satisfy the executing court that he is in a position to perform the obligations which the decree imposes on him.

That in cases where the identity or substance of what the decree directs a party to give to the other is in dispute, the executing court alone has the power to decide it under s. 47 of the Code of Civil Procedure and under s. 42 of the Code the powers of the court executing a decree on transfer are identical with those of the court which passed the decree.

That although the remedy provided by O. XXI, r. 32(1) of the Code of Civil Procedure is available in execution of a decree for specific performance, it can be used only by a person entitled to execute the decree and if, by reason of his own incapacity to perform his part, he is precluded from seeking execution, O. XXI, r. 32(1), can have no application.

Consequently, in a case where, as in the present, the defendant sought to execute a decree for specific performance of a contract but was himself unable to perform one of the obligations the decree imposed on his party, namely, to transfer five annas share in a partnership firm, for the reason that the firm had ceased to exist by dissolution before the date of execution, he was not entitled to execute the decree.

*Held further*, that the defendant could not be allowed to substitute five annas share in the assets of the dissolved firm instead, as that would amount to an alteration of the decree which the execution court was not competent to make.

CIVIL APPELLATE JURISDICTION: Civil Appeal  
No. 206 of 1955.

On appeal from the judgment and order dated the 5th May 1954 of the Patna High Court in Appeal from the Original Order No. 284 of 1951 arising out of the order dated the 11th July 1951 of the Court of Subordinate Judge, Motihari in Misc. Case No. 30 of 1951.

1956

*Jai Narain Ram  
Lundia  
v.  
Kedar Nath  
Khetan and others*

*Veda Vyas*, (*S. K. Kapur* and *Ganpat Rai*, with him) for the appellant.

*C. K. Daphtary*, *Solicitor-General of India* (*K. B. Asthana* and *C. P. Lal*, with him) for respondent No. 1.

1956. January 31. The Judgment of the Court was delivered by

BOSE J.—This appeal arises out of certain execution proceedings. The decree which the appellant, Jainarain Ram Lundia, seeks to execute is one that directs specific performance of a contract to sell certain shares in a private limited company known as the Ganga Devi Sugar Mills, together with a five annas share in a partnership firm called the Marwari Brothers, on payment of a sum of Rs. 2,45,000.

The facts are as follows. The partnership firm, known as the Marwari Brothers, was formed on the 29th of February 1936. The partners consisted of two groups called the Bettia Group and the Padrauna Group. The Padrauna Group consisted of (1) Kedar-nath Khetan and (2) a firm called Surajmal. These two were the plaintiffs in the suit. Kedarnath was one of the partners of the Surajmal firm. The Bettia Group consisted of (1) Gobardhan Das (2) Jainarain Ram Lundia (3) Badri Prasad and (4) Bisheshwar Nath. On Bisheshwar Nath's death his son Madan Lal Jhunjhunwalla stepped into his shoes. These persons were the defendants.

The Marwari Brothers Firm was formed for the purpose of promoting a company for starting a sugar mill in Champaran and for securing the managing agency of the company for itself for a period of ninety years. This was done. The capital of the company consisted of Rs. 8,00,000 divided into 800 shares of

1956

Jai Narain Ram  
Lundia

v.

Kedar Nath  
Khetan and others

Bose J.

Rs. 1,000 each. The shares were distributed as follows. In the Bettia Group Gobardhan Das and his brother Badri Prasad had 100 shares; Jainarain had 150 and Madan Lal had 100. The Bettia Group thus had 350 shares between them. The other group (Padrauna) held the remaining 450 shares.

About five years later the two sets of partners fell out and, as a result, the Bettia Group agreed, on 1-1-1941, to sell a certain number of their shares in the Ganga Devi Sugar Mills Limited to the Padrauna Group along with a certain share in the Marwari Brothers firm. The exact number of shares agreed to be sold and the extent of the share in the firm was a matter of dispute but that does not concern us at this stage because we are only concerned with the final result embodied in the decree now under execution.

The Padrauna Group sued for specific performance and the dispute was carried as far as the Federal Court. That Court affirmed the decree of the Calcutta High Court on 6-5-1949. The substance of the decree was this:

1. "It is declared that upon payment and or tender to the defendants-appellants Jainarain Ram Lundia and Madan Lal Jhunjhunwala of the sum of Rs. 2,45,000.....with interest thereon.....by the plaintiffs, the plaintiffs are entitled to 250 shares belonging to the said defendants in the Ganga Devi Sugar Mills Limited and five annas share belonging to them in the Marwari Brothers.....and to all dividends and profits in respect thereof with effect from 1-2-1941....."

2. "And it is further ordered and decreed that against payment or tender by the plaintiffs to the said defendants.....of the said sum of Rs. 2,45,000 with interest as aforesaid the said defendants-appellants and all proper parties do execute in favour of the plaintiffs proper deed or deeds of transfer or assignment of the said 250 shares in the Ganga Devi Sugar Mills Limited and the said five annas share in the Marwari Brothers....."

This was in slight variation of the first Court's decree. The exact variation does not matter. All

that it is necessary to note is that the plaintiffs (that is, the Padrauna Group) tendered the money some time after the first Court's decree and before the Calcutta High Court's decree. The tender was not accepted as the defendants (the Bettia Group) had appealed. It is admitted that there was no second tender after the High Court's decree.

After the Federal Court had settled the matter, one of the defendants, Jainarain Ram Lundia, applied to the Calcutta High Court for execution. The decree was transferred to the Subordinate Judge, Motihari, and the execution proceedings started there on 25-1-1951. One of the plaintiffs, Kedarnath Khetan, filed an objection petition on 20-3-1951. That is the objection we are concerned with. Among other things, one of the objections was that the defendants were not in a position to implement the conditions imposed on them by the decree because the Marwari Brothers firm was dissolved by agreement between the parties before the Federal Court's decree and was no longer in existence. The present appeal turns almost entirely on that fact and on the consequences that flow from it.

The first Court, that is, the Subordinate Judge's Court at Motihari to whom the decree had been transferred, declined to go into this holding that it had no jurisdiction as a transferee Court.

The plaintiff Kedarnath appealed to the High Court and succeeded. The High Court held that the transferee Court had jurisdiction, that the Marwari Brothers had been dissolved and that because of that the defendants could not execute the decree.

The defendants appealed here.

We will first consider the question of fact, namely, whether the Marwari Brothers was still in existence as a firm at the date of the execution application. On this point we agree with the High Court that it was not, for the following reasons.

The plaintiff Kedarnath asserted in his objection petition that the firm had been dissolved by agreement between the parties "including the plaintiffs and the defendants". This fact was not denied by

1956

---

*Jai Narain Ram  
Lundia*

v.

*Kedar Nath  
Khetan and others*


---

*Bose J.*

1956

Jai Narain Ram  
Lundia

v.

Kedar Nath  
Khetan and others

Bose J.

the defendant Jainarain Ram Lundia in his rejoinder though the fact was specifically alleged to be within his personal knowledge. Even if he did not know whether the firm had been dissolved or not (a fact which cannot be the case for reasons that we shall give later) he was certainly in a position to admit or deny whether the fact was within his personal knowledge. His silence can therefore only have one meaning.

The defendant's learned counsel contended before us that the fact had been denied by implication because Kedarnath stated that his side was, and had always been, ready to perform their part of the decree. Counsel argued that as the plaintiffs contended that performance was not possible after the dissolution of the Marwari Brothers firm this meant that the firm was still in existence. We reject this contention and remark in passing that this is inconsistent with another argument which was also urged in this Court, namely that the fact of dissolution was no bar to performance on the defendant's part.

Quite apart from the language of the rejoinder, the defendant Jainarain said in paragraph 15 of his application dated 12-7-1954 made to the High Court for leave to appeal here that

"the said Marwari Brothers was in existence on the date of the said conveyance, namely 14th September 1950, and died a natural death on the conveyance of the Ganga Devi Sugar Mills. to North Bihar Sugar Mills".

This is a clear admission that the firm was dissolved, at any rate, on 14-9-1950. The plaintiff's contention is that it was dissolved much earlier but whether that was so or not will make no difference to this appeal because 14-9-1950 is also before the date of the application for execution.

The defendant's learned counsel tried to explain this away also. He said that the defendant did not mean that the firm was dissolved on that date but that as the only purpose for which the firm existed, namely, the managing agency of the Ganga Devi Sugar Mills, had gone the firm could no longer function.

In order to understand this, some further facts will be necessary. While the plaintiff's appeal was being heard in the High Court, the defendants made an application to that Court on 14-4-1954 asking for permission to adduce further evidence in the shape of a sale deed dated 14-9-1950. The defendant contended that he had only "recently" come to know that the Ganga Devi Sugar Mills had sold *all* its land, machinery, etc. to the North Bihar Sugar Mills on 14-9-1950. This terminated the managing agency, and as the only business of the firm was this managing agency and as that was the only purpose for which the firm was formed, it was no longer able to function. But he said that this deed would show conclusively that the firm was in existence on that date. The High Court refused to accept this document because it considered that the only ground on which additional evidence can be admitted in appeal is when the Court is unable to pronounce judgment on the material already before it; as that was not the case here it rejected the document.

We need not decide whether there is any conflict of view between the Privy Council decisions in *Kessowji Issur v. G.I.P. Rly.*<sup>(1)</sup> and *Parsotim v. Lal Mohar*<sup>(2)</sup> on the one hand and *Indrajit Pratap Sahi v. Amar Singh*<sup>(3)</sup> on the other because, even if this evidence were to be admitted and were to be accepted as true, there would still be the defendant's admission in the High Court that the firm stood dissolved at least on 14-9-1950. We are not able to construe the statement in any other way. The plaintiff says that the dissolution was much earlier and that the firm mentioned in the sale deed now sought to be filed was not the same firm but another firm of the same name, but even if the defendant's version be accepted the fact still remains that even according to his statement there was a dissolution before his application for execution and that therefore the defendants were not in a position to assign their five annas share

1956

Jai Narain Ram  
Lundia

v.

Kedar Nath  
Khetan and others

—  
Bose J.

(1) [1907] L.R. 34 I.A. 115, 122.

(2) [1931] L.R. 53 I.A. 254.

(3) [1923] L.R. 50 I.A. 183, 190, 191.

1956

---

Jai Narain Ram

Lundia

v.

Kedar Nath

Khetan and others

---

Bose J.

in the Marwari Brothers firm. We now have to consider the effect of that.

Much of the argument about this revolved round the question whether the equitable rules that obtain before decree in a suit for specific performance continue at the stage of execution. It is not necessary for us to go into that here because the position in the present case is much simpler. When a decree imposes obligations on both sides which are so conditioned that performance by one is conditional on performance by the other execution will not be ordered unless the party seeking execution not only offers to perform his side but, when objection is raised, satisfies the executing Court that he is in a position to do so. Any other rule would have the effect of varying the conditions of the decree: a thing that an executing Court cannot do. There may of course be decrees where the obligations imposed on each side are distinct and severable and in such a case each party might well be left to its own execution. But when the obligations are reciprocal and are interlinked so that they cannot be separated, any attempt to enforce performance unilaterally would be to defeat the directions in the decree and to go behind them which, of course, an executing Court cannot do. The only question therefore is whether the decree in the present case is of this nature. We are clear that it is.

The relevant part of the decree has already been quoted. It directs that

“against payment or tender by the plaintiffs... the said defendants...do execute in favour of the plaintiffs proper deed or deeds of transfer of...five annas share in the Marwari Brothers...”

This is not a case of two independent and severable directions in the same decree but of one set of reciprocal conditions indissolubly linked together so that they cannot exist without each other. The fact that it is a decree for specific performance where the decree itself cannot be given unless the side seeking performance is ready and willing to perform his side of the bargain *and is in a position to do so*, only strengthens the conclusion that that was the meaning

and intendment of the language used. But the principle on which we are founding is not confined to cases of specific performance. It will apply whenever a decree is so conditioned that the right of one party to seek performance from the other is conditional on his readiness and *ability* to perform his own obligations. The reason is, as we have explained, that to hold otherwise would be to permit an executing Court to go behind the decree and vary its terms by splitting up what was fashioned as an indivisible whole into distinct and divisible parts having separate and severable existence without any interrelation between them just as if they had been separate decrees in separate and distinct suits.

Fry on Specific Performance was quoted to us (6th edition, Chapter IV, pages 546 onwards) where the learned author states that relief can often be obtained after judgment along much the same lines as before: thus a party to a contract may, in a proper case, apply for rescission of the contract and so forth. It was urged by the other side that even if that can be done it can only be done by the Court which passed the decree and not in execution. We do not intend to examine this because even if these remedies also exist, provided application is made to the proper Court, it does not affect the basic principle in execution that the executing Court must take the decree as it stands and cannot go behind it. If the decree says that on payment being made some definite and specific thing is to be given to the other side, the executing Court cannot alter that and allow something else to be substituted for the thing ordered to be given.

The learned counsel for the defendant-appellant contended that even if the Marwari Brothers had ceased to exist as a firm the plaintiff was still entitled to a five annas share in its assets on dissolution. But a five annas share in the assets of a dissolved firm which has ceased to exist is a very different thing from a five annas share in a going partnership concern; and to permit this substitution in the decree would be to alter it in a very material particular. The defendant may or may not have the

1956

---

Jai Narain Ram  
Lundia

v.

Kedar Nath  
Khetan and others

---

Bose J.

1956

*Jai Narain Ram  
Lundia*

v.

*Kedar Nath  
Khetan and others**Bose J.*

right to ask the Court which passed the decree to vary it in that way but he can certainly not ask the executing Court to do so. The decree must either be executed as it stands in one of the ways allowed by law or not at all.

In the High Court, and also before us, much was made of the fact that the plaintiff had not re-tendered the money after the decree was varied by the High Court and it was argued that that precluded him from contesting the defendant's right to attach his property under Order XXI, rule 32(1), of the Civil Procedure Code. The remedy provided in Order XXI, rule 32(1), is, of course, one of the remedies available in execution of a decree for specific performance but it can only be used by a person who is entitled to execute the decree, and if, by reason of his own incapacity to perform his part, he is precluded from seeking execution, Order XXI, rule 32(1), cannot apply.

The only question that remains is whether the executing Court can consider whether the defendant is in a position to perform his part of the decree. But of course it can. If the executing Court cannot consider this question who can? The executing Court has to see that the defendant gives the plaintiff the very thing that the decree directs and not something else, so if there is any dispute about its identity or substance nobody but the Court executing the decree can determine it. It is a matter distinctly relating to the execution, discharge and satisfaction of the decree and so under section 47 of the Civil Procedure Code, it can only be determined by the Court executing the decree. And as for the first Court's conclusion that it could not decide these matters because it was not the Court that passed the decree, it is enough to say, as the High Court did, that section 42 of the Code expressly gives the Court executing a decree sent to it the same powers in executing such decree as if it had been passed by itself.

The next point urged by the appellant was that as the plaintiff did not raise the present objection before the Federal Court when it passed its decree he

is precluded from doing so now. It is true this would have been a good ground for resisting a decree for specific performance but is no answer to the objection to execution. The defendant undertook to perform his part when the decree was passed and he must make good that undertaking before he can seek execution because the decree, in view of its language and intendment, must either be executed as a whole or not at all; it cannot be split up into different and uncorrelated parts and be executed unilaterally. It may be observed in passing that it was as much the duty of the defendant to seek modification of the contract by the Court which passed the decree, or modification of the terms of the decree later if he did not know these facts at the time, as he says, it was of the plaintiff. The fact remains that the decree was passed in these terms and it must either be executed as it stands or not at all unless the Court which passed it alters or modifies it.

Then it was argued that this objection to execution should have been taken by the plaintiff in the Calcutta High Court when the defendant asked for transfer of the decree to Motihari and that as that was not done it is too late now. But here also the answer is the same. The only question before the Calcutta High Court on the application made to it was whether the decree should be transferred or not. Whether the plaintiff might or could have taken the objection in the High Court is beside the point because it is evident that he need not have done so on the only issue which the application for transfer raised, namely, whether the decree should be transferred or not; at best it could only be said that the plaintiff had a choice of two forums. If the appellant's contention is pushed to its logical conclusion it would mean that whenever a decree is transferred all objection to execution must cease unless the order of the Court directing the transfer expressly enumerates the issues that the transferring Court is at liberty to determine. In our opinion section 42 of the Civil Procedure Code is a complete answer to this contention.

The appeal fails and is dismissed with costs.

---

1956

---

*Jai Narain Ram  
Lundia*

v.

*Kedar Nath  
Khetan and others*


---

*Bose J.*