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‘EXECUTION OF DECREES’

Topic

Claim Petitions in Execution Proceedings

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CLAIM PETITIONS IN EXECUTION
PROCEEDINGS

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Relevant provisions are Section 47, Order XXXVIII Rules 8, 10 and 11, Order XXI Rules 58, 59 and 97 to 104 Code of Civil Procedure. Rule 246 of Civil Rules of Practice. Articles 128 and 129 of Limitation Act.

Prior to amendment to the Code of Civil Procedure 1976, the executing court used to deal with investigation of claims and objections summarily. The scope of such inquiry was very limited and confined to possession and it was open to the aggrieved party to institute a suit. In Amendment Act 1976 pursuant to the recommendations made by the Law Commission certain amendments have been made in the Code expressly providing that all questions (including question of right, title and interest) are to be settled finally in execution proceedings itself and not by a separate suit. Where the court entertains a claim or objection, it

adjudicate upon all questions including the question of right, title and interest in the property under attachment. Order XXXVIII Rule 8 and Order XXI Rule 58 deals with adjudication of claims and objections to attachment of property. A third party who is aggrieved of attachment has two options, either he can file a petition under Order XXXVIII Rule 8 after the attachment before judgment in the suit or he can file the claim petition under Order 21 Rule 58 later in the execution petition filed to bring the attached property for sale.

Rule 246. Claim to attached property:-

An application by a claimant or objector, under Rule 58 of Order XXI of the Code shall be made by a verified execution application entitled in execution petition under which the property in question has been attached and shall set forth particulars of the claim in the manner prescribed for the plaint in a suit as form No.66.

Order XXXVIII Rule 8 Adjudication of claim to property attached before Judgment :

Where any claim is preferred to property attached before Judgment such claim shall be adjudicated upon in the manner

provided for the adjudication of claims to property attached in execution of decree for payment of money.

The application under Order XXXVIII Rule 8 can be entertained after disposal of the suit.

The Court has power to adjudicate the claim under Order XXXVIII Rule 8 Code of Civil Procedure even after disposal of the suit.

Therefore a petition filed under Order XXXVIII Rule 8 Code of Civil Procedure receives its adjudication as contemplated by Order XXI Rule 58, Order XXI Rule 58 to contemplates adjudications of the claim by the court dealing with the said claim and not by a separates suit. So much so Order XXI Rule 58 (4) is categorical and specific in stating that the Order made after such an adjudication shall have the same force and shall be subjected to the same conditions as to appeal or otherwise as if it were a decree. There is absolutely no bar and on the other hand it is permissible as contemplated by Order XXXVIII Rule 11 and Rule 11(a) for a petition filed under Order XXXVIII Rule 8 to be continued even beyond the date of decree of the suit and that the said application has got to be tried as if it is a plaint. **J.Rama Murthy and Others vs. Srinivasa Corporation General AIR 1989 AP 58.**

The Application filed under Order XXXVIII Rule 8 Code of Civil Procedure which is dismissed for default is a bar to file the petition under Order XXI Rule 58 Code of Civil Procedure.

The claimant who has filed an application under Order XXXVIII Rule 8 Code of Civil Procedure and the same was dismissed for default, he has no right to file application under Order XXI Rule 58 Code of Civil Procedure in execution.

In an application filed under Order XXXVIII Rule 8 Code of Civil Procedure to set aside or raising of order of attachment, the inquiry is to be held as provided in execution proceedings. Such an inquiry is to be conducted like a trial in a regular suit. The law provides for a regular appeal over an order passed in a claim application. Therefore, the order on dismissal of application under Order XXXVIII Rule 8 is a decree passed in regular suit. The second claim application under Order XXI Rule 58 Code of Civil Procedure is like a plaint in regular suit. In view of the provision in Order IX Rule 9 (1) Code of Civil Procedure, the claimant is not entitled to file a second claim application which is a suit in the eye of law.

Sattemsetti Somaraju vs. Ramiseti Naidu @ Venkatarao and Another, 2004 (1) ALD 318.

Order 38 Rule 10 provides that an attachment before judgment shall not affect the rights, existing prior to the

attachment of persons not parties to the suit, nor any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Order 38 Rule 11 provides that where a property has been attached before judgment, it need not be re-attached in the execution proceedings.

Order XXXVIII Rule 11-A (2) provides that an attachment made before Judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the order for dismissal of the suit for default has been set aside and the suit has been restored.

Order XXI Rule 58 Adjudication of claims to or objections to attachment of, property.—(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such, claim or objection shall be entertained—
(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or
- (b) disallow the claim or objection; or
- (c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or
- (d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (I), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such-suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

In view of the amended provisions of Order XXI Rule 58 the question of filing a separate suit is barred and all questions relating to the title or interest in the property attached have to be decided and adjudicated only in the claim proceedings and not by a separate suit. An application filed under Order XXI Rule 58 is required to be adjudicated as though it is an independent suit. The inquiry in an application under Order XXI Rule 58 should be elaborate and exhaustive.

The claims that can be decided under Rule 58 should have an immediate or proximate relevancy to the subject matter of the decree. Adjudication of claims which are remotely connected or not immediately related to the subject matter of the decree cannot be undertaken in an application under Order XXI Rule 58 Code of Civil Procedure. **M.Lakshman and Others vs. V.T.Rao and Others, 2004 (6) ALD 154.**

An agreement holder has right to file an application under Order XXI Rule 58 Code of Civil Procedure.

Agreement of sale in respect of certain property of defendant prior to its attachment before Judgment in a suit for recovery of money would prevail over the attachment and such property cannot be brought to sale in execution of decree. If the agreement of sale was executed in the ordinary course prior to the date of attachment before Judgment and in pursuance of such genuine transaction if a sale deed is executed subsequent to date of attachment then only the attachment before Judgment would not prevail over pre-existing contract of sale. 2013 (3) ALD 763 (D.B.) Punumatcha Ashokraj @ Ashok vs. Indukuri Goopalakrishnamraju.

A person who omits to prefer a claim under Order XXXVIII Rule 8 can raise an objection under Section 47 after execution is levied.

A person who omits to prefer a claim under Order XXXVIII Rule 8 Code of Civil Procedure does not run the risk of being prevented from raising an objection under Section 47 of Code of Civil Procedure after execution of decree is levied. AIR 1964 AP 99 (D.B.) Allada Eswarappa vs. M.Krishna Reddy and Others.

A claim application is maintainable after sale of property and confirmation of sale.

As per proviso (a) to Order XXI Rule 58 Code of Civil Procedure no claim or objection is maintainable when the property attached has already been sold. But our Hon'ble High Court in a case between **Magunta Mining Company represented by its Managing Partner vs. K.Kondanda Ramireddy and another** reported in **AIR 1983 AP 335 (D.B.)** held that where a claim is preferred under Order XXI Rule 58 Code of Civil Procedure the fact that the property sold or the sale confirmed will not deprive the court's of its jurisdiction to adjudicate on the claim. The Hon'ble Apex Court approved the said proposition in between **Kancherla Lakshminarayana vs. Mattaparthi Syamala, AIR 2008 SC 2069.**

In a case between **Damodar Naidu vs. Kondaiah Naidu, 2007 (1) ALD 106.** Our Hon'ble High Court held that proviso to Sub Rule (1) of Rule 58 prohibits the filing of claim or objection if the sale of attached property was held. It is not good law in view of Division Bench Judgment of our Hon'ble High Court in **Magunta Mining Company** case, and the same was approved by the Hon'ble Apex Court in **Kancherla Lakshminarayana** case.

Separate suit is maintainable when claim is rejected

The difference employed by 1976 amendment shows that prior to 1976 amendment the embargo was on investigation being made by the Court when it felt that objection was designedly or unnecessarily delayed, whereas after the amendment in 1976, the embargo is on the Court entertaining the application at a belated stage. Therefore for the court to take a decision whether it should investigate into the claim or not due to the delay, opportunity to a party to explain the delay may be necessary. After 1976 amendment no such opportunity need be given to explain the delay, because the Rule prohibits entertaining belated application by Court. This apart sub-rule (5) of Rule 58 of Order 21 C.P.C added by way of 1976 amendment, provides opportunity to the claimant whose petition was dismissed under the proviso to sub-rule (1), to file a suit for establishing his right.

It may be stated that while considering the object behind the proviso to Rule 58 of Order 21 C.P.C a Division Bench of Patna High Court in Sachida Prasad v. Biqa Prasad AIR 1980 Pat. 136 held that the purpose of the proviso is to see that execution should not unnecessarily be encumbered or unduly delayed by allowing frivolous objections from unconcerned quarters and so when a claim is filed the court has to look into the circumstances mentioned in the proviso and if the design of the objection is to

delay execution it shall not investigate into the claim or objection. If the court conducts an enquiry and dismisses the petition filed under order 21 Rule 58 CPC, such order would be appealable, and if the petition is summarily rejected under proviso to sub-rule (1) of Rule 58 of Order 21 C.P.C separate suit under sub-rule (5) of Rule 58 of Order 21 C.P.C is the remedy. It is also held so in K. Venkatarayappa case (2 supra) and T. Bhanukomari v. Salt Balwaot Raj 1979 (2) ALT 2 (NRC). In this case since the petition was rejected in time the remedy open to the appellant is to file a suit, but not an appeal, more so because elaborate reasons are given in the order under appeal for the court coming to a conclusion that the petition is designedly delayed. **(1) 2002 (1) An.WR 287, T.Muniratnam (Died) and others vs. T.Ashok and another. (2) Power Machines India Limited vs State Of Madhya Pradesh & others AIR 2017 SC 2567.**

Cause of action to prefer claim application :

The cause of action for a claimant to submit an application under this provision arises, only if an item of property is attached in the course of execution and not otherwise. The attachment can be of any movable property or different categories under Rules 42 to 53 or the one of immovable property under Rule 54 of Order XXI Code of Civil Procedure. Rule 58 does not make any difference

between movable and immovable properties. Through out the length and breadth of the rule, the word 'attachment' occurs at many places, hardly leaving any doubt that the *sine quo non* to invoke that provision is existence of attachment. Even where an amount, which is not with the judgment-debtor, is attached in the execution, it is possible for one to invoke that provision. **Gopana Subbarayudu vs. Pasupuleti Venkataramana, 2009 (6) ALD 544.**

Burden of proof on the claimant :

The burden to prove the title to the property in question squarely upon the petitioner/claimant. **Rahatunnisa vs. Md. Saber Alikhan 2009 (1) ALT 284. (2) Dr. M.Parvathi and Others vs. Penumatcha Satyanarayana Raju and Others, 2013 (5) ALT 184 (D.B.).**

Limitation to file claim application :

When substantial rights of parties are involved over the disputed properties, merely on the assumption that it is nevertheless a claim petition and on that premise if a period of limitation of three years is prescribed invoking residuary Article 137 of the Act, in my considered view it would result in serious ramifications. In the absence of Rule 58, a third party claimant would have in an ordinary course be in a position to lay the claim at any time provided of course, within that time when his right over the said property is extinguished in accordance with the principles

enjoined under Section 27 of the Act and the relevant Articles mentioned in First Schedule in regard thereto.

Limitation Act has not envisaged any period of limitation for a claim petition to be filed as such. Article 98 of the Act provides for a period of limitation for a suit to be filed. The suit as contemplated by Article 98 is in accordance with the unamended provisions of Rule 58 of the Code, after the Amendment to Rule 58 under Act 104 of 1976. Article 98 of the Act has not been suitably amended. Be that as it may, Article 98 contemplates a period of limitation for a suit to be maintained. On the other hand, under clause (a) to the proviso under sub-rule (1) of the Code a claim petition can be filed at any stage before the sale of the property attached, which specifically excludes any period of limitation. Thus, we can see inherent harmony in between the provisions of the Code and the Act, perhaps that is the reason why the Parliament in its wisdom has not provided for any period of limitation for a claim petition to be filed. Now, that be the position, we cannot read something- which is expressly or by necessary implication has been excluded- into the provisions of Rule 58 of Order 21 of the Code or the provisions under the Act contrary to the very intention of the Legislature. Let us visualise a situation where, if for any reason the claim is not preferred when the property has been attached before

judgment and in the process the period of more than three years is elapsed before the suit is culminated into a decree, the right of the third party claimant is totally barred and he cannot approach the Court when the decree is sought to be executed for realisation of money by bringing the property to sale. Nor he can file a suit claiming the property in view of the express bar in sub-rule (3) of Rule 58 of the Code. The substantial rights of the parties thus cannot be curtailed.

For the above reasons, I am of the considered view that no period of limitation is envisaged under the provisions of the Limitation Act and the amended provisions of Rule 58 of Order 21 of the Code, may either expressly or by necessary implication clearly exclude any period of limitation and a third party claimant can maintain a claim at any stage before the property is brought to sale. The rival submissions of the learned Counsel appearing for both the parties in regard to the starting point of limitation as to whether it is from the date of attachment order or from the date when the attachment was effected or from the date when the threat is clearly discernible for bringing the property to sale are not germane for consideration as in my view Article 137 has no application. **P.P. Raj and another vs Sri Rama Finance Corporation and others 1999 (6) ALT 436.**

There is no particular period prescribed for filing the claim petition. **Anthony vs. Kunjavarankutti Hajee and another, AIR 2003 Kerala 45.**

A claim petition is maintainable in an execution taken out in mortgage decree :

The claim petition under Order XXI Rule 58 of Code of Civil Procedure cannot be maintained in execution of mortgage decrees. Proceedings by way of claim are applicable only in cases of money decrees where property of the judgment debtor has been attached. The language of Order XXI Rule 58 of Code of Civil Procedure itself makes clear that a claim can be maintained only where an attachment is subsisting. No claim petition under Section 47 or under Order XXI Rule 58 Code of Civil Procedure would like and be maintainable in an execution taken out in mortgage decree. **Indian Bank, Nidadavole vs. Nallam Veeraswamy and others, 2014 (5) ALT 631. (2)**
T. Nabisab vs. G.Venkateswarulu and others, 2008 (4) ALT 231.

APPEAL & PAYMENT OF COURT FEE :

A regular appeal filed under Section 96 of Code of Civil Procedure is maintainable against the order dismissing the claim petition filed under Order XXI Rule 58 Code of Civil Procedure. In an appeal filed against an Order dismissing a claim petition fixed

court fee is payable on the relief as specified in clause (1) of Article 11 of Schedule II Andhra Pradesh Court Fee and Suits Valuation Act. **Andhra Pradesh Housing Board vs. Kamakshi Builders and Others decided on 3rd December, 2018.**

Resistance to delivery of possession :

Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of decree is resisted or obstructed by any person in obtaining the possession he makes an application to the court complaining of such resistance or obstruction. Order XXI Rules 98 and 100 provides that upon determination of questions referred to in Rule 101 the Court shall in accordance with such determination make an order allowing the application and directing that the applicant will put into the possession of the property or dismiss the application and pass such other orders. Order XXI Rule 99 provides that where any person other than Judgment debtor is dispossessed of immovable property by the holder of the decree for possession or purchaser of the property in execution of a decree, he may make an application to the court complaining such dispossession. As per Rule 101, all the questions (including questions relating to right, title or interest in the property) arising between the parties to the proceedings on an application under Rule 97 or Rule 99 shall be

determined by the court dealing with the application and not by a separate suit. Rule 102 provides that the third person who has purchased the property from the Judgment debtor during pendency of proceedings, has no right to make an application under Rules 98 and 100. Rule 103 provides that the orders passed under Rules 98 and 100 are decrees and they are appealable. Rule 104 provides that every order made under Rule 101 or Rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceedings in which such order is made, if in such suit the party against whom order under Rule 101 or Rule 103 is made has sought to establish a right which he claims to the present possession of the property.

Though in Rule 97, the names of the decree holder and auction purchaser were referred, a third party who is in possession of the property can make an application under this rule claiming independent right by resisting or objecting the delivery of possession. A person resisting delivery should be a person having an independent right and title to the property and not a person claiming through the parties to the litigation by virtue of transaction which came into existence pending the litigation.

The decree holder filed the execution for delivery of property. The third party in possession claiming the independent right as

tenant can object and get his claim adjudicated when sought to be dispossessed by decree holder. He need not wait until he is dispossessed. **Silverline Forum Pvt. Ltd., vs. Rajiv Trust, AIR 1998 SC 1754.**

Application filed under Order XXI Rule 97 to be tried like a suit. After coming into force of the CPC Amendment 1976 all questions relating to right, title and interest in the property arising between the parties to the proceedings on an application under Order XXI Rule 97 has to be determined by the court dealing with the said application and not by means of separate suit. **N.S.S.Narayana Sarma & Ors vs. M/s. Goldstone Exports P. Ltd. & Ors, AIR 2002 SC 251.**

Can a pendent lite purchaser obstruct the delivery of the property :

The long line of precedents notwithstanding, it is indeed true that in terms of the ordainment of Rule 102 of Order XXI, Rules 98 and 100 thereof would not apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was

passed. **Jini Dhanrajgir vs Shibu Mathew and Anr., AIR 2023 SUPREME COURT 2567.**

It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.

We are in respectful agreement with the proposition of law laid down by this Court in Silverline Forum. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right

and, therefore, is not entitled to get his claim adjudicated. **Usha Sinha vs. Dina Ram & Ors, 2008 SUPREME COURT 1997.**

Application under Order XXI Rule 99 Code of Civil Procedure:

A person who has not dispossessed from the property, is not entitled to make an application under Order XXI Rule 99 Code of Civil Procedure. An application under Order XXI Rule 99 Code of Civil Procedure is to be filed by person dispossessed of immovable property by the holder of the decree for the possession. **Trinity Infraventures Ltd. and Ors. Vs. M.S. Murthy and Ors., AIR 2023 SC 3361.**

The Order passed in an inquiry under Rules 97, 98 and 99 are to be treated as decrees:

It may be of interest to note that while Rule 101 allows the Executing Court to decide all questions including questions relating to right, title or interest in the property, Rule 103 creates a deeming fiction that the orders so passed under Rule 101 shall be deemed to be a decree. **Trinity Infraventures Ltd. and Ors. Vs. M.S. Murthy and Ors., AIR 2023 SC 3361.**

The order is treated as a decree under Order 21, Rule 103 and it shall be subject to an appeal. Prior to 1976, the order was subject to suit under 1976 Amendment to CPC that may be pending

on the date of the commencement of the amended provisions of CPC was secured. Thereafter, under the amended Code, right of suit under Order 21, Rule 63 of old Code has been taken away. The determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated under Order 21, Rule 98 which is an order and is a decree under Order 21, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. Thus, the procedure prescribed is a complete code in itself.

Babulal vs Raj Kumar & Ors, AIR 1996 SC 2050.

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 to 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 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. **Noorduddin vs. Dr. K.L. Anand, 1995 SCC (1) 242.**

The executing court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties including the claim of a stranger who apprehends dispossession from the immovable property. This is provided to avoid multiplicity of proceedings and if a court declines to adjudicate by stating that it lacks jurisdiction that by itself would occasion failure on the part of the executing court to exercise the jurisdiction vested in it. **Sameer Singh & Anr. vs. Abdul Rab & Ors, AIR 2015 SC 591.**

Appeal and Court Fee

a) Against the orders passed under Rule 58(3) and Rules 98 and 100 of Order 21 C.P.C. regular appeals under Section 96 and not miscellaneous appeals under Section 104 read with

Order 43 Rule 1 C.P.C. are maintainable and that the judgment of this Court in Nookaraju's case (1 supra) does not represent the correct position of law.

b) The Court fee payable on such appeals shall be the one calculated in accordance with Articles 11(i) or 3(i) of Schedule II of Court Fees Act, as the case may be read with Section 49 of the A.P. Court Fees and Suits Valuation Act.

c) A second appeal under Section 100 C.P.C. is maintainable against an order passed in an appeal, arising out of order passed under Rule 58(3) or Rules 98 and 100 of Order 21 C.P.C. **Mr. Gurram Seetharam Reddy vs. Gunti Yashoda and another AIR 2005 AP 95 (D.B.).**

Whether the legal representatives of judgment debtor has right to file application under Rule 99 ?

The application filed by the petitioner could certainly have been entertained and adjudicated upon, had it been a case where he is claiming his rights independently. However, the record discloses that his mother was very much a party to the suit and decree, being defendant No.13. She is one of the judgment-debtors. The remedy provided under Rule 99 is for the benefit of

3rd parties, i.e., those who were not parties to the suit. Legal representative of judgment-debtor does not fit into the description "person other than judgment-debtor", employed in Rule 99 of the C.P.C. For all practical purposes, the petitioner has to be treated as defendant and judgment-debtor No.13. In that view of the matter, the application filed by the petitioner is not maintainable. **Aitha Gopalakrishna vs. Miryala Venkata Radha Krishna, AIR 2004 AP 542.**

The remedy under Order XXI Rule 99 in execution is available to a party only on his dispossession but a third party who is resisting or obstructing the execution of decree can also seek adjudication of his claims and rights by making application under Order XXI Rule 97 of the Code. **Ashan Devi & Anr vs. Phulwasi Devi & Ors, AIR 2004 SC 511.**

A person whose claim under Order XXI Rule 58 is dismissed can file petition under Order XXI Rule 97 Code of Civil Procedure.

It is rudimentary that a third party to a suit for partition, who has no interest in the property covered by the suit, cannot resist its execution on the basis that the final decree is not in consonance with the plan prepared by the Commissioner appointed during final decree proceeding. If at all it is a judgment-debtor that can take such a plea. Admittedly, the petitions filed by the 1st respondent in

the earlier E.P., claiming right in the house, (possession of which is sought to be recovered by the revision petitioners) were dismissed and those orders have become final. Those orders operate as res judicata in this petition. A person whose claim under Rule 58 Order 21 CPC was dismissed cannot again reagitate the same by filing a petition under Rule 97 of Order 21 CPC. **(1) M. Padma and others vs M. Seshagiri Rao and others 2003 (4) ALT 683, (2) Dachepalli Kondalu Vs. Peddinti Chandra Sekhar AIR 2014 AP 124.**

A Judgment debtor can file petition under Order XXI Rule 97 Code of Civil Procedure.

A perusal of the provision under Order XXI Rule 97 makes it clear that it is meant basically for the benefit of the decree-holder, to remove the obstruction caused by persons, other than the judgment-debtors. Though the expression "any person" is wide enough, for all practical purposes, the judgment-debtors get excluded from its purview. **Nakka Perumal Reddy and others vs. Pandripalli Lakshmi Prasad and others, 2009 (6) ALT 779.**

For the purpose of considering an application under Order XXI Rules 99 and 100 of the Code of Civil Procedure what was required to be considered was as to whether the applicant herein claimed a right independent of the judgment-debtor or not. A person claiming

through or under the judgment-debtor may be dispossessed in execution of a decree passed against the judgment-debtor but not when he is in possession of the premises in question in his own independent right or otherwise. **H. Seshadri vs K.R. Natarajan And another, AIR 2003 SC 3524.**

LIMITATION :

128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession	
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.	

Questions to be determined by the court executing decree.

Section 47 provides that all questions arising between the parties to the suit in which 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. Where a question arises as to whether any person is or is not the representative of the party such question shall for the purpose of this section

determined by the court. All questions relating to delivery of property to such purchaser or his representative shall be deemed to be questions relating to execution, discharge or satisfaction of the decree within the meaning of this section.

Can a third party make an application under Section 47.

Section 47 has been enacted with a view to enable the parties to obtain adjudication of questions relating to execution without unnecessary expenses or delay. This section covers questions which arises before as well as after the decree has been executed. Order XXI Rule 97 Code of Civil Procedure envisages an independent provision which is neither connected nor correlated to the objections which could be lawfully raised and decided by the parties under Section 47 Code of Civil Procedure.

The objections raised by the appellants herein cannot be taken into account. The scope of adjudication of claims in execution proceedings is delineated by Section 47 of CPC. Under it, the executing Court can decide only those claims raised by the parties or claiming through them. The 3rd parties have no say in the matter. The objections raised by persons who are not parties to the decree or those who do not claim through the parties to the suit, cannot

seek adjudication of their rights under Section 47. **Akula Ramulu and others vs Kammari Balaram and another, 2003 (3) ALT 443.**

Pendency of execution petition is required to adjudicate claim under Section 47.

The principle of the section is that all questions relating to execution, discharge or satisfaction of a decree and arising between the parties to the suit in which the decree is passed, shall be determined in the execution proceeding, and not by a separate suit: it follows as a corollary that a question relating to execution, discharge or satisfaction of a decree may be raised by the decree-holder or by the judgment debtor in the execution department and that pendency of an application for execution by the decree-holder is not a condition of its exercise. The absence of a proceeding by the decree-holder to execute the decree was held not to be a bar to the maintainability of the applications. **M. P. Shreevastava vs Mrs. Veena, AIR 1967 SC 1193.**

The three Judges Bench of Hon'ble Apex Court held that an executing court cannot travel beyond the order or decree under execution. **S. Bhaskaran vs Sebastian (Dead) By Lrs. And Ors. AIR 2019 SUPREME COURT 4306.**

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.

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.

Under Section 47 of the Code, all questions arising between the parties to the suit in which the decree was passed or their representatives relating to the execution, discharge or satisfaction of decree have got to be determined by the court executing the decree and not by a separate suit. The powers of Court under Section 47 are quite different and much narrower than its powers of appeal, revision or review. **Dhurandhar Prasad Singh vs Jai Prakash University And Ors, AIR 2001 SC 2552.**

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