

**EXECUTION OF DECREES FOR EVICTION & DELIVERY OF
VACANT POSSESSION - OBJECTIONS AGAINST DELIVERY -
DETERMINATION**

By:

**SRI. AUDHINARAYANA VAVILI,
Principal Civil Judge (Junior
Division),
Nandyal.**

INTRODUCTION:

Courts having decreed a remedy, it must follow up to ensure that it is being adhere to. Execution is the most important aspect of civil justice. Success or failure of the system of civil justice depends on the rate of success in executing the decrees of civil courts. Legislature has drafted and introduced exhaustive and exemplary provisions of execution in the Code of Civil Procedure. There are as many as 106 rules in Order XXI which deals with execution and from Sections 36 to 74 (both inclusive) embodied in the Code of Civil Procedure.

The execution of decrees for eviction and the delivery of vacant possession is important aspect of civil litigation, most particularly in the landlord-tenant and property disputes. The process involves ensuring that the decree-holder (D.Hr) can obtain vacant possession of the property, while the judgment debtor (J.Dr) and any third parties have the opportunity to raise objections.

DECREE FOR IMMOVABLE PROPERTY:

The execution of decrees for eviction and delivery of vacant possession, as well as objections against delivery, is governed by several provisions under the Code of Civil Procedure (CPC), 1908.

1. ORDER XXI RULE 35 CPC :

DECREE FOR IMMOVABLE PROPERTY :-

When a decree is for the delivery of any immovable property, the execution can be carried out by the delivery of possession to the decree-holder, and if necessary, by removing any person bound by the decree who refuses to vacate the property.

2. ORDER XXI RULE 36 CPC :

DECREE FOR DELIVERY OF IMMOVABLE PROPERTY :-

When in Occupation of Tenant is often one of signifactors in Execution proceedings. If the property is in the occupancy of a tenant or other person entitled to occupy it, the delivery of possession can be made by affixing a copy of the warrant in some conspicuous place on the property and proclaiming it to the occupants by following the procedure under Order 21 Rule 36 CPC.

Rule 35 and 36 of Order XXI both are related to decree for immovable property but there is a distinction between both. The possession referred to in sub rules (1) and (3) of Order XXI, Rule 35 is Khas or actual possession, while that referred to sub -rule (2) and 36 is formal or symbolical possession.

Rule 35 of Order XXI, laying down the provision, reads and illustrated as under:

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 fixing 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 and facility to any person 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.

This rule describes the mode of obtaining possession - For possession of vacant land, the court can order the removal or demolition of the constructions made during the pendency of the suit.

Order XXI Rule 36 of CPC :

DECREE FOR DELIVERY OF IMMOVABLE PROPERTY WHEN IN OCCUPANCY OF TENANT:

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. Where property has been leased out for raising construction and subletting shops, the landlord obtained eviction decree, but did not implead sub-tenants as party in the case even opposed their impleadment, the sub-tenants are not bound by the eviction decree as they are not rank trespasser, they cannot be

evicted, the mode of execution of decree would be only **symbolic** possession.

In B.GANGADHAR Vs. B.G.RAJALINGAM (AIR 1996 SUPREME COURT 780) The Hon'ble Supreme Court held, in the following lines

“ in view of Order 21, Rule 35(3) the Court executing the decree is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the decree for possession. That power also includes the power to remove any obstruction or super-structure made pendente lite. The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. Thus where in a suit for declaration of title and vacant possession of land, the decree was passed by the trial Court directing handing over vacant possession of land by demolishing the shops constructed by the Judgment debtor during pendency of suit, the said direction in execution of decree was not without

jurisdiction". " It is also not necessary that the tenant should be made party to the suit when the construction was made pending suit and the tenants were inducted into possession without ' leave ' of the Court. It is settled law that the tenant who claims title, right or interest in the property through the judgment debtor or under the colour of interest through him, he is bound by the decree and that, therefore, the tenant need not be impleaded as a party defendant to the suit not it be an impediment to remove obstruction put up by them to deliver posse to the decree "

The Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad has also discussed the above parameters while dealing with the similar subject matter in DONGALA VENKAIAH AND ANOTHER Vs. DONGALA RAJI REDDY (2007 (5) ALD 716), held as follows :

" Execution of decree under Order 21 Rules 35, 97 and 101 C.P.C in a suit for declaration of title and recovery of possession is decreed and Structures like residential houses made by

Judgment Debtors/Defendants in suit land the Trial Court of ordered execution directing Bailiff to demolish construction and handover vacant possession of land to decree holder is Not without jurisdiction, Merely because plaintiff has not sought for relief of mandatory injunction, it cannot be said that decree is inexecutable and it is of no consequence whether structures existing on suit land were constructed prior to or after filing of suit ” “ suit filed for recovery of possession of land and Having filed written statement, defendants did not let in evidence and if suit decreed and EP for execution of decree filed Defendants instead of filing appeal, filed suit for cancellation of said decree and Defendants’ suit was dismissed and When Bailiff could not execute warrant for delivery of possession of suit land on account of existence of residential houses, Decree holder filed E.A. under Order 21 Rule 97 of C.P.C. requesting Court to give directions to bailiff to demolish

constructions made by defendants (Judgment debtors) in suit land and such Directions were issued accordingly overruling Judgment debtors objections and CRP, Contention that without a prayer and decree for mandatory injunction, trial Court cannot direct bailiff to remove structures/residential houses and as the structures/residential buildings were already in existence even at time of institution of suit and plaintiff failed to ask for a decree for mandatory injunction, executing Court cannot order delivery of vacant possession ”. “ Rejecting contention that if such constructions were made only during the pendency of the suit then the plaintiff can execute the decree without tortuous remedy of separate suit seeking mandatory injunction or possession, the Court held. ”

OBJECTION TO EXECUTION OF DECREE

The main hurdle to execute the decree passed by the civil court is the objection raised by the judgment debtors, strangers or the persons claiming under or through the judgment debtors, during the execution of proceeding. Generally, the objectors will raise their objections under Section 47 and Order XXI Rule 97, 99, 101 of the CPC. Decree-holder can seek removal of obstruction under Rule 35(3) if it is caused by a person bound by the decree. He has to move Court under Rule 97 for removal of obstruction by a third party.

Section 47 of the Civil Procedure Code states as “Question to be determined by the court executing the decree. In this Section, earlier, there were three sub clauses, but in terms of amendment made in the Code of Civil Procedure by virtue of Civil Code Amendment Act No.104 of 1976 w.e.f. 01/02/1977, sub-Section 2 has been deleted and now there are two sub sections and two explanations.

1) *All questions arising between the parties to the suit in which decree was passed, or their representatives and relating to execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and by a separate suit.*

2) *Where a question arises as to whether any person is or is not representative of a party, such question shall, for the purpose of this Section, be determined by the court.*

Explanation I :- *As per this Section, parties to the suit means that the plaintiff whose suit is dismissed and the defendant against whom the suit is dismissed.*

Explanation II :-

(a) *For the purpose of this Section, a purchaser of decree shall be the deemed party to the suit in which the decree is passed.*

(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.*

Rahul S. Shah Vs. Jitendra Kumar Gandhi reported in 2021(2) JLJR (SC) 459, Hon'ble Supreme Court held that the court exercising jurisdiction U/S 47 or U/O XXI must not issue notice on an application of third party claiming rights in a mechanical manner - the Court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating of suit if due diligence was exercised by the applicant - the court should allow taking of evidence during the execution proceeding only in the 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 - the court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide , resort to Rule 98(2), Order XXI as well as grant compensatory costs in accordance with section 35-A -U/s 60 ... term in name of the judgment debtor or by another person in trust for him or on is behalf should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

Therefore, it is incumbent to the court dealing with the application u/s 47 CPC must be heard preliminary and upon finding

merit if any then only registered as misc. case and proceed further and if no case made out the application must be disposed of threshold.

All questions arising between the parties to the suit in which decree was passed or their representatives and relating to execution, discharge or satisfaction of the decree shall be determined by the executing court:- Meaning and scope :

It means all questions which could properly arise or which could properly have been raised in the execution proceedings between the parties to the suit or their representatives. Now the question arose what types of questions comes within the ambit of this Section. Before answering this aspect of the matter it is kept in mind that there is a principle, that the "executing court cannot go behind the decree". The court has no power to comment the decree, fact or in law. The decree must be executed as it is. In **Addition Pains VS Sant Ram AIR 1970 SC 1475**, it was held that Section 47 does not entitle the court to investigate into the question of validity of the decree when on the face of the record of it there is nothing illegal..

Generally three kinds of objection could be entertained in this Section by the executing court as **(A)** Decree passed against dead person, **(B)** The decree is vague and ambiguous and **(C)** Without jurisdiction. It is well settled by Catina of judicial pronouncement that the question raised by judgment debtor under this Section that the decree sought to be executed is a nullity is a question to be

determined by the executing court under this Section. But it must be kept in mind that the executing court cannot adjudicate upon the legality and correctness of the decree unless the decree is nullity.

It is also necessary to keep in mind that in Section 47, the word “representative” has been used and not the words legal representatives. Hence, the word used in this Section does not mean legal representatives only. But a person who claim or step the shoe of another or inter meddles with the property of another shall be a party for this Section. Further the word used representatives, is not limited to the legal representatives of the deceased person, but it includes persons whom an interest has devolved by assignment, transfer or otherwise. In other words representatives include not only the heirs, but executors or administrators and the transferee of the decree holders. The explanation further makes it clear that all questions relating to the delivery of possession of such property to the purchaser or his representative shall be deemed to be question relating to the execution: discharge or satisfaction of the decree within the meaning of this Section.

As noticed above, a transferee of a decree either by assignment or by operation of law has a right to apply for execution of the decree as provided under Order XXI Rule 16 of the Code of Civil Procedure. Hence the transferee of the decree is a representative of the decree holder within the meaning of this Section. As discussed above, the executing court is competent to determine the all questions arising between the parties to the suit in which decree was passed or their representatives relating to execution, discharge or satisfaction of the decree. But such question must be a question relating to the decree not otherwise.

Awadh Bihari Tewari Vs NarainTewari- AIR 1961 Pat 427 at page 433, 434

“The validity of the decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject - matter was wholly foreign to its jurisdiction or that the defendant was dead at the time of the suit had been instituted or decree passed, or some other grounds which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject - matter of the suit or over the parties to it”.

*In the case of **Vasudev Dhanjibhai Modi Vs. Rajabhat Abdul Rahman AIR 1970 SC 1475**, the apex court considering an objection to the decree as nullity held that when a decree is nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who is dead at the date of decree is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again when a 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 in the face of the record. When the matter of jurisdiction not appear on the face of the record and requires examination of the question 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.*

*In the case of **Haryana Vidyut Prasaran Nigam Ltd. Vs. Gulshan Lal (2009) 13 SCC 354** it is held that An objection under Section 47 of the Code of Civil Procedure when filed by the judgment debtor it is incumbent upon him to show that the decree was ex-facionullity. For the said purpose, the court is precluded from making in depth scrutiny as regards the entitlement of the plaintiff*

with reference to not only his claim made in the plaint, but also the defense set up by the judgment debtor. As the judgment of the trial court could have not been reopened, the correctness thereof could not have been put in question.

*In the case of **Pratibha Singh Vs. Shanti Devi (2003) 2 SCC 330**, while discussing the scope of the Section 47 of the Code of the Civil Procedure, Hon'ble Supreme Court, held that when the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order VII Rule 3, in Order XX Rule 3 is capable of being cured. After, all a successful plaintiff should not be deprived of the fruits of the decree. Resort can be had to Section 152 or Section 47 of the Code of Civil Procedure depending on the facts and circumstances of each case which of two provision be more appropriate, just and convenient to invoke. Being an inadvertent error not effecting the merit of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained, by the executing court as a question relating to execution, discharge or satisfaction of the decree within the meaning of this Section. A decree of a competent court should not be allow to defeated on account of an accidental slip or omission, we think it would be more appropriate to invoke Section 47 CPC.*

RESISTANCE TO EXECUTION / RESISTANCE TO DELIVERY OF POSSESSION TO DECREE- HOLDER OR PURCHASER; SECTION 74 AND RULES 97 TO 103 OF ORDER XXI OF THE CODE OF CIVIL PROCEDURE.

SEC. 74 OF CPC: RESISTANCE TO EXECUTION :

Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

ORDER XXI RULE 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.]

Under this Rule, the decree holder as well as any person may complain to the court about the resistance and obstruction in obtaining possession. When a person unreasonably and in the instance of judgment-debtor resisted the delivery of possession, in such case the decree-holder may complain to the court executing the decree and on adjudication of the matter complained the court, and the court executing the decree order for removal of the

obstruction or may pass any such order as deem think fit and proper.

In the case of **Brahmadeo Choudhary Vs Rishikesh Prasad Jaiswal AIR 1997 SC 856**, it has been held that the objection of the objector can be considered by the executing court against the possession warrant and the court can stay the execution proceeding till the objection petition is decided by the executing court. In this case also the question came up before the court that whether the objector can claim adjudication of his right until he is actually dispossessed. The Supreme Court held that the claim could be adjudicated prior to actually dispossessed under Rule 97 of Order XXI CPC.

The same view was relied by the Hon'ble Supreme Court in the case of **Silverline Forum Vs. Rajiv Truwest AIR 1998 SC1756**, Also **Rajesh Vs Sreenath AIR 1998 SC1827**.

In the case of **Tanzeem -E- Sufia Vs. Bibi Haliman, AIR SC 3083**, it has been held that even if the objector filed a suit for declaration of right, title of part premises for which decree sought to be executed, the executing court shall have power to decide the objection under Order XXI Rule 97 CPC.

ORDER XXI RULE 98 :

ORDERS AFTER ADJUDICATION :

(1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2)

(a) make an order allowing the application and directing that the applicant be put into 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 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 :

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 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.

This rule applies where the person other than the judgment-debtor is dispossessed by the decree-holder or the purchaser, he can claim for his dispossession and establish his independent right, title. See ***Brahmadeo Choudhary Vs Rishikesh Jaiswal (Supra)***.

ORDER XXI RULE 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 :

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 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.

In the case of ***Vol Builders pvt. Ltd.&Anr. Vs. Janab Salim Saheb & Anrreported in 2009 (1) JCR 318 (Jhr)***, it has been held that where two separate suits were filed - one by objector for declaration of right, title and interest over the suit property on the basis of agreement for sale. Another suit was filed for injunction in respect of suit property - Suit on the basis of Agreement was dismissed - Appeal against is sub-Judice - knowing about the pendency of the two suits, court below cannot proceed to embark

upon a separate inquiry on its own on the issue raised (Order XXI Rule 97, 98, 101, 103 and 104 explained).

Also in the case of ***Sushilkumarsureka Vs. Santosh Kumar Singh*** reported in ***2009(3) JCR 740 (Jhr)***, it has been held that the objection under Order XXI Rule 98, 99, 100 and 101 - objection were repeatedly rejected up to High Court - Suit filed by the father of the objector is pending - A case of gross abuse of process of law - order impugned set aside with a nominal cost of ₹ 2500/-.

ORDER XXI RULE 102 :

RULES NOT APPLICABLE TO TRANSFEREE PENDENTE LITE :

Nothing in Rules 98 and 100 shall 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 or to the dispossession of any such person.

Explanation : In this rule, "transfer" includes a transfer by operation of law. This rule recognizes the doctrine of ***lis-pendens*** as embodied in Section 52 of the Transfer of Property Act, 1882.

In the case of ***Usha Sinha Vs. Dina Ram and others reported in (2007) 7 SCC 144***, the Hon'ble apex court elaborately discussed this rule - Object and scope of Order XXI Rule 102 restated - It based on justice, equity and good conscience - A transferee from a judgment-debtor is presumed to be aware of the proceeding before a court of law- Held if, unfair inequitable or undeserved protection is afforded to a transferee pendente-lite, a decree-holder will never be able to realise the fruits of the decree.

ORDER XXI RULE 103 :

ORDERS TO BE TREATED AS DECREES :

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

In the case of *Jogindera Kaur @ Jogenderkaur Vs. Kali Prasad @ Kalu Prasad, 2003 (2) JCR (Jhr) 149*, it has been held that the order passed under Rule 97, 99, 98 and 100 and 101 - Adjudication and determination under - to be treated as decree under Order 21 Rule 103 - as such first appeal and also second appeal shall lie.

Therefore, it is clear that when an order is being passed after adjudication of the claim of third parties filed under Order XXI Rule 97, 99 that order is appeal-able.

But when the court in threshold rejected the application, in such case the said order is not a decree within the meaning of Rule 98 and 100 of Order XXI CPC as such no appeal shall lie.

ORDER XXI RULE 104 :

ORDER UNDER RULE 101 OR RULE 103 TO BE SUBJECT TO THE RESULT OR PENDING SUIT :-

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 proceeding in which such order is made, if in such suit the party against whom the 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.

EXECUTION OF DECREE WITH POLICE ASSISTANCE

ORDER XXI RULE 97 CPC :-

In the case of ***Rahul S. Shah Vs. Jitendra Kumar Gandhi reported in 2021(2) JLJR (SC) 459***, the Hon'ble Supreme Court made directions - the executing court must dispose of the Execution proceeding within six months from the date of filing, which may be extended only by recording reasons in writing for such delay - 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 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 - the Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personal/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by Executing court.

CONCLUSION:

It can be summarized that Order XXI of CPC is an independent Code in itself and It not only provide procedure to be followed by the decree-holder to get the fruits of the decree, at the same time it provides an opportunity to the judgment-debtor or the third party to raise the grievances or objection in the execution proceeding itself. While disposing of execution applications filed under Order 21 Rule 97 of the Act, if the executing court gets whiff off dishonest tactics of Judgment debtor to delay the execution, the executing court must absolutely firm in stopping such unhealthy practices and delay. Resorting to independent proceedings by filing a separate suit is

clearly prohibited. Therefore, objections If any, are raised by the judgment-debtor or the third party in execution proceedings, the same are required to be adjudicated by executing court following the same procedure as if it were a suit and the orders by the executing court having the force of a decree.
