REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1659-1660 of 2021
(@ SPECIAL LEAVE TO APPEAL NOS. 7965-7966/2020)

RAHUL S SHAH ....APPELLANT (S)

VERSUS

JINENDRA KUMAR GANDHI & ORS. ....RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 1661-1662 of 2021
(@ SLP (C) NOS. 11859-11860/2020)

WITH

CIVIL APPEAL NOS. 1663-1664 of 2021
(@ SLP (C) NOS. 11792-11793/2020)

O R D E R

1. Leave granted.

Signature Not Verified
Digitally signed by Nidhi Ahuja
Date: 2021.04.23 17:48:51 IST
Reason:

The present appeals arise out of the common judgment and order dated 16th 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.

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 2nd and 3rd 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 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[1] 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

[1] O.S. No. 986/1987

from entering the property which Narayanamma claimed was hers.

4. During the pendency of the suit for declaration, the first purchasers filed two suits[2] 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.[3] 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

[2] O.S. Nos. 9077/ 1996 and 9078/1996
[3] Dated 09.11.2001, 12.12.2001, 05.12.2002 and 20.10.2004

was disposed of with a direction[4] 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 and dismissed the vendor's suit for injunction. The decree holders preferred execution proceedings.[5] 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.

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. In the meanwhile, aggrieved by the dismissal of the suit and decreeing the suit for possession,

[4] Dated 05.11.1998
[5] Execution Case Nos. 458-459/2007

Narayanamma filed first appeals in the High Court[6]. 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[7] the High Court directed the vendors to furnish particulars with respect to the sale, names of the purchaser and area sold etc. 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[8] was also dismissed by this Court on 23.07.2010.

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[9]. This was brought to the notice of the High Court which had dismissed the appeal preferred by the vendors.

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

[6] R.F.A. No. 661-663/ 2007
[7] Dated 10.04.208
[8] S.L.P. (C) Nos. 16349-13651/2010
[9] Dated 09.11.2001, 12.12.2001, 05.12.2002 and 20.10.2004

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 held that the compensation could not have been dispersed to the vendors, 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.[10] 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[11] 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.

[10] Dated 28.10.2009
[11] Dated 17.07.2013

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[12] 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

[12] SLP (C) No. 18031/2013

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 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.

12. All these orders led to initiation of five writ petitions on behalf of the appellant, and the vendors etc. Three First appeals[13] 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.

[13] R.F.A. Nos. 441, 468 and 469/2017

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.

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.

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 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.

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.

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.

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. 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 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 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.

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 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 & 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 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 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 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.

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.

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***[14] 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***[15], 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

[14] (1871-72) 14 Moore's I.A. 605
[15] (2009) 9 SCC 689

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 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.

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.

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 judgement 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.

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.

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 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.

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.

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.

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.

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 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.

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.

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 immoveable 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.

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.

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 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 defendant. Thus, the Court may also take recourse to the following actions:

a) Issue commission under Order XXVI Rule 9 of CPC.

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.

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.

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.

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.

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***[16], 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

[16] AIR 1991 SC 2251

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

2. party interest and further exercise the power under Order XI 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.

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.

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.

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.

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.

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.

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 which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

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.

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.

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.

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.

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.

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.

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.

44. The appeals stand dismissed.

.....CJI.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

.....J.
[S. RAVINDRA BHAT]

New Delhi,
April 22, 2021.