

**HIGH COURT OF TRIPURA
AGARTALA**

CRP 34 of 2022

- 1. Sri Dipak Chandra Sarkar,**
Son of late Suresh Chandra Sarkar,
Resident of Village- Tamsabari,
P.O. & P.S. Sonamura, District- Sepahijala, Tripura.
- 2. Sri Prabir Chandra Sarkar,**
Son of late Suresh Chandra Sarkar,
Resident of Village- Tamsabari,
P.O. & P.S. Sonamura, District- Sepahijala, Tripura.

.....*Petitioners.*

VERSUS

- 1. Sri Sunil Chandra Sarkar,**
Son of late Kali Kumar Sarkar,
Resident of Village- Tamsabari,
P.O. & P.S. Sonamura, District- Sepahijala, Tripura.
- 2. Smt. Fulu Sarkar (Bhattacharjee),**
Wife of late Manik Sarkar,
Resident of Village- Tamsabari,
P.O. & P.S. Sonamura, District- Sepahijala, Tripura.
- 3. Smt. Madhumita Sarkar,**
Daughter of late Manik Sarkar,
Resident of Village- Tamsabari,
P.O. & P.S. Sonamura, District- Sepahijala, Tripura.
- 4. Sri Atanu Sarkar,**
Son of late Manik Sarkar,
Resident of Village- Tamsabari,
P.O. & P.S. Sonamura, District- Sepahijala, Tripura.

.....*Respondent.*

- 5. Smt. Rubi Dey Sarkar,**
Daughter of late Ajit Sarkar @ Chuni,
Resident of Village- Tamsabari,
P.O. & P.S. Sonamura, District- Sepahijala, Tripura.
- 6. Sri Abhijit Sarkar,**
Son of late Ajit Sarkar,
Resident of Village- Tamsabari,
P.O. & P.S. Sonamura, District- Sepahijala, Tripura.

.....*Proforma Respondents.*

For Petitioner(s)	:	Mr. S. Deb, Sr. Advocate Mr. A. De, Advocate
For Respondent(s)	:	Mr. DR Chowdhury, Sr. Advocate. Mr. S. Sarkar, Advocate.
Date of hearing	:	25.07.2023.
Date of pronouncement of Judgment & Order	:	31.07.2023.
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order

Heard Mr. S. Deb, learned senior counsel assisted by Mr. A. De, learned counsel appearing for the petitioner as well as Mr. DR Chowdhury, learned senior counsel assisted by Mr. S. Sarkar, learned counsel for the respondents.

[2] The instant Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 30.11.2021 in Civil Misc. 08 of 2015 arising out of Ex. (T) 03 of 2015 passed by the Court below.

[3] The petitioners are the legal heirs of defendant No.2 in T.S. 32 of 1979. This petition has been filed challenging the legality/validity of the judgment and decree passed in connection with case No. T.S. 32 of 1979 which was subsequently reversed by the First and Second Appellate Court i.e. learned Additional District Judge, Sepahijala in T.A. No. 03 of 2006 as affirmed in RSA 20 of 2007 by this Court and subsequently on the strength of said judgment and order passed by the 1st and 2nd Appellate Court, an execution petition No. T.S. (Exe) (T) No. 03 of 2015 was filed wherein the petitioners were not arrayed as parties. According to the petitioners, they are affected by the said decree passed in T.S. 32 of 1979 passed by the learned Court below.

[4] The brief facts of the case are that the plaintiff, namely Sunil Chandra Sarkar filed the suit bearing No. T.S. 32 of 1979 before the Court of Munsiff now Civil Judge, Junior

Division, Sonamura. In the said suit, the plaintiff claimed that on 04.01.1968 he purchased land measuring 0.12 acres from one Manindra Chandra Singha Roy under Dag No.1043 of Khatian No.500 of Mouja Nabadwip Chandra Nagar. Thereafter, on 27.07.1979, he purchased another land measuring 0.11 acres from Sankar Singha Roy and Apu Singha Roy fallen under same Dag number. Thus he claimed to be the owner of 0.23 acres lands out of 0.41 acres of land fallen under Dag No.1043. The defendant No.1 & 3 filed written statement wherein they have stated that the defendant No.2 Suresh Chandra Sarkar purchased land measuring 0.18 acres from Bandana Pal. Subsequently the defendants file an additional written statement, wherein they have stated that their father Suresh Chandra Sarkar died long years back, but the plaintiff did not substitute the legal heirs of late Suresh Chandra Sarkar. The plaintiff filed suit for recovery of possession vide suit no. T.S. 32 of 1979. However, after trial of the suit, by a judgment dated 23.08.2005, the learned trial Judge dismissed the suit.

[5] Aggrieved thereby, the plaintiff preferred a Title Appeal No.03 of 2006 before the learned Addl. District Judge, West Tripura, Agartala. After hearing both the sides, on 19.12.2006, the learned Court below allowed the appeal and set aside the judgment and decree passed on 23.08.2005 and 31.08.2005 respectively.

[6] Aggrieved by and dissatisfied with the judgment and order dated 19.12.2006 in T.A. 03 of 2006, defendants preferred a Second Appeal bearing No. RSA 20 of 2007 before this Court. After hearing the appeal, this Court by a judgment dated 11.12.2013 affirmed the judgment and decree passed by the first appellate Court dated 19.12.2006.

[7] The plaintiff thereafter filed an execution petition bearing No. Ex(T) 03 of 2015 before the Executing Court for execution of the decree passed in favour of the plaintiff. The present petitioners came to know that if the decree is passed they would be affected badly as they are the legal heirs of Suresh Chandra Sarkar (defendant No.2) and they apprehend that their house will be demolished. The present petitioners and other legal heirs of Suresh

Chandra Sarkar were not made party to the suit and said Suresh Chandra Sarkar had died during the pendency of the suit.

[8] Thereafter, the present petitioners preferred an application bearing No. Civil Misc. 08 of 2015 arising out of Ex(T) 03 of 2015 before the Executing Court praying for declaring the judgment and decree in connection with case No. T.S. 32 of 1979 passed by the learned Trial Court to be null and void and also for fresh trail. But, the Executing Court i.e. Civil Judge Junior Division, Court No.1, Sonamura, Sepahijala dismissed the petition filed by the legal representatives of defendant No.2 by order dated 30.11.2021.

[9] Being aggrieved by the impugned order dated 30.11.2021, the petitioners herein has approached this Court seeking the following reliefs:

- (i) **Admit the petition and issue a rule calling upon the respondents as to why the judgment and decree passed by the learned Additional District Judge, Sepahijala in T.A. No. 03 of 2006 (Annexure-3) as affirmed in RSA 20 of 2007 (Annexure-4) arising out of T.S. 32 of 1979 and the judgment and order passed on 30.11.2021 in Execution petition bearing No. T.S. (Exe.) (T) No.3 of 2015 (Annexure-9) on the strength of the judgment and decree passed by the learned Additional District Judge, Sepahijala in T.A. No. 03 of 2006 (Annexure-3) as affirmed in RSA 20 of 2007 (Annexure-4) arising out of T.S. 32 of 1979 shall not be quashed and set aside;**
- (ii) **In the interim stay further proceeding in T.S. (Exe.) (T) No.3 of 2015 during the pendency of the petition;**
- (iii) **Call for records;**
- (iv) **After hearing both the parties make the rule absolute.**

[10] It is the case of the petitioners that they are the legal heirs of defendant No.2 and the suit has been ended in ex parte. In view of death of defendant No.2, the plaintiff has not taken any step to bring the legal heirs on record and thus, the suit which is decreed cannot be executed against the legal heirs of the defendant No.2 and thus, it is prayed that the Court below ought to have considered their objections in their favour and rejected the Execution

Proceeding by allowing their objection under Order XXI Rule 97 of CPC. Since the Court below has rejected their case, they prayed to allow the CRP and set aside the order impugned.

[11] Plaintiff and the defendants No.1, 2 & 3 are neighbours and there is a boundary dispute and it is the claim of the plaintiff that defendants are in unauthorised occupancy of the portion of the property of the plaintiff and the plaintiff filed the suit seeking recovery of possession of the suit land. The land in question was represented by defendants No.1, 2 & 3 and the matter was in contest. The defendants No.1, 2 & 3 are family members. Defendants No.1 & 3 are the brothers and defendant No.2 is the father of defendants No.1 & 3. The suit scheduled property is as under:

Scheduled

It is situated in Mouza Nabadwip Chandra Nagar within the jurisdiction of Sonamura Tahashil, Paragana Udaipur, holding No.337 Khatian No.500 Dag No.1043 which contains an area of 0.41 acres out of which northern part measures 0.23 acres belongs to the plaintiff. The suit land is a part of this 0.23 acres. Suit land is plaint amended as per order No. 32 dt. 15.7.85 bounded on the north by the land of plaintiff. On the south is the remaining 0.18 acres of Land of Dag No.1043 on the east by Dag No.1041 belonging to Gobinda Saha and others on the West by plaintiff and others. With in this the area of the suit land is nearing 0.11 acres.

The decree prepared in favour of the plaintiff is as under:

“Title Appeal No. 45 of 2005 (Agartala)

Title Appeal No.03 of 2006 (Sonamura) from the Title Suit No.32 in the Court of Civil Judge, Junior Division, Sonamura, West Tripura judgment of 1979 dated the 23rd day of August, 2005. This appeal came up for hearing on 22nd day of November, 2006 before Sri S. Sikdar, Additional District & Sessions Judge, West Tripura, Sonamura.

In the presence of 1. Sri D. Chakraborty, 2. Sri P.K. Deb, Advocate for the appellant and of Sri B. Das, Sr. Advocate with Sri S. R. Bardhan, Advocate for the respondents. It is ordered that in the result the impugned judgment dated 23.08.2005 and the decree drawn on 31.08.05 is set aside. Plaintiff appellants filed to the suit land is hereby declared. The defendant respondents are required to vacate the suit land measuring 0.12 acres within a period of 3 months from today failing which the plaintiff appellant shall be entitled to recover Khash possession through the process of law in the light of the report of the joint survey commissioner dated

25.03.04 marked exhibit- C, in the circumstances of the case the parties are left to bear their respective cost of the appeal.”

[12] The written statements have been filed by the defendants during the pendency of the suit. In their additional written statement defendants No.1 & 3 have indicated that defendant No.2 had died long ago. It is to be noted that the suit is filed in the year 1979 whereas, additional written statement has been filed on 08.04.2022.

[13] Mr. S. Deb, learned senior counsel submits that the application filed under Order XXI Rule 97 & 99 read with Section 151 of CPC for dismissal of decree passed in TS 32 of 1979 has been rejected by the Court below. He contends that the court below has miserably failed to take into account the decision of Hon'ble Apex Court in *Brahmdeo Choudhury v Rishikesh Prasad Jaiswal (AIR 1997 SC 856)* wherein it has been observed as under:

3. Respondent 1 filed an Eviction Suit No. 54 of 1988 in relation to six and a half dhurs of the suit land against Respondent 2 and his mother Bachani Devi. A decree was passed in favour of Respondent 1 against the judgment-debtor Respondent 2 in 1988 by the Court of Munsif II, Munger. Respondent 1 filed execution proceedings in 1990 against Respondent 2 judgment-debtor. These proceedings were registered as Execution Case No. 25 of 1990. On 25-4-1991 Respondent 1 decree-holder obtained a warrant for delivery of possession from the executing court against Respondent 2. When the bailiff went on spot to execute the warrant on 28-4-1991 he was resisted by the present appellant as well as his brothers Sitaram Choudhary and Jago Choudhary along with 20-25 persons and because of the resistance offered by them and on account of abuses and throwing of bricks and stones indulged into by them it was impossible to execute the warrant for possession. Under these circumstances the decree-holder by his application dated 6-5- 1991 requested that help of magistrate and armed force be made available at his cost for execution of the decree. It appears that the said application remained lingering on the file of executing court for a number of years and ultimately the executing court directed execution of the warrant for possession by affording help of police force to the decree-holder. It was at that stage that the present appellant filed a written application on 22-1-1996 before the executing court to stay operation of the said warrant and to decide his objections. By a rejoinder dated 1-2- 1996 Respondent 1 decree-holder raised the question of maintainability of such an application before handing over actual possession to the decree-holder. The executing court without adjudicating upon the objections of the appellant on merits and without deciding whether the obstruction or resistance offered by him was legally justified or not dismissed the appellant's application dated 22-1- 1996 by order dated 15-2- 1996. The executing court took the view that the remedy of the appellant was to move an application under Order XXI, Rule 99, CPC only after he was dispossessed and as that stage was not still reached the request of the appellant to adjudicate his claim could not be entertained. It is this order of the executing court which has come to be confirmed by the High Court of Judicature at Patna by the impugned order dated 17-5- 1996.

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

was decreed in favour of respondent no.1 decree-holder. The Nazir in his report dated 28th April 1991 has noted that the warrant for possession could not be executed on spot on account of the resistance and obstruction offered by the appellant, amongst others. Once that report was received by the Executing Court respondent no.1 decree-holder naturally became alive to the fact of such resistance on spot by the appellant, amongst others. Thereafter when he moved the application on 6th May 1991 for issuance of fresh warrant for possession with the help of police force though the application purported to be under Order XXI Rule 35 it would strictly not fall within that provision as the decree-holder wanted to bypass the obstruction and resistance offered by a stranger to the decree, namely the appellant who was not claiming any right, title or interest through the judgment-debtor. Whether his claim was right or wrong on merits is a different matter. But once such resistance was offered by him the proper procedure which was required to be followed by respondent no.1 decree-holder was the one contemplated by Order XXI Rule 97, CPC. The said provision reads as under:

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

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

9. In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist in only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI Rule 99. Order XXI Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order XXI Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order XXI Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to

have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI Rules 97 and 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.

10. In this connection we may also profitably refer to a judgment of a Bench of three learned of this Court in the case of Bhanwar Lal v. Satyanarain and Another (195) 1 SCC 6. In that case the Bench consisting of K. Ramaswamy, S.C. Agrawal, and N. Venkatachala, JJ., Satyanarain had obstructed to the delivery of possession of the suit immovable property which was sought to be obtained in execution by the appellant decree-holder. After such an obstruction was offered by Satyanarain the decree-holder moved an application under Order XXI Rule 35 for police assistance to remove obstruction caused by Satyanarain. The Executing Court directed the decree-holder to make an application under Order XXI Rule 97. This Court took the view that the very application under Order XXI Rule 35 sub-rule (3) for police assistance for removal of obstruction caused by Satyanarain had to be treated to be an application under Order XXI Rule 97 and such an application was maintainable and could not be said to be beyond limitation. In this connection the following pertinent observations were made by this Court: "2. The crux of the question is whether the application filed on 25-5-1979 by the appellant, though purported to be under Order XXI, Rule 35(3) against Satyanarain, is convertible to one under Order XXI, Rule 97. Order XXI, Rule 35(3) provides that:

"35(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession."

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

4. Order XXI, Rule 97 provides thus:

"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.'

5. The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order XXI, Rules 98 to 102. A reading of Order XXI, Rule 97 CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.

6. When the appellant had made the application on 25-5-1979 against Satyanarain, in law it must be only the application made under Order XXI, Rule 97(1) of CPC. The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule. On technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of res judicata which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost."

[14] He has further contended that the defendant No.2, Suresh Chandra Sarkar had died long ago and the legal heirs of defendant No.2 was not brought on record. In support of his contention, reliance has also been placed on another judgment of the Apex Court in *Saiyad Mohammad Bakar El- Edroos v Abdulhabib Hasan Arab and others* reported in (1998) 4 SCC 343 wherein it has been held thus:

3. Learned counsel for the appellant submits with vehemence that in all the aforesaid orders, if Rule 7 of the Bombay Public Trust Rules, 1951 was taken into consideration, the conclusion would have been otherwise. Submission is this, rule 7 read with Section 6 of the presidency small Causes Courts Act, 1882 (hereinafter referred as '1882 Act') makes it obligatory on the Charity Commissioner to follow the procedure as prescribed by the Civil Procedure Code, so when one of the applicants died and his heirs not being brought on the record within the prescribed time, the proceedings would abate by virtue of provisions under the Civil Procedure Code. The relevant portion of Rule 7, as relied by the appellant is quoted hereunder:-

"7. Manner of inquiries - Except as otherwise provided in that Act and these rules, inquiries under or any other inquiry which the Charity Commissioner may direct to be held for the purposes of the Act, shall be held, as far as possible, in the Greater Bombay Region in accordance with the procedure prescribed for the trial of suits under the Presidency small Cause Courts Act, 1882 and elsewhere under the provincial Small Cause Courts Act, 1887. In any inquiry a party may appear in person or by him recognised agent or by a pleader duly appointed to act on his behalf."

Section 6 of the Presidency Small Cause Courts Act, 1882 is quoted hereunder: -

"6. The Small causes Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or

Bombay, as the case may be, within the meaning of the Letters patent, respectively, dated the 28th day of December, 1865, for such High Courts, and within the meaning of the Code of Civil Procedure and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal practitioners Act, 1879 and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction."

[15] Further reliance has been placed on another judgment of the Apex Court in *Ashan Devi and another v Phulwasi Devi and others* reported in (2003) 12 SCC 219, which reads as under:

11. Aggrieved by the reversing judgment of the High Court, the Objectors are in this appeal. The connected special leave petition has been filed by the Decree Holder as they feel aggrieved only by the last direction of the High Court giving liberty to the Objectors to file a separate suit for their rights, without being prejudiced by findings and conclusions reached in proceedings under Order XXI Rule 99 of the Code.

12. We have heard both the learned senior counsel Shri P.S. Mishra appearing for the Objectors and Shri R.S. Suri for the Decree Holder at sufficient length. On behalf of the Objectors, it is contended that they being in possession under registered sale deeds and their names having also been mutated in records of Patna Municipality, the delivery of possession of the land in execution of decree of specific performance to the Decree Holder was clearly a case of 'dispossession' within the meaning of Order XXI Rule 99 of the Code. Reliance is placed on *Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal & Anr.* [1997 (3) SCC 694]; *Shreenath & Anr. vs. Rajesh & Ors.* [1998 (4) SCC 543]; *Silverline Forum Pvt. Ltd., vs. Rajiv Trust & Anr.* [AIR 1998 SC 1754]; and *Tanzeem-E- Sufia vs. Bibi Haliman & Ors.* [2002 (7) SCC 50]

[16] On the contrary Mr. DR Chowhury, learned senior counsel appearing for the plaintiff-respondents herein, contends that the order passed by the Court below is in accordance with law and needs no interference and thus, the present CRP has to be dismissed. He also contended that the CRP under Article 227 is not maintainable since there is no necessity for exercising the supervisory jurisdiction by the High Court. He argued that the suit land was represented by the defendants in its entirety and mere death of defendant do not bar the trial court from issuing any Execution Proceeding and there is no necessity for bringing the legal representatives on record for defendant No.2. He also contended that at no point of time, the defendants have indicated to the plaintiff about the death of defendant No.2 and regarding the surviving legal heirs in order to take appropriate steps for bringing them on record.

[17] The defendants and the petitioners have not acted in a fair manner and they have not approached this Court with clean hands and they are not entitled for any relief. He also

pointed out that the petitioners herein being the legal heirs of defendant No.2 are not third parties but, they are representing decree/judgment debtors and the judgments referred by the petitioners' counsel are not applicable to the facts of the case and he further relied upon judgment of the Hon'ble Apex Court in ***Beharilal and another v Bhuri Devi (Smt) and others*** reported in ***(1997) 2 SCC 279*** and the judgment in ***Brakewel Automotive Components (India) Private Limited v. P.R. Selvam Alagappan*** reported in ***(2017) 5 SCC 371*** and in support thereof, he prayed to dismiss the CRP confirming the order dated 31.11.2021 of the trial court passed in Civil Misc. 08 of 2015 arising out of Ex(T) 03 of 2015.

[18] The Apex Court in ***Beharilal and another v Bhuri Devi (Smt) and others*** reported in ***(1997) 2 SCC 279*** with regard to the fact that there is no necessity for bringing the legal representatives on record for defendant No.2, which reads as under:

5. In view of the respective contention, the first question that arises for consideration is; whether the appeal has abated on account of failure to substitute the legal representatives of the 1st respondent. It is seen that the original allottee, Ram Gopal is represented by his widow, Bhuri Devi and Kamla, the daughter. Kamla and Bhuri Devi are on record representing his estate. Therefore, on the demise of Bhuri Devi, Kamla being already on record, is representing the estate of her mother as well as her father Ram Gopal. Under these circumstances, the appeal has not been abated nor is there any need to bring separately the legal representatives of Bhuri Devi on record.

[19] The Hon'ble Supreme Court in ***Brakewel Automotive Components (India) Private Limited v. P.R. Selvam Alagappan*** reported in ***(2017) 5 SCC 371*** which reads as under:

17. The materials on record and the arguments based thereon have received our due consideration. To recapitulate, the plaint discloses that the respondent had represented before the appellant to be authorized to act on behalf of both the firms and in that capacity had participated in the transactions that followed. In that perspective, even assuming that the name of one of the firms was wrongly mentioned and that in fact, it is the wife of the respondent, who is the proprietress thereof, with whom there is no conflict of interest, these in our comprehension per se, would not render the decree void or unexecutable. Such errors, even if exist, would not infest the decree with any jurisdictional infirmity or reduce it to a nullity.

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

21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the

execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, in execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

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

[20] For the purpose of reference let us see what has been observed in the provisions of Section 47 CPC, Order XXI Rule 58 of CPC and Order XXI Rule 97 of CPC-

The provisions of Section 47 CPC read as under:

“47. Questions to be determined by the Court executing decree- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) [*****]

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

[Explanation I. – For the purposes of this Section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

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

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

The provisions of Order XXI Rule 58 of the CPC read as under:

“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 question (including questions relating to right, the 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, the 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 (1), 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.”

Order XXI Rule 97 of CPC reads as under:

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

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

[21] Admittedly, the petitioners are majors and they are Sri Dipak Chandra Sarkar, aged 54 years and Sri Prabir Chandra Sarkar, aged 56 years and they are legal heirs of Suresh Chandra Sarkar (defendant No.2). It is not in dispute that the petitioners are neighbours of the plaintiff and defendants No.1 & 3 are/were their family members and residing at same place. Thus, this Court is not in a position to accept that the petitioners had no knowledge about this litigation.

[22] Even in the additional amended written statement filed on 08.04.2022 by Defendants No.1 & 3 in paragraph No.2, they have categorically stated that defendant No.2 died long ago but, neither they have indicated the date of death of defendant No.2 nor the details of death and the survival members certificate have been indicated in the said written statement enabling the plaintiff to take steps for bringing legal representatives on record. Such a conduct of the defendants where collectively contesting the matter for the portion of land which is the suit property and the petitioners herein being the family members of the defendants chose not to approach the Court or the plaintiff by providing their particulars in order to bring them on record is nothing else but an unfair attitude of conduct. They have not approached the Court of law with clean hands.

[23] As rightly pointed out by the Court below by referring to judgment of the Hon'ble Apex Court in *Brahmdeo Choudhury v Rishikesh Prasad Jaiswal* cited (*supra*) wherein a distinction has been drawn indicating third party. As per the judgment/order of the Court below, the term 'Third Party' is explained thus, "*A party can be called third party only when it has no stake at all in the proceeding. A third party comes into picture when his property comes in danger zone in litigation between two litigating parties, completely unattached to the "third Party".*" The petitioners are not purchasers of the property or strangers to the property. They are already in possession and enjoying the property and it has to be reasonably presumed that they have sufficient knowledge about the litigation since, they all belong to the same family.

[24] Admittedly, defendant No.2 is a judgment debtor. The legal heirs of judgment debtor who are before this Court entered into the shoes of judgment debtor and they cannot be termed as third party or a stranger and accordingly, cannot claim a benefit under Order XXI Rule 97 of CPC. Now, it is necessary to examine Order XXI Rule 98 and Rule 103 for appreciation of the facts:

"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.

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."

[25] In a case where a stranger to a property who is a purchaser, faces any decree or Execution Proceeding, he can explain same before the Court dealing with the Execution

Proceedings under Order XXI Rule 98 and on such context, the concerned Court can appreciate the evidence and take a fresh decision. If the third party is aggrieved by the said decision, under Order XXI Rule 103 of CPC, he has right to appeal. But insofar as, the present case is concerned, it is not a case of third party but, it is a case of legal heirs to be identified as a judgment-debtor as cited to supra.

In view of the above discussion, this Court also opines that there is no infirmity in the order passed by the Court below and thus, there is no need for any interference.

Accordingly, the order dated 30.11.2021 passed by the Civil Judge, Jr. Division, Court No.1, Sepahijala, Sonamura in case No. Civil Misc. 08 of 2015 arising out of Ex(T) 03 of 2015 is upheld and the CRP fails and thus, the same is dismissed.

Pending application(s), if any, shall also stand vacated.

JUDGE

Sabyasachi G.

**SABYASACHI
GHOSH**

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