N.S.S. NARAYANA SARMA AND ORS. A

v.

M/S. GOLDSTONE EXPORTS (P) LTD. AND ORS.

NOVEMBER 23, 2001

[D.P. MOHAPATRA AND SHIVARAJ V. PATIL, JJ.] B

Code of Civil Procedure, 1908—Order 21 Rules 97-99 and 101—Dispossession by decree holder of purchaser—Decree of partition of the suit property—Transferee dispossessed of the property by decree holder—Objections filed under Order 21 Rule 99 claiming independent title to the property C *as the transferee from the Pattadars whose land did not vest in the State Government under the provisions of the Act—Maintainability of—Dismissal by Trial Court and High Court—On appeal, held the view that the transferees are bound by the decree as they are claiming the property through the State Government who were parties in the suit is unsustainable—Andhra Pradesh (Telangana Area) Abolition of Jagirs Regulation, 1358. (Fasli)* D

One 'D' filed a suit for partition of the suit properties. A preliminary decree was passed which subsequently attained finality pursuant to which the High Court appointed a Commissioner for division of the property in terms of the decree. Respondent, tracing their title to transfers by some E **decree-holders filed applications before the High Court for delivery of possession of the property of their share which was allowed. Respondent then filed execution petition for delivery of possession. Appellants claiming to be transferees, claimed right to such property and filed objection Petition under Order 21 Rule 97 read with Section 101 C.P.C. resisting the execution. Trial Court and High Court dismissed the petitions. This Court,** F **in appeal directed the parties to approach the Executing Court to decide the question of maintainability of the applications under Order 21 Rule 99 C.P.C. and High Court to decide the controversies in accordance with law. The High Court dismissed the objections as not maintainable. Hence the present appeal.** G

On appeal, the appellants contended that their right, title and interest in the property could not have been evicted by the preliminary decree passed in the matter in which they were not parties.

Allowing the appeal, the Court H

A **HELD : 1. The appellants filed a petition before Executing Court claiming independent title to the property as the transferees from the pattadars whose land did not vest in the State Government under the provisions of Andhra Pradesh (Telangana Area) Abolition of Jagirdar Regulation Act, 1958 from which they are sought to be evicted in execution**
B **of the decree. Thus the view taken by the Division Bench that since the appellants were claiming the property through the Paigah Committee or the State Government, who are parties in the suit, they are bound by the decree, is unsustainable and does not at all stand scrutiny under law.**

[338-G; H; 339-A; B]

C **2. When any person claiming title to the property in his possession obstructing the attempt by the decree-holder to dispossess him from the said property the executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule**
D **103 is to be treated as a decree. [338-D; E]**

Silverline Forum Pvt. Ltd. **v.** *Rajiv Trust and Anr.*, **[1998] 3 SCC 723;** *Shreenath and Anr.* **v.** *Rajesh & Ors.*, **[1998] 4 SCC 543 and** *Anwarbi* **v.** *Pramod D.A. Joshi and Ors.*, **[2000] 10 SCC 405, referred to.**

Usha Jain **v.** *Manmohan Bajaj,* **AIR (1980) MP 146, cited.**

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7983 of 2001.

From the Judgment and Order dated 10.11.98 of the Andhra Pradesh High Court in O.S.A. No. 20 of 1996.

WITH

F

C.A. Nos. 7984-85, 7986-88 of 2001.

P.P. Rao, C. Sitaramaiah R.F. Nariman, S. Muralidhar, B. Nalin Kumar, S. Vallinayagam, M.K. Garg, Aman Lekhi, Ms. Anjali Aiyagari, Guntur Prabhakar, Ms. Neeru Vaid, K. Ram Kumar, B. Sridhar, A.K. Narasimha Rao
G and Anis Ahmed Khan for the appearing parties.

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Leave is granted in all the SLPs.

The judgment rendered by a Division Bench of the Andhra Pradesh High
H

Court on 10th November, 1998 disposing of a batch of appeals filed under Clause 15 of the Letter Patent, against the judgment of single Judge is under challenge in these appeals. Since common questions of fact and law were raised by the parties in all the cases the High Court disposed of the appeals by a common judgment. The dispute relates to a property extending over 196.20 guntas under Survey No. 172 of Hydernagar village. The contest is between two sets of transferees of the property, while the appellants claim to be transferees of holders of pattas issued in their favour by the Pygah Committee of Nawab Khurshed Jah Pygah, the respondents trace their title to transfers by some decree-holders in the suit. The objections filed by the appellants under Order 21 Rule 99 read with Rule 101 of the Civil Procedure Code (for short 'the CPC') having been dismissed by the High Court as non-maintainable, the appellants are before this Court assailing the judgment of the High Court.

The genesis of the proceedings leading to the present cases shorn of unnecessary details, may be stated thus : One Dildar Unnisa Begum filed OS No. 41/1955 in the City Civil Court, Hyderabad against the defendants for a decree of partition of the suit properties which according to the plaintiff were Matruka property of the late Nawab Khurshed Jah Paygah. The High Court transferred the suit to its file and on such transfer the suit was re-numbered as C.S. No. 14 of 1958. A preliminary decree was passed in the suit on 28th June, 1963 on the basis of the compromise entered into between the parties. No appeal having been filed against the preliminary decree it attained finality. The subject matter of the present proceeding is included as Item No. 38 of Schedule IV of the plaint. Item No. 38 corresponding to Survey No. 172 of Hydernagar Village to an extent of 196 acres 25 guntas was allotted to plaintiff no. 2/ defendants nos. 27, 50, 51, 52 and 116 in the preliminary decree. In pursuance of the preliminary decree the High Court appointed a Commissioner for division of the property in terms of the decree.

M/s. M.S. Cyrus Investments Ltd. is stated to have purchased 50 shares of HEH Nizam who himself was a purchaser of certain shares from the original decree-holder and thus became defendant no. 206 in the suit. Subsequently, the said M/s. M.S. Cyrus Investments Ltd. assigned its assets in favour of M/s. Goldstone Exports and some others who are respondents herein. After the aid assignment M/s. Goldstone Exports and others filed applications before the High Court for certain reliefs including delivery of possession of the property of their share and for mutation of their names in the revenue records. A single Judge of the High Court allowed the applications filed by M/s. Goldstone

A Exports and other assignees for being impleaded as defendants in the suit. Thereafter the applicants so impleaded as defendants in the suit filed E.P. No. 3/96 seeking delivery of possession. A single Judge of the High Court by the order passed on 29th March, 1996 ordered delivery of possession of the property in favour of the applicants. The Bailiff appointed by the Court is stated B to have delivered possession of the property to the respondents.

The appellants tried to obstruct delivery of possession of the property to the applicants. The gist of their case was that the late Nawab Khurshed Jah Pygah administration had granted pattas in favour of several cultivators and supplementary sethwar was also issued, wherein the names of the pattadars C were recorded. Since the supplementary sethwar had not been implemented the lands were erroneously shown as government lands. Subsequently, however the supplementary sethwar was implemented and their names were recorded as transferees of the property in the year 1980. Thereafter the pattadars entered into an agreement of sale with SETWIN Employees Housing Cooperative Society and Shri Satya Sai Cooperative Housing Society Ltd. of which the D appellants are the members. Registered sale-deeds were also executed in favour of the appellants to the extent of 85 acres of land. Pakka houses were constructed on the lands transferred in favour of the appellants. Assessment of property tax in respect of the houses has been made by the Kukatpally Municipality.

E

Coming to know of the execution petition filed by the respondents for delivery of possession before the District Judge, Ranga Reddy District, some of the appellants filed petitions under Order 21 Rule 97 read with Section 101 of the CPC resisting the execution. The District Judge dismissed the petitions holding that he was not the Executing Court, he was merely implementing the F orders passed by the High Court and, therefore, could not entertain such applications. The appellants approached the High Court in appeal but were unsuccessful. Thereafter they filed Civil Appeal Nos. 5610-5611/1997 (Arising out of SLP (C) No. 4162-63/1997) and Civil Appeal No. 5609 of 1997 (Arising out of SLP (C) No. 23706 of 1996) and Civil Appeal Nos. 5612-14/1997 G (Arising out of SLP (C) Nos. 8787-8789 of 1997) before this Court which were disposed of by the order dated 14.8.1997 wherein both the parties were directed to approach the Executing Court and the Executing Court was directed to decide the question of maintainability of the applications under Order 21 Rule 99 CPC and also the question of limitation, uninfluenced by any direction given H by the High Court. The High Court was directed to go into all the questions

arising in the case and finally decide the controversies as it thinks proper and in accordance with law. A

That is how the appeals were placed before the Division Bench which disposed them of by the judgment under challenge.

From the facts narrated in the impugned judgment it is clear that the appellants claimed to have become absolute owners of the land on the basis of their purchase of the same from the pattadars much prior to the Andhra Pradesh (Telangana Area) Abolition of Jagirdar Regulation Act, 1958 came into force. It was the further case of the appellants that they were in possession of the land and had constructed pucca houses thereon. They contended that their right, title and interest in the property could not have been affected by the preliminary decree passed in C.S. No. 14 of 1958 in which they were not parties. B C

The relevant provisions of the CPC material for the case are Rules 97 to 103 of Order 21 of the Code. Rule 97 provides that :"(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 abstaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction". Such an application is to be dealt with by the Court in accordance with the provisions contained in the Code. D E

Under Rule 98 provision is made regarding the order to be passed by the Court in accordance with the determination either making it to be allowing the application and directing that the applicant be put into the possession of the property or dismissing the application or passing such other order as, in the circumstances of the case, it may deem fit. F

Under Rule 99(1) it is laid down "Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession." Under sub-rule (2) thereof it is provided that where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions contained in the Code. G

Under Rule 100 it is laid down that : "Order to be passed upon appli- H

A cation 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

(b) pass such other order as, in the circumstances of the case, it may deem fit."

C Rule 101 contains provisions regarding question to be determined. It reads as follows :

"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 adjudi-
D cation 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."

Under Rule 102 it is provided "Nothing in Rules 98 and 100 shall apply
E 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 person."

Under Rule 103 any order made by the Court upon adjudication under
F Rule 98 or Rule 100 shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto.
G In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of
H Order 21 contain the provisions enabling the executing court to deal with a

situation when a decree holder entitled to possession of the property encounters obstruction from "any person". From the provisions in these rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with "all issues" relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application *shall be determined by the Court dealing with the application and not by a separate suit* and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the manner irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting the relevant issues arising in the case.

(Emphasis supplied)

Interpreting the provisions in these rules, a three Judge bench of this Court in the case of *Silverline Forum Pvt. Ltd.* v. *Rajiv Trust and Anr.*, [1998] 3 SCC 723 held :

> "It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be

A determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the B resistance was made by a transferee *pendente lite* of the judgement-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is C based on the salutary principle adumbrated in Section 52 of the Transfer of property Act.

When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudicate, the court is obliged to determine only D such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

The words "*all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties.* E In other words, the court is not obliged to determine a question merely because of the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant F for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee *pendente lite* it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who G questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. *In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can* H

decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section."

(Emphasis supplied)

Tracing the change in the statutory provisions brought about by the amendment of the CPC this Court in the case of *Shreenath and Anr.* v. *Rajesh and Ors.*, [1998] 4 SCC 543, made the following observations :

"Under sub-clause (1) Order 21 Rule 35, the executing court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by the decree. Order 21 Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the court delivers possession by fixing a copy of the warrant in some conspiuous place of the said property and proclaiming to the occupant by beat of drum or the customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree holder gets the symbolic possession. Order 21 Rule 97 conceives of resistance of obstruction to the possession of immovable property when made in execution of a decree by "any person". This may be either by the person bound by the decree, claiming title through the judgment-debtor or claiming independent right of his own including tenant not party to the suit or even a stronger. A decree-holder, in such a case, may make an application to the executing court complaining such resistance for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the executing courts when such claim is made to proceed to adjudicate upon the applicant's claim in accordance with the provisions contained hereinafter. This refer to Order 21 Rule 101 (as amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21 Rule 97 or Rule 99 shall be determined by the court and not by a separate suit. By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstruction by a stranger is adjudicated and finally given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately of widen-

A ing the scope of power so that the executing court could adjudicate the claim made in any such application under Order 21 Rule 97. Thus by the use of word "any person" it includes all persons resisting the delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right
B on their own, including a stranger.

So, under Order 21 Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the executing court. A party is not thrown out to relegate itself to the long-drawn-out arduous procedure of a fresh suit. This is to salvage the possible
C *hardship both to the decree holder and the other person claiming title on their own right to get adjudicated in the very execution proceedings.* We find that Order 21 Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in posses-
D sion who is bound by a decree, while under Order 21 Rule 36 only symbolic possession is given where the tenant is in actual possession. *Order 21 Rule 97, as aforesaid, conceives of cases where delivery of possession to the decree holder or purchaser is resisted by any person. "Any person", as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own*
E *including that of a tenant including a stranger.*

xxx xxx xxx

So far sub-clause (1) of Rule 97 the provision is the same but after the 1976 Amendment all disputes relating to the property made under
F Rules 97 and 99 are to be adjudicated under Rule 101, while under unamended provision under sub-clause (2) of Rule 97, the executing court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 the court puts back a decree-holder in possession where the court finds obstruction
G was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the court has to dismiss the decree-holder's application. *Thus even prior to 1976, right of any person claiming right on his own or as a tenant not party to the suit, such person's right had to be adjudicated under Rule 99 and he need not*
H *fall back to file a separate suit. By this, he is saved from a long*

litigation. So a tenant or any person claiming a right in the property on the own. If resists delivery of possession to the decree-holder, the dispute and his claim has to be decided after the 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. *However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he was to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the executing court itself finally under Rule 101.*

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

Rule 100 of the old law, as referred in the aforesaid Full Bench decision of the Madhya Pradesh High Court is a situation different from what is covered by Rule 97. Under Rule 100 (old law) and Order 99, the new law covers cases where persons other than the judgment-debtor is dispossessed of immovable property by the decree holder, of course, such cases are also covered to be decided by the executing court. But this will not defeat the right of such a peon to get his objection decided under Rule 97 which is a stage prior to his dispossession or a case where he is in possession. In other words, when such person is in possession the adjudication to be under Rule 97 and in case dispossessed adjudication to be under Rule 100 (old law) and Rule 99 under the new law. Thus a person holding possession of an immovable property on his own right can object in the execution proceeding under Order 21 Rule 97. One has not wait for his dispossession to enable him to participate in the execution proceedings. This shows that such a person can object and get adjudication when he is sought to be dispossessed by the decree-holder. For all the aforesaid reasons, we do not find the Full Bench in Usha Jain, AIR (1980) MP 146 correctly decided the law."

(Emphasis supplied)

This Court in the case of *Anwarbi* v. *Pramod D.A. Joshi and Ors.*, [2000] 10 SCC 405, interpreting the provisions in Order 21 Rules 97 and 101 clarified

A the position that the obstructionist in possession can only be dispossessed in accordance with law - person in possession of immovable property claiming legal entitlement thereto and obstructing execution of decree for possession - may not be dispossessed till his rights are adjudicated in appropriate proceedings. The decree-holder cannot take possession unless such proceedings terminate in his favour. This Court further held :

B

> "Learned counsel for the appellant has contended that the appellant is being repeatedly threatened with dispossession. We, therefore make it clear that the possession of the appellant cannot be disturbed except in accordance with law; and that in view of the obstruction raised by her to the execution of the said decree, the rights of the obstructionist will have to be decided in appropriate proceedings, in accordance with law. Unless and until such proceedings terminate in favour of the decree-holder, the decree-holder cannot take possession and the appellant is entitled to retain possession."

C

D From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructing the attempt by the decree-holder to dispossess him from the said property the executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass E appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree. From the averments made in the petition filed by the appellants before the executing Court it is clear that they are claiming independent right to the property from which they are sought to be evicted in execution of the decree. It is the further case of the appellants that the right in the property had vested in them much prior to filing of the present suit the F decree of such is under execution. It is to be kept in mind that the suit as initially filed was a suit for partition simplicitor. In such a suit the High Court in course of execution proceedings ordered delivery of possession. Whether such a direction given in the suit is valid or not is a separate matter. We need not say anything more on the question at present. As noted earlier, the learned G single Judge and the Division Bench dismissed the petition filed by the appellants as non-maintainable without entering into the merits of the case. The Division Bench appears to have taken the view that since the appellants are claiming the property through the Paigah Committee or the State Government, who are parties in the suit, they are bound by the decree. The view taken by H the Division Bench is unsustainable and does not at all stand scrutiny under

law. It amounts to, if we may put it that way, begging the question raised in the petition filed by the appellants. At the cost of repetition, it may be stated here that the appellants are claiming independent title to the property as the transferees from the pattadars whose land did not vest in the State Government under the provisions of Andhra Pradesh (Telangana Area) Abolition of Jagirdar Regulation Act, 1958. On a perusal of the orders passed by the single Judge as well as Division Bench of the High Court, we are constrained to observe that the said orders are based on a complete mis-reading of the case of the appellants and mis-conception of the legal position relevant to the matter. Considering the facts and circumstances of the case, we are the view that the matter should be remitted to the High Court for fresh consideration of the petitions filed by the appellants by a single Judge at the first instance.

Accordingly, the appeals are allowed. The order dated 28th December, 1995 of the learned single Judge in C.S. No. 14 of 1958 which was confirmed by the Division Bench in the order dated 10th November, 1998 in O.S.A. Nos. 10, 11, 18, 20/1996 & 35, 36 and 37 of 98 (appealed from) is set aside and the matter is remitted to the High Court for fresh consideration of the petitions filed by the appellants and disposal in accordance with law. The matters shall be placed before a single Judge of the High Court other than the learned Judge who passed the order, at the first instance. The contesting respondents shall pay to the appellants a sum of a Rs. 10,000 as costs of these appeals.

N.J. Appeals allowed.