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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 20.11.2017*
Judgment Pronounced on: 14 .12.2017

+ **RFA 209/2017**

NAVEEN KUMAR GUPTA Appellant.
Through: Ms.Kamakshi Garg, Advocate
with appellant in person.

versus

BHARAT BHUSHAN & ORS. Respondent
Through: Mr.Varun Goswami, Mr.Naveen
Grover, Mr.Rahul Sinha, Ms.Ankita Bansal
and Mr.Shourya Mehra, Advocates for R-1.
Mr.Sagar Sharma , Advocate for R-2 & R-3.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The appellant in the present Regular First Appeal has impugned the judgment & decree dated 25.10.2016 passed by the court of learned ADJ-03, North-West District, Rohini Courts, Delhi in CS No.604/14 whereby the trial court held that the plaintiff's suit was not maintainable in view of Order XXI Rule 101 of the Code of Civil Procedure, 1908 (in short 'CPC').
2. Facts leading to the filing of the present appeal are that in April, 2012, the respondents came at the suit property with Warrants

of Attachment when the appellant was informed that a suit bearing no.4/11 was filed on 04.01.2011 against the respondents for possession of the suit premises. This suit was decreed vide judgment and decreed dated 29.09.2011 by the court of CCJ-cum-ARC (North-West) Rohini Court, Delhi.

3. The respondent no.1 filed an Execution Petition no.451/11 being the decree holder in said Civil Suit No.4/2011 to get the possession of the suit premises and vide order dated 16.03.2012, the trial court issued Warrants of Attachment.
4. The appellant then filed a Civil Suit bearing No.604/2014 for a Declaration that the decree dated 29.09.2011 in Civil Suit No.4/2011 as null and void; Permanent Injunction seeking restrain order against the respondents from executing the decree dated 29.09.2011 and restraining the respondents from creating any third party interest and compensation of Rs.5 lacs against the respondents for harassment by fraudulently obtaining the said decree dated 29.09.2011. The appellant claimed that he was the owner of the property bearing no.C4/57, Ground Floor, LIG Flats, Lawrence Road, Delhi (in short 'suit premises') having purchased it from one Smt. Ratna Gupta, wife of Sh. Raj Kumar vide registered agreement to sell and purchase, registered GPA and Will dated 21/22.12.2010. The appellant got this property converted into a freehold property vide Conveyance Deed dated 11.06.2012. The appellant also claimed to be in possession of

the suit premises since having purchased it from Smt. Ratna Devi.

5. Ms. Kamakshi Garg, learned counsel for the appellant during the course of arguments had stated that her client had filed objections under XXI Rule 101 of the CPC in the execution petition filed by the respondents seeking execution of the impugned judgment and decree dated 29.09.2011. She had limited her challenge to the impugned judgement and decree to the extent that while dismissing her suit on the ground that it was not maintainable, the relief of compensation claimed in prayer clause (iv), has also been rejected without returning any findings.
6. Per contra, Mr. Varun Goswami, learned counsel for respondent no.1, Mr. Shourya Mehra, learned counsel for respondent no.2 and Mr. Sagar Sharma, learned counsel for respondent no.3 had contended that the impugned judgment was based on the correct appreciation of facts & law and therefore warrants no interference.
7. He contended that according to Order XXI Rule 101, all questions arising between the parties on an application under Rule 97 or Rule 99 shall be determined by the court entertaining such an application and not by a separate suit.
8. I have heard the learned counsel for the parties.
9. They only point in the present appeal is as to whether the trial court was correct in not returning a finding about the issue of

compensation that the appellant had claimed for the harassment having suffered decree dated 29.09.2011 in Civil Suit No.4/2011 without impleading him as party to the suit.

10. The appellant had claimed that respondent no.1 succeeded in getting a decree of possession of the suit premises by concealing relevant facts and documents from the court in connivance with respondent no.2 & 3. He claimed that due to this fraud he had suffered harassment and claimed damages of Rs.5 Lakhs.
11. It is profitable to reproduce Order XXI Rule 97, 98, 99 and 101 of CPC as below:

“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.”

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.

99. Dispossession by decree-holder or purchaser

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for 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.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

101. Question to be determined

All questions (including questions relating to right, title or interest in the property) arising

between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

12. The Hon’ble Supreme Court in ***Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal***, (1997) 3 SCC 694 while elaborating the scope of Order XXI Rules 97, 98, 99 and 101 held as under:

“8. A conjoint reading of Order 21, Rules 97, 98, 99 and 101 projects the following picture:

(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order 21, Rule 35 then the decree-holder has to move an application under Order 21, Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without a just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order 21, Rule 98, sub-rule (2) and the decree-holder would be permitted to be put in

possession. Even in such an eventuality the order passed would be treated as a decree under Order 21, Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on the spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order 21, Rule 99 CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order 21, Rule 98, sub-rule (1) CPC the executing court can direct the stranger applicant under Order 21, Rule 99 to be put in possession of the property or if his application is found to be substanceless, it has to be dismissed. Such an order passed by the executing court disposing of the application one way or the other under Order 21, Rule 98, sub-rule (1) would be deemed to be a decree as laid down by Order 21, Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order 21, Rule 101.”

13. In the present case, the appellant has claimed that respondent No.1 had colluded with respondents No.2 and 3 to get a decree for Possession and Permanent Injunction in relation to the suit

property even when respondents No.2 & 3 had already sold the suit property to Smt. Ratna Gupta from whom the appellant had purchased the suit property.

14. It has been already pointed out that the appellant had already filed objections under Order XXI Rule 101 in the executing court. The question of damages due to the alleged harassment is a question which is intrinsically linked to the issue of “right, title and interest” over the suit property.
15. Order XXI Rule 101 states that all questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or 99 shall be determined by the court dealing with the application and not by a separate suit. The question of damages in relation to the alleged harassment suffered by the appellant while the Warrant of Attachment was being executed is a question which is clearly within the scope of the words “all questions” as appearing in Order XXI Rule 101 as the same is relating to the right, title and interest in the suit property.
16. Therefore I find no merit in the appeal and the same is dismissed with no order as to costs

(VINOD GOEL)
JUDGE

DECEMBER 14, 2017
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