



CNR: KAHC010194962024

NC: 2026:KHC:45824
WP No. 9627 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.9627 OF 2024 (GM-CPC)

BETWEEN:

MRS. APSA
D/O. LATE USMAAN BYARI,
W/O. MOHAMMED RAFEEQ,
AGED ABOUT 42 YEARS,
R/AT #25-6B, ZAINABA MANZIL,
KASBA BENGRE, MANGALORE,
D.K. DISTRICT-575 030.

...PETITIONER

(BY SRI. RAJASHEKAR S., ADVOCATE)

AND:

1. PRAVEEN CAPITAL PRIVATE LIMITED
A PRIVATE LIMITED COMPANY,
REGISTERED UNDER SECTION 45 (IA) OF THE
RESERVE BANK OF INDIA ACT, 1934,
FOR CARRYING ON THE BUSINESS OF
NON-BANKING FINANCIAL ACTIVITIES,
HAVING ITS HEAD OFFICE AT
SHRI GANESH COMPLEX,
DARBE, PUTTUR, PUTTUR TALUK,
D.K. DISTRICT-517 538.

AND
REG. OFFICE AT EMBASSY PLAZA,
PUMPWELL CIRCLE, MANGALURU,
REPRESENTED BY ITS G.P.A. HOLDER,
SHRI. YOGISH. S,
AGED ABOUT 24 YEARS,
S/O. SOMAPPA NAIK,



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R/AT KUMMAI HOUSE,
CHIKAMUOOR VILLAGE,
PUTTUR TALUK,
D.K. DISTRICT-517 538.

2. SMT. DULAIKHA
W/O. LATE USMAN B.K.,
AGED ABOUT 58 YEARS,

3. MR. ABDUL NAZEER
S/O. LATE USMAN B.K.,
AGED ABOUT 33 YEARS,

RESPONDENT NOS.2 AND 3 ARE
RESIDING AT BOLADABAILU HOUSE,
KOKKADA VILLAGE & POST,
BELTHANGADY TALUK,
D.K. DISTRICT-574 214.

4. MR. ASHRAF
S/O. LATE USMAN B.K.,
AGED ABOUT 44 YEARS,
R/AT: 3-256(A), KOLPE HOUSE,
IDKIDU VILLAGE & POST,
BANTWAL TALUK,
D.K. DISTRICT-574 220.

...RESPONDENTS

(BY SRI. K. RAVISHANKAR, ADVOCATE FOR R-1;
V/O/D 02.04.2024 NOTICE TO R-2 – R-4 IS DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED
ORDERS DATED 23.02.2024 PASSED ON I.A.NO.1 AND 2 IN
EX.C.NO.6/2021 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND JMFC, BELTHANGADY D.K. DISTRICT VIDE
ANNEXURE-A AND B.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN
'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA



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ORAL ORDER

1. Impugning the order dated 23.02.2024 passed on I.A.Nos.I and II in Ex.C.No.6/2021 on the file of the Court of Principal Senior Civil Judge and JMFC, Belthangady, D.K. District [**the Executing Court**], the objector/applicant is before the Court in this writ petition. By the impugned order, I.A.No.I filed by the petitioner under Order XXI Rule 58 read with Section 151 of the Code of Civil Procedure, 1908 [**CPC**] and I.A.No.II filed under Order XXI Rules 97 to 101 read with Section 151 of the CPC, seeking to raise the order of attachment and adjudication of her independent right, title and interest over the petition schedule property, came to be dismissed.

2. The decree holder [**Respondent No.1**] had obtained a decree for recovery of money against the judgment debtors and instituted execution proceedings [Ex.C.No.6/2021] seeking execution of the judgment and decree by way of attachment of the petition schedule property. Along with the execution petition, the petitioner, claiming an independent right, title and interest over the petition schedule property, filed I.A.No.I under Order XXI Rule 58 read with Section 151 of the CPC and I.A.No.II under Order XXI



Rule 97 to 101 read with Section 151 of the CPC, seeking adjudication of her alleged right, title and interest over the petition schedule property.

3. The petitioner claimed that the property originally belonged to her grandfather and that the regularization/grant of the property had been obtained by her father for and on behalf of the entire family. In support of her claim, she relied upon the saguvali chit, proceedings of the Tahasildar, sketch, RTC extracts, No Objection Certificate and endorsement relating to the property. The Executing Court, by order dated 23.02.2024, dismissed both the applications.

4. Learned counsel for the respondent raised a preliminary objection to the maintainability of the writ petition, contending that an order passed under Order XXI Rules 58 and Rules 97 to 101 of the CPC, upon adjudication of the rights of the parties, has the force of a decree by virtue of Order XXI Rule 58(4) and Rule 103 of the CPC and is, therefore, appealable. Hence, it is contended that a writ petition under Article 227 of the Constitution would not be maintainable.



5. The said preliminary objection was resisted by the petitioner contending that only an order which adjudicates the dispute between the parties would attain the status of a deemed decree under Rule 58(4) and Rule 103.

6. According to the petitioner, in the present case, the Executing Court rejected the applications without conducting the requisite enquiry and, therefore, failed to exercise the jurisdiction vested in it.

7. In support of his contention, learned counsel for the petitioner placed reliance upon the judgment of the Hon'ble Supreme Court in ***Sameer Singh and Another V. Abdul Rab and Others***¹ (*Sameer Singh*), contending that where the Executing Court declines to conduct an enquiry and does not adjudicate the lis as contemplated under Order XXI Rules 97 to 101 of the CPC, the order does not acquire the status of a deemed decree under Rule 103 and, consequently, a petition under Article 227 of the Constitution would be maintainable.

¹ (2015) 1 SCC 379



8. The Executing Court, while passing the impugned order, observed that the petitioner's claim that she was a co-owner of the petition schedule property was not established by the documents produced by her. The Executing Court found that the property bearing Sy.No.17/7A4, measuring 55 cents, had been regularized/granted in favour of judgment debtor No.1 and that the concerned authority had permitted the judgment debtor to convert 40 cents of the property for non-agricultural purposes. The Executing Court specifically recorded a finding that the documents produced by the petitioner did not establish that the property had been granted for and on behalf of the entire family or that the petitioner had any independent right, title or interest therein. Accordingly, the applications came to be dismissed.

9. Heard the learned counsel for the parties and perused the material on record. The question that calls for consideration is:

Whether the impugned order passed by the Executing Court falls within the provisions contained under Order XXI Rule 58(4) and Rule 103 CPC?

10. Order XXI Rule 101 of the CPC mandates that all questions relating to the right, title or interest in the property arising between



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the parties to a proceedings on an application under Rule 97 or 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. Upon determination of such questions, the Executing Court is required to pass an order under Order XXI Rule 98 or 100, as the case may be. Rule 103 envisages that where any application has been adjudicated upon under Rule 98 or 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.

11. Order XXI Rule 58(4) envisages that 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.

12. The Hon'ble Supreme Court in ***Periyammal (dead) through LRs V. V. Rajamani and Another²*** (*Periyammal*) has reiterated the statutory scheme and has held at paragraph Nos.47 to 51 as under:

² (2025) 9 SCC 568



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“47. This Court in N.S.S. Narayana Sarma v. Goldstone Exports (P) Ltd. [(2002) 1 SCC 662], has held as under: (SCC pp. 668-69, paras 15 & 19)

“15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. 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 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



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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 [Ed.: The matter between two asterisks has been emphasised in original.] shall be determined by the Court dealing with the application and not by a separate suit [Ed.: The matter between two asterisks has been emphasised in original.] 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 matter 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



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cannot shirk its responsibility by skirting the relevant issues arising in the case.

19. 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 obstructs 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 103 is to be treated as a decree."

48. In Sameer Singh v. Abdul Rab [(2015) 1 SCC 379], this Court, after considering its previous judgment in Brahmedeo Chaudhary [(1997) 3 SCC 694] has held thus: (SCC p. 389, para 26)

"26. The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated



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by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order 21 Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree. If a court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different.”

49. *A conjoint reading of the relevant provisions and the principles laid down by this Court makes it clear that in execution of decree for possession of immovable property, the executing court delivers actual physical possession of the decretal land to the decree-holder. Rule 35 confers jurisdiction on the executing court to remove any person, who is bound by the decree and who refuses to vacate the property. The words “any person who is bound by the decree”, clearly mandate that removal can only be of a person who is bound by the decree. Rules 97 to 101 deal with situation when execution is obstructed or resisted by “any person” claiming right, title or interest in the property. The words “any person” include even a stranger to a decree resisting the decree of possession as not being bound by a decree or by claiming independent right, title or interest to the property.*



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50. Thus, Rule 97 not only provides to a decree-holder in obtaining possession of an immovable property but also to a stranger who obstructs or resists delivery of possession of the property by claiming derivative title from the judgment debtor or independent right, title or interest in the decretal property. Whereas, Rule 99 gives right to a third party claiming right, title or interest in the property to seek restoration of the decretal property. Suffice it to say that the remedy under Rule 99 is available when a person claiming right to the decretal property is already dispossessed.

51. Rule 101 enjoins upon the executing court dealing with application under Rule 97 or 99 to determine all questions including questions relating to right, title or interest in the property, arising between the parties and relevant to the adjudication of the application. As held by this Court in *Silverline Forum [Silverline Forum (P) Ltd. v. Rajiv Trust, (1998) 3 SCC 723]* the question that the executing court is obliged to determine under Rule 101 must possess two adjuncts viz. (i) that such question should have legally arisen between the parties, and (ii) such question must be relevant for consideration and determination between the parties. Upon adjudication of such questions, the executing court is under an obligation to pass appropriate order as contemplated under Rule 98 or 100, as the case may be. When eventually such order is passed, it would be treated as decree and no separate suit would lie against such order. It therefore follows that the



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only remedy is to prefer an appeal before the appropriate court against such deemed decree.”

13. The decision in ***Sameer Singh*** does recognize an exception to the aforesaid principle. The Hon’ble Supreme Court observed that where the Executing Court declines to adjudicate the claim altogether for example, by holding that it has no jurisdiction or that it has become in *functus officio* and consequently does not undertake the enquiry contemplated under Order XXI Rules 97 to 101, there is no adjudication attracting Rule 103. In such circumstances, the failure to exercise jurisdiction can be corrected in exercise of the supervisory jurisdiction under Article 227 of the Constitution. The relevant portion of the paragraphs is extracted below:

“24. In S. Rajeswari [(2006) 4 SCC 412], the appellant was one of the persons who had obstructed the execution of a decree obtained by the first respondent therein and had filed an application under Section 151 CPC which was rejected by the executing court on the ground that it was not maintainable. Being grieved by the said order he preferred a revision petition which was allowed by the High Court. The Court treated the application preferred under Section 151 CPC to be one under Order 21 Rule 97 because the executing court proceeded to record evidence



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and thereupon adjudicated the matter. The evidence of the decree-holder was considered and a conclusion was arrived at that the identity of plot in question had not been established and thereby the plaintiff was disabled from executing the decree for possession of the land. A contention was raised before this Court that the High Court had erred in entertaining a revision petition under Section 115 CPC, for the order was a decree under Order 21 Rule 103 of CPC and hence, an appeal lay. The said contention was accepted by this Court.

25. *At this juncture, we may refer with profit to the pronouncement in Brahmddeo Chaudhary v. Rishikesh Prasad Jaiswal [(1997) 3 SCC 694], wherein a two-Judge Bench scanning the anatomy of the Rules came to hold that: (SCC pp. 702-03, para 9)*

"9. ... 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 21 Rule 99. Order 21 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 21 Rule 99 on the other hand deals with the subsequent stage



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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 21 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.”

14. The exception recognized in **Sameer Singh** was founded on the circumstance that the Executing Court had not adjudicated the controversy and had merely declined to undertake the enquiry contemplated under Order XXI Rules 97 to 101. The present case, however, stands on different footing. The Executing Court has not rejected the applications on the ground of want of jurisdiction, nor has it declined to adjudicate the claim. On the contrary, it has considered the petitioner's claim of right, title and interest, examined the documents produced by her and recorded a specific finding that the petitioner did not establish any independent right,



title or interest over petition schedule property. Thus, there has been an adjudication of the petitioner's claim, as contemplated under Order XXI Rule 101 of the CPC, followed by an order on the applications. The mere fact that the petitioner may contend that the adjudication is erroneous in law or that the enquiry conducted by the Executing Court was inadequate would not, by itself, take the impugned order outside the scope of Rule 103.

15. This Court in ***A. Ravikantha Reddy V. Mr Peter Issac and Others***³ (*Ravikantha Reddy*) dealt with a similar situation, wherein the Executing Court had rejected an application filed under Order XXI Rule 97 read with Rule 101 and Section 151 of the CPC. The issue before the Single Judge was whether an order rejecting an application under Order XXI Rule 97 of the CPC is appealable (being a deemed decree under Rule 103) or whether a petition under Article 227 is maintainable against it.

16. This Court examined paragraph Nos.20 to 27 of the judgment in ***Sameer Singh*** and also considering the decision in ***Noorduddin V. K.L. Anand***⁴ and ***Babulal V. Raj Kumar***⁵, held

³ W.P.No.26965/2025 D.D. 18.09.2025

⁴ (1995) 1 SCC 242



that an order adjudicating an application under Rule 97 or 100 would attain the status of a deemed decree under Rule 103 and would be appealable as such. It was further held that where the Executing Court has adjudicated upon the petitioner's claim of right, title and interest, the principle enunciated in ***Sameer Singh's*** case would not apply. In the ***Sameer Singh's*** case, it is a situation where Executing Court declines to exercise jurisdiction or holds itself to be *functus officio* and, consequently, does not conduct any enquiry into the claim on merits. In such a situation, there is no adjudication within the meaning of Rule 103, and the order may be amenable to correction under Article 227 as a jurisdictional error.

17. The ***Periyammal's*** case also clarifies that where a genuine jurisdictional issue (refusal to conduct enquiry/*functus officio*) arises at the stage of proceedings under Rule 97 such as refusal by the Executing Court to conduct the enquiry on the ground of lack of jurisdictional or on the ground that it has become *functus officio* the supervisory jurisdiction under Article 227 may be invoked. However, that is not the position in the present case. The grievance

⁵ (1996) 3 SCC 154



of the petitioner, at its highest, is that the adjudication is erroneous, that the enquiry was not conducted in the manner contemplated under the CPC, and that the Executing Court has wrongly rejected the applications. Such grievances go to the correctness of the adjudication and the procedure adopted by the Executing Court. They are matters which may appropriately be urged in the statutory appeal against the deemed decree contemplated under Order XXI Rule 103 of the CPC and do not furnish a ground for invoking the extraordinary supervisory jurisdiction under Article 227 of the Constitution. Accordingly, the preliminary objection raised by the respondent as to the maintainability of the writ petition deserves to be upheld and the point framed for consideration is answered accordingly. The writ petition is ***dismissed*** with liberty to the petitioner to avail the appropriate statutory remedy in accordance with law.

18. It is brought to the notice of this Court that the interim order granted by this Court on 02.04.2024 has not been complied with.

Sd/-

JUSTICE K.S. HEMALEKHA