



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.1577 OF 2025

BETWEEN:

1. SMT. LAKSHMAMMA
AGED ABOUT 76 YEARS,
W/O LATE JAYARAMAIAH
2. SRI. C.J. NARENDRA
AGED ABOUT 54 YEARS,
S/O LATE JAYARAMAIAH
3. SRI. C.J. THAMMEGOWDA
AGED ABOUT 50 YEARS,
W/O LATE JAYARAMAIAH

R/AT CHANNAHALLI VILLAGE,
CHANNARAYAPATNA HOBLI,
DEVANAHALLI TALUK – 562 157.

...APPELLANTS

(BY SRI. C M NAGABUSHANA, ADVOCATE)

AND:

1. SMT. K. S. JAYAVANI
AGED ABOUT 64 YEARS,
D/O LATE SRINIVAS MURTHY,
W/O K. RAJA RAO,
R/AT NO.3242, 21ST B MAIN ROAD,
HAMPI CIRCLE, VIJAYANAGAR,
2ND STAGE, E BLOCK,
MYSORE -570017.

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2. SMT. K. RAMABAI @ S. LAKSHMI
AGED ABOUT 72 YEARS,
W/O LATE R. SATHYANARAYANA RAO,
R/AT NO. 9, SRI. GURUPRASANNA,
HANUMANTHAPPA BUILDING,
ANJANEYA LAYOUT,
VIDAYARANYAPURA (THINDLU)
BANGALORE – 560 097.
3. SMT. K. THULASI
AGED ABOUT 53 YEARS,
W/O LATE SRINIVAS MURTHY,
R/AT NO.1978,
8TH CROSS, KUMARASWAMY LAYOUT,
2ND STAGE, BENGALURU PIN-560 078.
4. SMT. UMA DEVI @ UMA RAO.K.
AGED ABOUT 59 YEARS,
W/O SURYANARAYANA RAO
R/AT NO.64, 13TH MAIN,
RAGHAVENDRA BLOCK,
SREENAGAR,
BENGALURU – 560 050.
5. SMT. K. SAVITHRI,
W/O NAGARAJA,
AGED ABOUT 50 YEARS,
R/AT NO.860, 1ST MAIN,
2ND CROSS, KONANKUNTE,
BENGALURU-560062.
6. SMT. K. LEELAVATHI,
W/O LATE CHANDRASHEKAR,
AGED ABOUT 48 YEARS,
R/AT NO.5156, 4TH CROSS,
RAILWAY STATION,
GUBBI TOWN AND TALUK,
TUMKUR-572216.



7. SMT. KAMALA,
W/O LATE K.RAGHAVENDRA,
AGED ABOUT 58 YEARS,
RESIDING AT NO.17,
GAVIGANGADHARA DEVASTHANA,
GAVIPURA CHATRA BLOCK,
BENGALURU-560019.
8. SRI. K. RAVI,
S/O LATE KRISHNAMURTHACHAR,
AGED ABOUT 46 YEARS,
R/AT DOOR NO.39, 1ST MAIN,
24TH CROSS, MARUTHINAGAR,
YELAHANKA, BENGALURU,
PIN-560064.
9. SRI. K. PRASAD,
S/O LATE KRISHNAMURTHACHAR,
AGED ABOUT 41 YEARS,
R/AT AREAHALLI, A.G.S.LAYOUT,
BENGALURU-560 061.
10. SRI. C. NARAYANSWAMY,
S/O LATE SHANKRAPPA,
AGED ABOUT 72 YEARS,
R/AT NO.14, NARAYANAPPA FARM LAYOUT,
GEDDALAHALLI,
BENGALURU-560 094.
11. SMT B. N. RAJAMMA,
W/O LATE B NAGARAJ,
D/O LATE THAMMANNAM
R/AT NO.27, MANJULA,
SUDDAKUNTE PALYA,
C.V.RAMAN NAGAR POST,
BENGALURU-56009.
12. SRI. P. RAJA NAIDU,
S/O GANGALU NAIDU,
AGED ABOUT 75 YEARS,



13. SMT. P. JAYAMMA,
W/O P.RAJA NAIDU,
AGED ABOUT 65 YEARS,

14. SRI.BABU PATHIPATI
S/O P.RAJA NAIDU,
AGED ABOUT 46 YEARS,

APPELLANT NO.12 TO 14 ARE
RESIDING AT PERAIPHGARIPALLI,
E-KOTHUR POST, IRALA(M.D)
HITTOR DISTRICT,
ANDHRA PRADESH-517 030.

...RESPONDENTS

(BY SRI ASHOK HARANALLI, SENIOR ADVOCATE FOR
SRI ASHWIN G. RAJ FOR SRI YATHISH.S, A/W
SMT.SANGEETHAM ADVOCATES FOR R1;
MISS.ANKITA PATIL, FOR SRI R.KOTHWAL, ADVOCATES FOR
C/R2 TO R8;
SRI RAKESH KINI, ADVOCATE FOR C/R9)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE
DATED 06.09.2025 PASSED IN RA NO.13/2021 ON THE FILE OF
PRL. SENIOR CIVIL JUDGE AND JMFC, DEVANAHALLI,
DISMISSING THE APPEAL AND CONFIRMING THE ORDER
DATED 06.04.2021 PASSED ON IA NO.10 IN EX NO.2/1993 ON
THE FILE OF PRL. JUDGE AND JMFC, DEVANAHALLI.

THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri C.M.Nagabushana, learned counsel for the appellants and Sri Ashok Haranahalli, learned Senior Advocate for the respondents.

2. This appeal is by Opponent Nos.2 to 4 in Execution Case No.2/1993 on the file of Principal Civil Judge and JMFC, Devanahalli, whereby, the Executing Court, by the Order dated 06.04.2021 allowed the application filed by the Decree Holders under Order XXI Rule 97 of the Code of Civil Procedure seeking removal of obstructions/resistance to the decree that has been passed in O.S No.74/1975, which got confirmed before this Court in RSA No.551/1978.

3. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under:

3.1 A suit was filed in O.S No.74/1975 for redemption of mortgage by Sri K.Srinivasa Murthy against Sri Shankarappa. In the said suit it is contented that plaintiff-K.Srinivasa Murthy



is the son of K.Gururayachar. Said Gururayachar, on account of financial difficulties, mortgaged the suit schedule properties in favour of Shankarappa under a registered mortgage deed dated 20.08.1951. When the said mortgage was still in existence, the Mysore (Personal and Miscellaneous) Inam Abolition Act, 1954 came into operation.

3.2 Shankarappa applied for grant of occupancy rights before the Deputy Commissioner. Gururayachar was also a party in the said proceedings as he was the owner of suit properties having purchased the same from erstwhile owner under registered sale deed dated 05.03.1947.

3.3 Application filed by Shankarappa was adjudicated and occupancy rights were granted in favour of Shankarappa, subject to rights of parties in the mortgage deed dated 20.08.1951.

3.4 In other words, the Order of the Deputy Commissioner was subject to the right to redeem the mortgage under the registered mortgage deed, in view of the settled principles of law that, 'once a mortgage is always a mortgage'.



3.5 As such, when the demand for redemption of the mortgage was refused by Shankarappa, a suit in O.S No.74/1975 was filed on the file of the Munsiff, Doddaballapura, by Sri K.Srinivasa Murthy.

3.6 On contest, the suit got decreed directing to redeem the mortgage after receiving the mortgage money.

4. An appeal came to be filed by Shankarappa against the decree passed in O.S No.74/1975 in R.A.No.26/1977 which was also dismissed on merits by a considered judgment.

5. Shankarappa did not stop there. He challenged the same before this Court in a Second Appeal in R.S.A No.551/1978. Appeal got admitted and later on by a considered Judgment dated 08.10.1990, the Second Appeal got dismissed on merits whereby decree passed in O.S No.74/1975 became final, as Shankarappa did not challenge further.

6. Thus, decree passed in O.S No.74/1975 directing Shankarappa to redeem the mortgage by accepting the mortgage money with interest became final.



7. When there was no compliance to the decree, having regard to the change of jurisdiction in the Courts, decree passed by the Munsiff at Doddaballapura was transferred to the Court of Principal Civil Judge and JMFC, Devanahalli, for execution of the decree.

8. In the said execution petition i.e., Execution Case No.2/1993 a delivery warrant was issued pursuant to the decree passed in O.S No.74/1975. There was resistance by the present appellants who claim to be the joint family members of Shankarappa, for execution of the redemption of mortgage decree.

9. Therefore, decree holder filed an application under Order XXI Rule 97 r/w Section 151 of the Code of Civil Procedure against the present appellants who are opponent Nos.2 to 4 before the Executing Court. Same was objected by appellants.

10. Learned Trial Judge while considering the rival contentions of the parties, noted that no independent right has been pleaded by the appellants/ opponents before the Executing Court and all that they were claiming was under the



original Judgment Debtor namely Shankarappa. Therefore allowed the application filed by decree holder, rejecting the objections filed by the appellants herein.

11. Being aggrieved by the same, appellants herein filed R.A No.13/2021. Another appeal in R.A No.10/2021 came to be filed by yet another opponent.

12. Learned Judge in the First Appellate Court after securing the records, considered the rival contentions of the parties, noted that the appellants herein failed to make out any independent right to oppose the decree, dismissed the appeal by considered judgment dated 06.09.2025.

13. Both the Courts also noted that the opponents have filed a separate suit in O.S No.26/2020 on the file of the Senior Civil Judge and JMFC, Devanahalli, wherein the decree holders are also parties. The said suit came to be dismissed by allowing the application filed under Order VII Rule 11 of the Code of Civil Procedure by the defendants against which an appeal came to be filed before the First Appellate Court. It is submitted that, said appeal is also dismissed on 20.06.2026.



14. Being aggrieved by the dismissal of R.A.No.10/2021 dated 06.09.2025 same, Opponent Nos.2 to 4 in Execution Case No.2/1993, have preferred the present Regular Second Appeal on the following grounds and substantial questions of law.

- *Both the Courts while adjudicating the application filed by appellant have not considered and failed to appreciate that the appellant have independent title and not claiming any right to property under the Judgment and debtors.*
- *The Learned Judge of both the courts failed to consider and appreciate that, the Rule 101 of Order XXI of CPC provides that all the questions relating to right, title and interest will have to be adjudicated by the court between the parties to a proceeding under rule 97 or 99 of Civil Procedure Code. The Trial Court, despite the appellants having set up an independent title and possession over the lands in question, has failed to adjudicate the application in I.A No.10 in the manner contemplated Under Rule 101 of Order XXI of Civil procedure Code. The Learned Judge of the 1st Appellate Court has simply affirmed the same. As such the Judgement and Decree of both the courts are vitiated in law.*
- *The learned Judge of the Trail Court failed to consider that, an application filed under Rules 97 should be treated as suit and the executing court should adjudicate the question after following due process of law, i.e., by*



providing an opportunity to the parties to establish their right, title and interest over the property in question by leading evidence. In the instant case no such exercise has been held by the executing court as such the impugned order is contrary to Rule 101 of Order 21 of Code of Civil Procedure.

- *The learned Judge of the Executing Court has failed to adjudicate the core issue that arises for its consideration as per Rule 101 of Rule 21 of Code of Civil Procedure. The learned Judge has failed to consider that, the appellant has filed an application to obstructing the execution of the decree in respect of property belonging to the appellant, so as to recovery the decretal amount which was passed against the Judgment Debtors.*
- *The approach of the Trial Court in adjudicating the issues that, arise in application filed under Order 21 Rule 97 of the Code of Civil Procedure, is erroneous and illegal, as it has proceeded on assumption and recorded finding that, the gift deed does not per say makes the gift deed inoperative/invalid and therefore the gift deed, until it is held that, it is invalid or inoperative, the title transferred to the appellants and her right cannot be defeated in execution of a decree for which she is not a party and the gift deed is acted upon, the Katha of the property has been transferred to her name, the concerned local authority has assessed the property to taxes and collected taxes from the Appellants.*
- *The Learned Judge of the 1st Appellate Court has dismissed the Appeal holding that the opposite parties 2*



to 5 have filed a comprehensive suit and challenged the Judgement and Decree in OS No.74/1975 before the competent court of law. The Executing Court cannot go behind or beyond the decree. Therefore, the question shall be determined by the suit filed by the opposite parties before the competent court is contrary to the provisions of Rule 97 to 101 of Order XXI of CPC. Therefore, the Judgement of the 1st Appellate Court is erroneous and not sustainable in law.

- *The Learned Judge of the 1st Appellate Court has committed a grave error in dismissing the appeal filed by the Appellants by placing reliance on final order dated 13/12/2024 in W.P.No.200085/2023(GM-CPC). The Learned Judge failed to consider and appreciate that in the decision rendered by this Hon'ble Court, the obstruction is claiming the right through the Judgement Debtor. In the instant case the appellant has traced down their title to the order passed by the Spl. Deputy Commissioner for INAM granting occupancy rights in their favour. As such the Judgement and Decree of the 1st Appellate Court is erroneous and not sustainable in law.*
- *The Hon'ble Apex Court in the case of Jini Dhanrajgir and another v/s Shibhu Mathew and another reported in (2023)20 SCC 76 as laid down the law as follows;*

"29. Section 47 CPC, being one of the most important provisions relating to execution of decrees, mandates that the court executing the decree shall determine all questions arising



*between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit. What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree. Should there be any resistance offered or obstruction raised impeding due execution of a decree made by a court of competent jurisdiction, the provisions of Rules 97, 101 and 98 Order 21 enable the executing court to adjudicate the inter se claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits. No wonder, the provisions contained in Rules 97 to 106 Order 21 CPC under the sub-heading "Resistance to delivery of possession to decree-holder or purchaser" have been held by this Court to be a complete code in itself in *Brahmdeo Chaudhary* 14 as well as in a decision of recent origin in *Asgar v. Mohan Varma* 18. In the latter decision, it has been noted that Rules 97 to 103 Order 21 provide the sole remedy both to parties to a suit*



as well as to a stranger to the decree put to execution."

- *The Hon'ble Apex Court in the case of Asgar and others v/s Mohan Verma and others reported in (2020)16 SCC 230 as laid down the law as follows;*

"The provisions of Order 21 Rules 97 to 103 constitute a complete code and provide the sole remedy both to parties to a suit and to a stranger to a decree. All questions pertaining to the right, title and interest which the appellants claimed had to be urged in the earlier execution application and adjudicated therein. To take any other view would only lead to a multiplicity of proceedings and interminably delay the fruits of the decree being realised by the decree-holder".

- *The only ground on which the Learned Judge of the Executing Court has failed to consider the objection filed by the Appellants/Objectors is that the Judgement and Decree passed in O.S.No.74/1975 has attained finality and the objectors have filed separate suit for declaration and injunction before the competent court and hence there is no necessity for determining the rights of the party. Such an observation of the Learned Judge of the Executing Court is not only untenable, the same is capricious in law as the Learned Judge of the Executing Court failed to exercise its jurisdiction in accordance with Rule 101 of Order XXI of CPC. The Learned Judge of the 1st Appellate Court has confirmed the infirmity and illegality committed by the Executing Court. As such the*



Judgement and Decree of both the courts are vitiated in law.

- *The Learned Judge of both the courts failed to consider and appreciate that from the facts pleaded by the appellant together with documents placed on record, it is evident that the appellants are not claiming under the Judgement Debtor. They have independent title, that apart the appellants are not even the persons who are described under rule 98 of Order XXI of CPC. When such being the case the Respondents/Decree Holders ought to have dismissed as provided under rule 99 of Order XXI of CPC. The Rule 99 of CPC clearly provides that, the resistance or obstruction is not by the persons mentioned under rule 98 and the person resisting the decree are doing no good faith to the court is bound to dismiss the application vide Rule 97 of Order XXI of CPC filed by the Decree Holders having failed to do so, the Judgement and Decree of both the courts are vitiated.*
- *The impugned order passed by the Executing Court is in flagrant violation of the provisions of Evidence Act as well as the Transfer of Property Act. As such the conclusion arrived at by the Learned Judge of Trial Court is untenable and not sustainable in law.*
- *Viewed from any angle, the Judgment and Decree of the Execution Court is not sustainable in law as the same is passed ignoring the material and documentary evidence."*



SUBSTANTIAL QUESTIONS OF LAW:

(i) Whether the Judgement and Decree passed by the both the Executing and First Appellate Court are vitiated as both the courts have failed to adjudicate the application in I.A No.10 as provided under Rule 101 of Order XXI CPC?

(ii) Weather the Judgment and Decree of both the courts are vitiated as both the courts have failed to exercise the jurisdiction contemplated under Rule 97 to 101 of Civil Procedure Code, as the Appellant have filed the separate suit seeking declaration and injunction against the decree holder as well as the Judgement Debtor?

(iii) Weather the Judgement and Decree of both the courts are vitiated as both the courts have failed to determine the issues that arose between the objector and the decree holder by exercising the power conferred under Section 47 of the Civil Procedure Code?"

15. Sri C.M.Nagabushana, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that the learned Trial Judge in the executing court committed a grave error in not holding an enquiry with regard to the valid objections raised by the appellants herein based on the registered partition deed dated 12.12.2003.



16. He would further contend that there was an oral partition in the family of Shankarappa, who was the defendant in O.S No.74/1975. Said oral partition was acted upon by the parties and after the death of Thammanna who is the brother of Shankarappa, there was one more partition which ultimately resulted in the registered partition deed dated 12.12.2003. Therefore, Shankarappa did not have any independent title in respect of the suit properties. Therefore, judgment passed against Shankarappa without impleading the present appellants and other sharers in the suit for redemption of mortgage itself was not maintainable. Therefore, enquiry was utmost necessary before the Executing Court to adjudicate the independent rights of the appellants. He would further argue that non holding an enquiry by the Trial Court has resulted in grave miscarriage of justice and thus sought for admitting the appeal on the aforesaid substantial questions of law.

17. Sri Nagabushana would further contend that the finding recorded by the Executing Court as well as the First Appellate Court that the appellants did not possess any independent right or interest by the alleged partition without holding an enquiry is



per se incorrect and that cannot be countenanced in law having regard to the scope of Order XXI Rule 97 of the Code of Civil Procedure. Therefore, sought for admitting the appeal for further consideration on the aforesaid substantial questions of law.

18. In support of his contentions, Sri Nagabushana has placed reliance on following judgments wherein it is held as under:

(i) ***Bangalore Development Authority v. Nanjappa and another*** reported in **(2022) 18 SCC 156**.

"7.1. It is submitted that for raising the obstruction/objection to the decree which is sought to be executed, the obstructor need not be in possession and it is enough that the obstructor claims title with respect to the said property. Though in the present case it is the case of BDA that possession was handed over by the Government to BDA — Engineering Section.

7.4. It is further submitted that Order 21 Rule 97 and Rule 101 CPC are to be read together. It is submitted that as per Order 21 Rule 101, all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order 21 Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the executing court



dealing with the applications. It is further submitted that while raising an obstruction/objection to the execution of the decree, the obstructor need not prove his/its possession but when it claims right, title or interest in the suit property, the same is required to be determined, decided and/or adjudicated upon by the executing court in such an application.

12. *In the instant case, it is the specific case of the appellant BDA that pursuant to the acquisition of the land in question, the BDA has become the absolute owner and the said land is vested in the BDA and possession was already taken over by the BDA and the land was handed over to the Engineering Section. Therefore, the applications submitted by BDA for impleadment in the execution proceedings and the obstruction against handing over the possession to the decree-holder were required to be adjudicated upon by the executing court by impleading BDA as a party to the execution proceedings. Though, in the present case, a substantive suit being OS No. 2070 of 2013 filed by the BDA against the decree-holder and the judgment-debtor to declare the lease agreement as null and void is pending, irrespective of the same, considering Order 21 Rule 101CPC, the question relating to right, title or interest of the BDA in the suit property was required to be adjudicated upon by the executing court."*

(ii) *Jini Dhanrajgir and another v. Shibu Mathew and another* reported in (2023) 20 SCC 76.



"18. The Commissioner, on 23-6-2017, submitted a report to the effect that the respondents objected to the delivery of possession to the appellants.

*29. Section 47 CPC, being one of the most important provisions relating to execution of decrees, mandates that the court executing the decree shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit. What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree. Should there be any resistance offered or obstruction raised impeding due execution of a decree made by a court of competent jurisdiction, the provisions of Rules 97, 101 and 98 Order 21 enable the executing court to adjudicate the inter se claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits. No wonder, the provisions contained in Rules 97 to 106 Order 21CPC under the sub-heading "Resistance to delivery of possession to decree-holder or purchaser" have been held by this Court to be a complete code in itself in *Brahmdeo Chaudhary* [*Brahmdeo Chaudhary**



v. Rishikesh Prasad Jaiswal, (1997) 3 SCC 694] as well as in a decision of recent origin in Asgar v. Mohan Varma [Asgar v. Mohan Varma, (2020) 16 SCC 230] . In the latter decision, it has been noted that Rules 97 to 103 Order 21 provide the sole remedy both to parties to a suit as well as to a stranger to the decree put to execution.

30. *In Bhanwar Lal v. Satyanarain [Bhanwar Lal v. Satyanarain, (1995) 1 SCC 6] , this Court held that when any person, whether claiming derivative title from the judgment-debtor or sets up his own right, title or interest dehors the judgment-debtor, the executing court whilst executing the decree, in addition to the power under Rule 35(3), is empowered to conduct an enquiry whether the obstruction by that person is legal or not.*

31. *This Court in Noorduiddin v. K.L.Anand [Noorduiddin v. K.L. Anand, (1995) 1 SCC 242] reiterated that the executing court was bound to adjudicate the claim of an obstructionist and to record a finding allowing or rejecting the claim which was laid before the executing court, the person being neither a party to the earlier proceedings nor the decree being passed against him.*

37. *The argument, though attractive at first blush, pales into insignificance in view of the peculiar facts obtaining here. From the factual narrative, it appears that the suit instituted by Mrs Cherian in 1987 was*



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initially dismissed on 16-11-1989 and upon an appeal being preferred in 1991, the suit was restored to the file of the trial court by the order of the High Court dated 18-12-1998 [Tara Cherian v. V.T. Mathew, AS No. 27 of 1991, order dated 18-12-1998 (Ker)]. If, indeed, there have been transfers post dismissal of the suit during the time when there was no pending lis, it would be most appropriate for the executing court to determine the question as to whether any of the transfers made by Mr Mathew to the respondents would attract Rule 102. This would indeed involve an exercise of leading of evidence by the parties and merely because the suit was ultimately decreed on 21-10-2000 and ultimately was upheld by this Court with a minor modification of the amount of compensation, that would not be sufficient justification to throw out the objections raised by the respondents as being devoid of merit.

45. *It is made clear that the executing court shall proceed to deal with the application of the appellants under Rule 97 Order 21CPC together with the objections raised by the respondents on their own merits and without being influenced by any observation made in this order which has been necessitated only for disposal of the present appeals.*

(iii) **Sriram Housing Finance & Investment (India) Ltd. v. Omesh Mishra Memorial Charitable Trust** reported in **(2022)15 SCC 176.**



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24. On conjoint reading of the aforesaid provisions, it can be observed that under Rule 97, it is only the "decree-holder" who is entitled to make an application in case where he is offered resistance or obstruction by "any person". In the present case, as admitted by the appellant itself, it is a bona fide purchaser of the property and not the "decree-holder". As available from the material placed on record, it is the respondent Trust along with legal heirs of late N.D. Mishra who are the decree-holders and not the appellant. Therefore, it is obvious that the appellant cannot take shelter of Rule 97 as stated above to raise objections against execution of decree passed in favour of the respondent. Further, Rule 99 pertains to making a complaint to the Court against "dispossession" of the immovable property by the person in "possession" of the property by the holder of a decree or purchaser thereof.

(iv) **Jesaraj Ghasimal Betal v. Ahammad Hussein**, reported in **1986 SCC OnLine Kar 212**.

8. Rule 97 of Order 21 of the Code of Civil Procedure reads, as—

"(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."



Therefore, the only persons, who can file an application under Order 21 Rule 97 of the Code of Civil Procedure, are (1) the holder of a decree for possession and (2) the purchaser of any such property sold in execution of a decree. No other person has got a right to file such an application. In this case I.A. 1 is filed by respondents 1 and 2, who claim to have purchased ¼th share in the property and claim to have been put in possession of the property by judgment-debtor respondent No. 3 on 1-4-1986. Therefore, respondents 1 and 2 cannot be said to be the holders of the decree for possession, because they have not obtained the decree. Further respondents 1 and 2 cannot be considered to be the purchasers of the property sold in execution of the decree, because admittedly they claim to have purchased the property by private arrangement. Therefore, respondents 1 and 2 do not fall within any one of the categories mentioned in Rule 97 of Order 21 of the Code of Civil Procedure.

14. *As already stated above, the decree-holder has not participated in the proceedings as such. If is only regarding the competence of I.A. 1, he raised objections. Therefore, the objections filed by the decree-holder to I.A. 1 cannot be treated as an application by the decree-holder under Rule 97 of Order 21 CPC. If there was any prayer in those objections resulting in the relief for removal of obstruction and if any fullfledged enquiry regarding the same had been held, it may not be open to the decree-holder to contend that his objections should not be taken as an application under Rule 97 of Order 21*



CPC. But in the present case, as already stated above, the only objection raised by the decree-holder is to the competence of I.A. 1 filed by respondents 1 and 2.

15. *The Munsiff, as can be seen from the order, has not held any enquiry regarding the obstruction. At the very threshold, the Munsiff has dismissed I.A. 1 only on the ground that it is incompetent. Therefore, the lower appellate Court, in ray opinion, committed an error in treating the objection filed by the decree-holder as an application under Rule 97 of Order 21 CPC. Further it committed an error in holding that the contentions raised in I.A. 1 were the objections to the relief under Rule 97 of Order 21 CPC. Therefore, under these circumstances, the order passed by the lower appellate Court is unsustainable.*

(v) **Ni. Pra Channabasava D.S.**
Mathadhipatigalu Kannada Mutt v. C.P.
Kaveeramma, reported in (2009) 11 SCC 28.

11. *The High Court held that Section 4(2)(b) does not expressly or impliedly provide that after regrant the encumbrance created would not get revived. Under the said provision the land after passing of the Act shall stand vested in the State Government free from all encumbrances and the transferees cannot enforce their contractual rights against the Government.*

14. *A bare reading of Section 4 makes it clear that notwithstanding any contract the inam tenure of all*



inams and minor inams stood abolished and the consequences were the passing of the rights, title and interests as provided in Section 4(2)(b).

17. *Learned counsel for the respondents on the other hand submitted that even if Section 43 has no application, Section 10 of the Act would take care of the situation. We find that Section 10 has really no application to the facts of the case. The same reads as follows:*

"10. Saving of right in certain cases.—(1) Where before the appointed date an inamdar has created any right in any land which vests in the State Government, other than land registered under Section 5 including rights in any mines or minerals, quarries, fisheries, ferries or forest, the transactions shall be deemed to be valid and all rights and obligations arising thereunder on or after the appointed date be enforceable by or against the State Government:

Provided that the transaction was not void or illegal under any law in force at the time:

Provided further that where such right was created in any land, unless it relates to lands registered under Section 5, the State Government may, if in its opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.



(2) The person, whose right has been terminated by the State Government under the foregoing proviso, shall be entitled to an amount from the State Government equal to the estimated net income of such person from the land for the unexpired portion of the period for which the right was created, having regard to all the circumstances of the case.

(3) Any right or privilege exercised or enjoyed by any person in respect of uncultivated jamma lands immediately before the appointed date shall, notwithstanding anything in this Act, and until other provision is made in this behalf, continue to be exercised or enjoyed."

18. *It is submitted by learned counsel for the respondents that apart from Section 43 of the TP Act and Section 4(2)(b) of the Act, the respondents had made other submissions which were not considered by the High Court, in view of its conclusions about applicability of Section 4(2)(b) and/or Section 43 of the TP Act in the instant case. Without expressing any opinion about the acceptability of any such stand we think it proper to set aside the impugned judgment and remand the matter to the High Court for fresh consideration. It is made clear that the issue relating to applicability of Section 43 stands closed by virtue of this judgment."*

19. *Per contra*, Sri Ashok Haranahalli, learned Senior Advocate representing the contesting respondents who are the



legal representatives of original plaintiff in O.S No.74/1975 opposed the appeal grounds by contending that the theory of oral partition, and registered partition dated 12.12.2003 has been rightly rejected by the Executing Court, inasmuch as, it is Shankarappa who got the occupancy rights and he had pleaded the same as a defence in O.S No.74/1975 which on contest became final by the Order dated 08.10.1990 in RSA No.551/1978.

20. Therefore, alleged partition among the members of the family of Shankarappa and claiming right thereunder cannot be termed as independent right. Therefore both the Courts were justified in holding that no independent right is made out by the appellants herein, whereby enquiry was not necessary on the application filed under Order XXI Rule 97 of the Code of Civil Procedure filed by the Decree Holders and thus supports the impugned judgment.

21. Sri Ashok Haranahalli would also point out that the appellants herein had filed an application before the Executing Court vide I.A.No.12 under Order XXI Rule 104 of the Code of



Civil Procedure which is dismissed on merits, which was not challenged by appellants.

22. Likewise, the application filed by the appellants herein requesting the Court to hold an enquiry on the application under Order XXI Rule 97 of the Code of Civil Procedure being rejected, having not been challenged, appellants cannot be permitted to urge the same ground before this Court in the Second Appeal.

23. Thus the appeal grounds are barred by 'constructive *res judicata*' not only on the point that Shankarappa has failed in his plea that the occupancy rights will have a preferential right over the right of redemption of the mortgage and also on the ground that attempt made by the appellants having been negated by the Executing Court and not challenged, has become final. As such, the finding recorded by the duly constituted Court, *inter se* parties in the interlocutory stage would be binding among the parties and thus sought for dismissal of the appeal.



24. Having heard the arguments of both sides, this Court perused the material on record meticulously.

25. On such perusal of the material on record, there is no dispute that Gururayachar was the owner of the suit properties having purchased the same by sale deed dated 05.03.1947. Likewise, there is no dispute that there was a registered mortgage deed executed by Gururayachar in favour of Shankarappa on 20.08.1951.

26. In the meantime, the Mysore (Personal and Miscellaneous) Inam Abolition Act, 1954 came into force. Shankarappa applied for grant of occupancy rights by contending that he was the tenant of the land in question though he was only a mortgagee.

27. There is no dispute as to the mortgage deed executed by Gururayachar in favour of Shankarappa.

28. Gururayachar being the father of K. Srinivasa Murthy (plaintiff in O.S.No.74/1975) was a party before the Deputy Commissioner under Inam Abolition Act. The application filed by Shankarappa was allowed with conditions by the Deputy



Commissioner stating that the grant of occupancy right is subject to mortgage rights by virtue of the registered mortgage deed dated 20.08.1951.

29. In other words, though occupancy right was granted treating Shankarappa as tenant of the suit property, Deputy Commissioner relegated the parties to the Civil Court insofar as the rights of the parties under the registered mortgage deed dated 20.08.1951.

30. Therefore, suit in O.S No.74/1975 came to be filed before the Court of Munsiff and JMFC, Doddaballapura. Admittedly, Shankarappa was party defendant in the said suit.

31. Shankarappa in his written statement took up the contention about the occupancy rights being granted to him and opposed the redemption of the suit property contending that occupancy rights granted to him is having preference over right of Gururayachar in seeking redemption of mortgage.

32. The issue before the Trial Court thus was, whether the occupancy rights granted to Shankarappa will have a



preferential right over the mortgage right which is a contractual between the parties.

33. The Trial Court decreed the suit of the plaintiff by holding that plaintiff had right to redeem the mortgage.

34. The decree passed by the Trial Court in O.S No.74/1975 was challenged before the First Appellate Court in R.A.No. 26/1977.

35. Learned Judge in the First Appellate Court dismissed the appeal of Shankarappa.

36. Pertinently, Shankarappa also raised the defence that there is an oral partition, to oppose the suit claim. But the Trial Court as well as the First Appellate Court negated such defence and therefore the oral partition stood not proved.

37. When the oral partition stood not proved and before this Court in RSA No.551/1978, Shankarappa lost the battle, the finding recorded by this Court in RSA No.551/1978 became final.



38. In other words, on factual aspects and also on the legal question, the dispute between Shankarappa and K. Srinivasa Murthy became final.

39. The judgment passed by the Trial Court in O.S No.74/1975, confirmed before this Court in RSA No.551/1978 by judgment dated 08.10.1990, was sought to be executed by filing the Execution Petition No.2/1993.

40. In the meantime, objections came to be filed by the appellants herein which was being adjudicated.

41. However, the appellants herein also filed O.S No.26/2020 which as referred to supra came to be dismissed by allowing the application filed under Order VII Rule 11 of the Code of Civil Procedure. Appeal thereof also got dismissed.

42. Therefore, in the backdrop of such factual aspects, the question that is now required to be considered by this Court is whether every application filed in execution proceedings objecting the execution of the decree needs an enquiry.



43. In this regard, Trial Court noted that there is no independent right propounded by the appellants herein and all that appellants claimed is under the decree or judgment passed against Shankarappa. In fact, an application was also filed under Section 151 of the Code of Civil Procedure before the Executing Court itself to hold an enquiry. Said application came to be rejected by the Executing Court by considered order.

44. Pertinently, the appellants herein did not choose to challenge the said order for the reason best known to them.

45. Likewise, records reveal that an application under Order XXI Rule 104 of the Code of Civil Procedure came to be filed by the appellants herein which also came to be dismissed. There is no challenge on the said order as well.

46. In other words, on the factual aspects, the finding recorded among the appellants and the legal representatives of the original decree holder had attained finality which will bind the parties in the subsequent proceedings as well by applying the principle of '*constructive res judicata*'.



47. Further, since the opponents failed to make out independent right of opposing the execution petition, there was no necessity to hold any enquiry while disposing of the application filed by the Decree Holder.

48. No doubt, pendency of the Civil Suit filed by the appellants would not have come in the way of holding an enquiry, if there is any independent right made out by the appellants herein, following the dictum of the Hon'ble Apex Court in the case of ***Jini Dhanrajgir*** supra.

49. Therefore, the observations or the findings recorded by the Trial Court as well as the First Appellate Court that the appellants having filed a civil suit in O.S No.74/1975, did not act as a deterrent in dealing with an application under Order XXI Rule 97 of the Code of Civil Procedure. To that extent, observation of First Appellate Court is erroneous.

50. However to hold enquiry on the application filed under Order XXI Rule 97 of the Code of Civil Procedure, no independent rights have been made out by the appellants herein and therefore enquiry was not a must.



51. It is to be noted that having regard to the settled principles of law as to the Order that is passed on the application filed under Order XXI Rule 97 of the Code of Civil Procedure would partake the nature of a decree. As such, an enquiry is necessary if there is an independent right made out by the objectors, as the finding recorded in adjudicating such an objection as to the independent right, there cannot be a separate civil suit.

52. However, since Shankarappa had already taken the plea that there is an oral partition and he failed to convince the Court in O.S No.74/1975, and First Appeal thereof in R.A.No.26/1977 and before and in this Court in RSA No.551/1978, anybody claiming under Shankarappa cannot have any independent right to oppose the decree passed against Shankarappa.

53. In other words, to claim independent right, the appellants herein were required to plead what is that independent right which entitled them to oppose the execution.



54. This is more so because of the finding recorded by this Court in RSA No.551/1978, wherein at paragraph No.9 it has been held as under:

"9. "xxx xxx xxx xxx *In the instant case it is not in dispute that the defendant did make a claim in respect of the suit lands before the Tribunal under Section 10 of the Act. It is also not disputed that much before the filing of the suit, in the proceeding under Section 10 of the Act the Special Tribunal had passed an order which recognized the occupancy rights of the defendant/ appellant in respect of the suit lands but subject to the mortgage. The correctness of this order cannot be challenged in the instance proceeding. It is not disputed that neither the plaintiff nor the defendant challenged this order. The order has attained finality and binds the parties. If the order of the Tribunal is taken as it is, it only means that the defendant/appellant will continue to possess the suit lands subject to the mortgage, meaning thereby that he shall continue to possess till such time as the mortgage is not redeemed. Such an order obviously postulates that the defendant/appellant is in possession of lands in respect of which his mortgagor could claim tenancy rights under the Act. xxx xxx xxx xxx"*

55. In other words, Shankarappa applied for grant of occupancy rights and by exercising the power under Section 10 of the Mysore (Personal and Miscellaneous) Inam Abolition Act,



1954. Pursuant to such application, limited right of occupancy came to be granted based on the tenancy rights and clearly remarked that the grant is subject to mortgage rights between the parties.

56. It was for Shankarappa to challenge the same, if he was aggrieved by the said order of the Deputy Commissioner. But for the reasons best known to Shankarappa, he did not challenge the same.

57. In other words, order of the Deputy Commissioner has become final as is observed by the co-ordinate Bench of this court in RSA No.551/1978.

58. Therefore, the question that is to be answered now by this Court is whether the occupancy right granted in favour of Shankarappa could be treated as absolute right of occupancy or whether it had preferential right over the mortgage rights.

59. It is to be noted that when once Shankarappa has suffered an order before the Deputy Commissioner that occupancy right is subject to mortgage right, perhaps on the principle that 'once a mortgage is always a mortgage',



resistance offered by Shankarappa in O.S No.74/1975 having attained finality in RSA No.551/1978, any other members of the family of Shankarappa claiming that the occupancy right is for and on behalf of the joint family and therefore oral partition was permissible and parties enjoyed their respective share and present appellants got the share in the registered partition deed dated 12.12.2003 which is in pursuance to the oral partition that took place in the family of Shankarappa in the year 1969 and 1970, cannot be countenanced in law.

60. Thus, in the absence of any independent right being propounded and proved by the appellants herein, non holding an enquiry on the application filed by the Decree Holder under Order XXI Rule 97 of the Code of Civil Procedure cannot be faulted with as there was no necessity to hold any enquiry in the absence of independent rights made out by the appellants herein.

61. With regard to the principles of law enunciated by the Hon'ble Apex Court in the case of **BDA vs. N.Nanjappa** supra, their Lordships in paragraph 7.4 while observing the procedure for adjudicating an application under Order XXI Rule 97 of the



Code of Civil Procedure, have held that Order XXI Rule 97 and Rule 101 of the Code of Civil Procedure should be read together and further held that all questions including the questions relating to right, title or interest in the property arising between the parties to a proceeding on an application filed under Order XXI Rule 97 or Rule 99 should be adjudicated by holding an enquiry.

62. There cannot be any dispute with regard to said principle of law, provided, an independent right is made out by the applicant/objector.

63. Likewise, in the case of ***Jini Dhanrajgir*** supra, their Lordships of the Hon'ble Apex Court while considering all relevant case law, in paragraph Nos.29, 30 and 31, 37 and 45 have ruled as referred to supra that Executing Court shall proceed to deal with the application filed under Rule 97 of Order XXI together with the objections on their own merit without influenced by the observation made in the order in the same proceedings.

64. None can dispute said principle of law. But in the case on hand, the facts being different, and in the absence of any



independent right made out by the appellants herein, the principles of law enunciated in the aforesaid judgment is of no avail to the appellants herein.

65. In fact, in the case of **Jini Dhanrajgir** supra, observation made by the Hon'ble Apex Court is worth noticing which reads as under:

"Leave granted. More than a century and a half back, the Privy Council (speaking through the Right Hon. Sir James Colville, J.) in Raj Durbhunga v. Coomar Ramaput Sing [Raj Durbhunga v. Coomar Ramaput Sing, 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605] lamented that the difficulties of litigants in India indeed begin when they have obtained a decree. A reference to the above observation is also found in the decision of the Oudh Judicial Commissioner's Court in Kuer Jang Bahadur v. Bank of Upper India Ltd. [Kuer Jang Bahadur v. Bank of Upper India Ltd., 1925 SCC OnLine Oudh JC 217 : AIR 1925 Oudh 448] It was ruled there that the courts had to be careful to ensure that the process of the court and the laws of procedure were not abused by judgment-debtors in such a way as to make the courts of law instrumental in defrauding creditors, who had obtained decrees in accordance with their rights.

2. *Notwithstanding the enormous lapse of time, we are left awestruck at the observation [Raj Durbhunga v. Coomar Ramaput Sing, 1872 SCC OnLine*



PC 16 : (1871-72) 14 Moo IA 605] of the Privy Council which seems to have proved prophetic. The observation still holds true in present times and this case is no different from cases of decree-holders' woes commencing while they are in pursuit of enforcing valid and binding decrees passed by civil courts of competent jurisdiction. The situation is indeed disquieting, viewed from the perspective of the decree-holders, but the law, as it stands, has to be given effect whether the court likes the result or not. In Martin Burn Ltd. v. Corpn. of Calcutta [Martin Burn Ltd. v. Corpn. of Calcutta, 1965 SCC OnLine SC 20 : AIR 1966 SC 529] , this Court held that a court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

66. The observation made by the Hon'ble Apex Court is aptly applicable to the case on hand as well inasmuch as, the fruits of the decree could not be enjoyed by the plaintiff in his lifetime.

67. After his death, it is his legal representatives who are still toiling to get the fruits of the decree. The applications filed before the Executing Court and execution case pending from the year 1993 till upto 2026 itself shows how difficult to get a decree of the Civil Court executed.



68. Be it what it may. Fact remains that in the absence of any independent right, propounded by the appellants herein, the order of the Executing Court allowing the application filed under Order XXI Rule 97 CPC by the decree holder, rejecting the objections filed by the appellants herein, which was confirmed by the First Appellate Court, needs no interference.

69. Yet another decision that is relied on by the learned counsel for the appellants is the case of ***Ni. Pra. Channabasava D.S.*** supra.

70. Section 43 of the Transfer of Property Act will have no application to the facts and circumstances of the present case inasmuch as, there is no fraudulent transfer even as per the admitted pleadings. As such, principles enunciated in the case of ***Ni. Pra. Channabasava*** supra has no application to the case on hand.

71. No doubt, defendants can take alternate plea but also mutually destructive plea. But when once an order has been accepted by a party during the course of a proceeding, he cannot turn around and then contend that the order which was



in his favour is incorrect, especially when Shankarappa himself did not choose to challenge the conditional grant that was made by the Deputy Commissioner.

72. Therefore, none of the decisions relied on by the appellants are of no avail for the appellants in getting the appeal admitted for further adjudication.

73. In view of foregoing discussion, this Court is of the considered opinion that the substantial questions of law raised in the appeal memorandum do not merit for further consideration.

74. Accordingly, the following:

ORDER

- (i) Admission declined.
- (ii) Appeal ***dismissed***.
- (iii) No order as to costs.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 79