

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal Nos.1160 & 1040 of 2001

COMMON JUDGMENT:

The unsuccessful Decree Holder had filed these two second appeals under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity) assailing the common orders dated 31.12.1999 of the learned V Additional Chief Judge, City Civil Court of Hyderabad passed in C.M.A. nos.204 of 1996 and 203 of 1996. The learned Additional Chief Judge while dismissing the said appeals preferred by the Decree Holder had confirmed the common order dated 28.06.1996 of the learned VIII Assistant Judge, City Civil Court, Hyderabad passed in E.A.nos.145 and 146 of 1993 in E.P.no.107 of 1992, whereby, the learned Assistant Judge had allowed both the said execution applications filed in the Execution Petition.

2. I have heard the submissions of the learned counsel for the Decree Holder/appellant in these two appeals. Though sufficient opportunity was granted, no submissions were made on behalf of the respondents in these two appeals and there was no representation for them at the time of hearing. Hence it is treated that the respondents have no submissions to make on their behalf.

3. At the time of admission of these appeals, this Court had taken note of the common substantial question of law mentioned in ground no.14 of the memoranda of the grounds of appeal. The said common question reads as under:

“Whether a person who is not judgment-debtor, pre-empt (pre-emptively) strike at execution of decree for delivery of possession by way of persistent proceeding initiated even without offering resistance or obstruction and before the decree-holder moves for removal of resistance of obstructions and whether such a person can seek for declaration of his title and possession and also seek for setting aside such decree in the execution proceedings.”

4. During the pendency of these second appeals, the sole plaintiff/Decree Holder had died and her legal representatives were brought on record as appellants 2 to 8. The judgment debtor is one Mohd. Ibrahim and he is the 5th respondent in S.A.No.1160 of 2001 and the 3rd respondent in S.A.No.1040 of 2001. He shall hereinafter be referred to as 'the Judgment Debtor'. The respondents 1 and 2 in S.A.No.1040 of 2001 (i.e., Shaik Haneef and Shaik Osman) are the claim petitioners in E.A.No.145 of 1993. The respondents 1 to 4 in S.A.No.1160 of 2001 are the claim petitioners in E.A.No.146 of 1993. The parties in these appeals shall hereinafter be

referred to as the Decree Holder, the judgment debtor and the claim petitioners for convenience and clarity. The legal representatives of the Decree holder shall be referred to as the appellants.

5. The introductory facts, in brief, are as follows:

5.1 The sole plaintiff/Decree Holder (since died) had brought the suit against the judgment debtor stating *inter alia* that the judgment debtor is the owner of the suit schedule property and that he had agreed to sell the same to the Decree Holder for a total consideration of Rs.10,000/- by entering into an agreement dated 20.08.1998 and that the Decree Holder had paid Rs.4,000/- to the Judgment Debtor as earnest money and that she had further agreed to pay the balance amount at the time of registration, i.e., within one month and that the Decree Holder is always ready and willing to perform her part of the contract and obtain a registered sale deed from the judgment debtor by paying the balance consideration and that despite issuance of a notice by the Decree Holder to the Judgment Debtor, the Judgment Debtor did not come forward to execute the sale deed and that therefore, she is constrained to file the suit for specific performance of the agreement to sell dated 20.08.1998. That suit was decreed on 24.07.1992. The Decree Holder had filed an execution petition in E.P.No.107 of 1992 as the Judgment Debtor did not come forward to execute and register the sale deed in respect of the suit schedule property in spite of the decree granted against him by the Court. Therefore, the court of execution had executed and registered the sale deed under exhibit B1 on 20.03.1993 in respect of the suit schedule property in favour of the Decree Holder. Subsequently, in the execution proceedings, a delivery warrant was entrusted to the Field Assistant of the Court. At the time of the delivery of the possession of the decree schedule property, the respondents 1 and 2 in S.A.No.1040 of 2001 had filed E.A.No.145 of 1993 and the respondents 1 to 4 in S.A.No.1160 of 2001 had filed E.A.No.146 of 1993 to declare the respective respondents i.e., the claim petitioners as the owners of the respective claim petition schedule properties and set aside the decree passed in favour of the Decree Holder.

5.2 The claim petitioners in E.A.No.146 of 1993 had filed the claim petition in respect of the property bearing H.No.9-10-72 admeasuring 290 square yards. The claim petitioners in E.A.No.145 of 1993 had filed the claim petition in respect of the property bearing H.No.9-10-73 in an extent admeasuring 90 square yards. The pleadings of the claim petitioners in the two claim petitions are as under: "The father of the claim petitioners 1 to 3 and the husband of the claim petitioner no.4 in

E.A.No.146 of 1993, by name, Mahmood Ali is the owner of the property bearing H.Nos.9-10-72 and 9-10-73. The said property was acquired by the said Mahmood Ali. He had constructed a house 40 years back. Further, the said Mahmood Ali had sold away H.No.9-10-73 in an extent admeasuring 90 square yards during his life time by virtue of a registered sale deed dated 03.07.1973 vide exhibit A1 to one Murtuza Khan. The said Murtuza Khan had sold the same to the claim petitioners in E.A.No.145 of 1993 by virtue of registered sale deed dated 19.09.1979 under exhibit A3. The said Mahmood Ali had continued in possession of the remaining site and house property bearing H.Nos.9-10-1972 till his death. After his death, the claim petitioners 1 to 4 in E.A.No.146 of 1993 had succeeded to the said property and are continuing in possession and enjoyment of the said property. The claim petitioners in E.A.No.145 of 1993 are continuing in possession and enjoyment of the property purchased by them from Mahmood Ali under exhibit A3 registered sale deed.” Accordingly, the claim petitioners in E.A.No.146 of 1993 had claimed declaration of title in respect of the property bearing the H.No.9-10-72 and the claim petitioners in E.A.No.145 of 1993 claimed declaration of title in respect of the property bearing the H.No.9-10-73 in a site admeasuring 90 square. Claiming titles to the respective house properties, the respective claim petitioners had thus resisted the delivery of the decree schedule property to the Decree Holder.

5.3 The Decree Holder in her turn had resisted the claim petitions by *inter alia* contending as follows: “The Decree Holder had obtained a decree for specific performance against the judgment debtor in respect of the decree schedule property. The judgment debtor is the owner of the said property. Even after the decree granted in favour of the decree holder, the judgment debtor did not come forward to execute and register the sale deed in respect of the decree schedule property. Hence, the decree holder had filed the execution petition. In the circumstances, the court had executed and registered the sale deed in favour of the decree holder. Therefore, the Decree Holder is the owner of the decree schedule property and is entitled to obtain delivery of the property through the process of the court. The property never belonged to Mahmood Ali. The said Mahmood Ali is not at all owner of the suit schedule property bearing H.Nos.9-10-72 and 9-10-73. He has no right, title and interest over the same. Therefore, the question of the said Mahmood Ali selling one of the houses bearing no.9-10-73 to the vendor of the claim petitioners in E.A.No.145 of 1993 by virtue of sale deed under exhibit A1 does not arise for consideration. The claim petitions are not maintainable before the executing court.

The claim petitioners have to file independent suits before competent courts for the reliefs claimed in the claim petitions as the executing court has no jurisdiction to declare their titles to properties being claimed by them in the respective claim petitions. The delivery proceedings in the execution petition cannot be stalled by the claim petitioners.”

5.4 Both the claim petitions were consolidated and common evidence was recorded by the court of execution. The first claim petitioners in both the claim petitions were examined as PWs 1 and 3 and their supporting witness was examined as PW2 and exhibits A1 to A45 were marked on the side of the claim petitioners. The Decree Holder and her supporting witness were examined as DWs 1 and 2 and exhibits B1 and B2 were marked on the side of the Decree Holder.

5.5 On merits, the Court of execution had allowed the claim petitions. Feeling aggrieved, the Decree Holder had preferred two Civil Miscellaneous Appeals in C.M.A.Nos.203 of 1996 and 204 of 1996. By the order impugned, the learned V Additional Chief Judge, had dismissed both the appeals and had confirmed the orders of the executing court. Feeling aggrieved, the Decree Holder had filed these two second appeals. On her death, her legal representatives are brought on record as appellants and they are prosecuting these second appeals.

6. The learned counsel for the appellants had contended as follows:

The courts below had committed grave error in allowing the claim petitions purported to have been filed under Order XXI Rules 58, 97 and 99 read with Sections 47 and 151 of the Code though the said petitions are misconceived and are not maintainable before the Court of execution. The provisions of law mentioned in the claim petitions have no application to the facts of the case. Even before the Decree Holder had filed an application for delivery of the decree schedule property after removing the obstructions being caused by the claim petitioners, the claim petitioners who had showed resistance for delivery of the property, had filed the claim petitions. Hence, neither Order XXI Rule 58 nor Order XXI Rule 97 is applicable to the facts of the case. Rule 99 of Order XXI applies to a person, who is dispossessed of the immovable property by the holder of the decree for possession and such a person who is dispossessed of his immovable property can make an application to the executing Court complaining of such dispossession. Since the claim petitioners in the instant case are not dispossessed, the provision of Order XXI Rule 99 of the Code has no application. The Court below ought to have seen that

the claim petitioners had sought the reliefs of declaration of title to the respective claim petition schedule properties and they had further requested to set aside the decree that was obtained by the Decree Holder against the Judgment Debtor. The executing court is not competent to grant such reliefs. The Courts below had failed to see that the claim petitioners in the two claim petitions had failed to establish the source of title of Mahmood Ali who was said to have acquired the property and constructed houses 40 years back. It is not established by the claim petitioners as to how the said Mahmood Ali had acquired right, title, interest and possession over the property. The Decree Holder had obtained a valid decree against the judgment debtor for specific performance in respect of the suit schedule property and pursuant to the decree granted in that suit for specific performance, the Court of execution had executed a regular registered sale deed in respect of the suit schedule property and that therefore, the Decree Holder is entitled to obtain delivery of possession of the decree schedule property as per the terms of the decree and the sale deed that was executed by the court. The claim petitioners who have no title, right and interest in the properties cannot obstruct the delivery of possession of the decree schedule property to the decree holder by disputing the sale deed obtained by her pursuant to a valid decree obtained by her against the judgment debtor. The judgment debtor had mischievously set up the claim petitioners in the two claim petitions and they are his associates, agents and representatives. He had joined hands with the claim petitioners to play fraud on the Court and the Decree Holder and to somehow obstruct the delivery of the possession of the property and to delay and defeat the valuable rights of the Decree Holder under the decree granted by a competent civil Court. The Court below had mechanically endorsed the findings of the court of execution and had erroneously confirmed the orders of the executing court without independent application of the mind to the facts of the case. If the orders passed by the courts below are sustained, the appellants suffer serious and irreparable loss which cannot be compensated in terms of money.

7. As already noted, despite granting sufficient time to the claim petitioners/respondents in both the appeals, no submissions were made on their behalf.

8. I have carefully gone through the pleadings and the evidence brought on record. I have noted the submissions. I have gone through the memoranda of grounds of appeal.

8.1 The Decree Holder having obtained a decree for specific performance against the judgment debtor and having filed an execution petition for execution of the said decree had obtained a regular registered sale deed executed by the court in respect of the decree schedule property. In the said execution petition, the Court of execution had entrusted a delivery warrant to the Field Assistant of the Court directing him to deliver the decree schedule property to the Decree Holder. At the time of delivery of the decree schedule property to the decree holder, the claim petitioners in the two claim petitions had obstructed the delivery proceedings and had filed the two claim petitions. The claim petition in E.A.No.146 of 1993 is filed by the claim petitioners claiming that one Mahmood Ali who is the father of the claim petitioners 1 to 3 and husband of the 4th claim petitioner had acquired the property and had constructed two houses bearing no.9-10-72 and 9-10-73 about 40 years back and that while enjoying the said house property, he had sold the house bearing no.9-10-72 to the vendor of the claim petitioners in E.A.No.146 of 1993 by virtue of registered sale deed under exhibit A1 and that the said vendor in his turn had sold that property to the claim petitioners in E.A.No.145 of 1993 under exhibit A3 dated 19.09.1979 and that therefore, the claim petitioners in E.A.No.146 of 1993 are the owners of the other house property bearing H.No. 9-10-72 having got the said house by inheritance after the death of the said Mahmood Ali and that the claim petitioners in E.A.No.146 of 1993 are the owners of the house bearing no.9-10-72 having acquired valid tile to the said house by virtue of registered sale deed dated 19.09.1979 under exhibit A3 executed by the purchaser from Mahmood Ali under exhibit A1. While reiterating the respective pleaded cases, the claim petitioners had exhibited exhibit A1-the original sale deed in Urdu and its' translation deed besides exhibit A3, the sale deed dated 19.09.1979 of the claim petitioners in E.A.No.145 of 1993 and other documents to show the long continuous possession and enjoyment of the respective claim petition schedule properties by the respective claim petitioners. Before proceeding further, be it noted that the courts below had recorded concurrent findings of fact that the claim petitioners in respective claim petitions had established right, title, interest and possession over the respective claim petition schedule properties and accordingly, allowed the claim petitions.

8.2 Dealing first with the contentions that the claim petitions are premature as the claim petitioners are not admittedly dispossessed from the respective properties being claimed by them and that Rule 99 of Order XXI of the Code has, therefore, no

application and that the claim petitions seeking declarations of title to the respective schedule properties are not maintainable before the court of execution and that the court of execution has no jurisdiction to entertain such claim petitions and declare titles of the claim petitioners in respect of the respective claim petition schedule properties and that the claim petitioners are required to file suits in case they desire to claim the said reliefs, it is necessary to first refer to the provisions of Order XXI Rule 97, 98 and 99 of the Code, which read thus:

97. Resistance or obstruction to possession of immovable property.-

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

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

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.

It is now time for us to consider Order XXI, Rule 99 which reads as under:

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 executing 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.

The legal position on the aspect urged on behalf of the decree holder is no longer *res integra*. In **Silverline Forum Pvt. Ltd. V. Rajiv Trust and another**, the Supreme Court had held that resistance offered by third parties can be subject matter of a petition under Rule 97 of Order XXI of the Code. A similar view was also expressed in **Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal**. In this cited case, it was held as under:

A conjoint reading of Order XXI, 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 XXI, Rule 35 then the decree-holder has to move an application under Order XXI, 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 XXI, Rule 97 Sub-rule (2) read with Order XXI, Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without 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 XXI, 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 XXI, 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 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 XXI, 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 XXI, Rule 98 Sub-rule (1), CPC the Executing Court can direct the stranger applicant under Order XXI, Rule 99 to be put in possession of the property or if his application is found to be substance less it has to be dismissed. Such an order passed by the Executing Court disposing of the application one way or the other under Order XXI, Rule 98 Sub-rule (1) would be deemed to be a decree as laid down by Order XXI, Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order XXI, Rule 101.

In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once

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

obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI, Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI, Rules 97 to 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.

Thus, the Supreme Court had held that the claim petitions can be filed before the executing Court even before the claim petitioners who are in possession of the decree schedule property lose possession to the Decree Holder. Further, in the decision in **Ashan Devi and Another v. Phulwasi Devi and others**, while appreciating the whole gamut of the provisions contained under Rules 97 to 103 of the code and the objectives behind the same, the Supreme Court had held as follows:

Rule 97 deals with resistance or obstruction to possession by the holder of a decree for possession or the purchaser of any such property sold in execution of a decree. It empowers such a person to file an application to the Court complaining of such resistance or obstruction and requires the Court Under Sub-rule (2) to adjudicate upon the application in accordance with the provisions provided therein. Rule 99 deals with dispossession by decree-holder or purchaser. It stipulates that 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. The Court is obliged to adjudicate such an application. Thus this rule, as is manifest, includes any person other than the judgment-debtor. Rule 101 deals with the questions to be determined. It provides 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 an application and not by a separate suit and for the said purpose, the executing court has

been conferred the jurisdiction to decide the same. Rule 100 deals with orders to be passed upon application complaining of dispossession. It is apt to reproduce the said rule:

Rule 100. Order to be passed upon application complaining of dispossession.-Upon the determination of the questions referred 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 possession of the property or dismissing the application; or

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

14. Rule 98 deals with orders after adjudication. Sub-rule (1) provides that upon the determination of questions referred to in Rule 101, the Court in accordance with determination and subject to provisions of Sub-rule (2) therein make an order allowing the application and directing that the applicant be put in possession of the property or dismissing the application or pass such other order, as in the circumstances of the case it may deem fit. As far as Sub-rule (2) is concerned, the same is not necessary to be taken note of for the purposes of present case. Rule 103 which is significant reads as follows:

Rule 103. Orders to be treated as decrees.-Where any application has been adjudicated upon Under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

Further, in **Noorduddin v. Dr.K.L.Anand**, the facts show that the executing court had rejected the application of the Appellant therein on the ground that the High Court had already adjudicated the *lis*. Analysing the language employed in Rules 97, 98 and 100 to 104, the Court held:

Thus, the scheme of the Code clearly adumbrates that when an application has been made Under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Code of Civil Procedure Amendment Act, 1976, right of suit Under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property Under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

Elucidating further, the Supreme Court opined that adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to meet out justice and, therefore, adjudication Under Order XXI, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property Under execution.

The authorities aforesaid clearly stipulate that the executing Court has authority to adjudicate all the questions pertaining to title or interest in the property arising between the parties and it also includes the claim of the stranger who apprehends dispossession or has already been dispossessed from the immovable property. Therefore, the Code of Civil Procedure enjoins the executing court with a duty and empowers it to adjudicate the *lis* for the purpose of avoiding multiplicity of proceedings. Therefore, the contention of the Decree Holder that the applications are premature and not maintainable before the court of execution and that the executing Court has no jurisdiction to entertain the applications are devoid of merit and are therefore, accordingly rejected.

8.3 In *Ashan Devi and Another* (3 supra), the question that fell for consideration before the Supreme Court was whether a purchaser of a vacant land under registered Sale Deed and claiming to be in possession of the land can maintain an application under Order XXI Rule 97 of the Code of Civil Procedure complaining of his alleged dispossession in execution of the decree of specific performance of contract of sale obtained *ex parte* by the decree holder against the original owner of the suit property? The brief facts of the cited case are as follows: ‘The Decree Holder had obtained an agreement of sale dated 12.07.1984 from the judgment debtor in respect of the suit lands. According to the Judgment debtor, she was not aware that the Objectors had obtained title to the suit property by four separate sale deeds in the year 1985 and got them registered in Calcutta where the vendors resided. The purchasers were not made parties to the suit. After the *ex parte* decree was granted, the Decree Holder had deposited balance of sale consideration in the Court and the decree was put in execution by him. A registered sale deed was executed by the court in favour of the decree holder as the judgment debtors absented despite notice

and failed to execute it. According to the Decree Holder, on 5.9.1996, through the process issued by the executing court, possession of the decreed property was obtained by the Decree Holder through Court Nazir without any obstruction or resistance from any one. While so, on 21.9.1996, the Objectors filed an application under Order XXI Rule 99 before the executing court complaining about their illegal dispossession and seeking restoration of possession to them. The said application was opposed by the Decree Holder. In the above stated factual background, the Supreme Court having referred to the ratio in the decision in **Brahmdeo Chaudhary** (2 supra), had held as follows:

‘In view of the discussion aforesaid, in our opinion, the executing court was well within law in recording evidence and adjudicating the claim of the third party. The executing court rightly rejected the preliminary objection to the maintainability of application of the Objectors under Order XXI Rule 99 of the Code and decided the other issues on merits of their claims arising between the Decree Holder and the Objectors.’

5.8 The precedential guidance in the decisions referred to supra clearly shows that the claim petitioners need not file separate suits and that their petitions before the executing court are perfectly maintainable.

5.9 In view of the narrow compass of the substantial question raised in these two appeals, there is no need to go into any other aspects of the matter. The courts below had recorded concurrent findings of fact that the claim petitioners in these two claim petitions who are admittedly in possession of the respective claim petition schedule properties had established their rights, titles and interests in respect of the respective claim petition schedule properties and had declared that the claim petitioners in E.P.No.145 of 1993 are the owners in possession of the property bearing H.No.9-10-73 admeasuring 90 square yards at Banjara Darwaza, Golconda Fort, Hyderabad and that the claim petitioners in E.P.No.146 of 1993 are the owners in possession of the property bearing H.No.9-10-72 admeasuring 290 square yards situated at Banjara Darwaza, Golconda Fort, Hyderabad and had accordingly declared them as the absolute owners and possessors of the respective properties and had allowed both the claim petitions.

6. Before parting with the case, it is necessary to mention that the learned counsel for the appellants had relied upon the following decisions:

(i) **Rajasthan State TPT Corpn & Anr. V. Bajrang Lal.** This decision was relied upon in support of the contention that a second appeal, in exceptional circumstances, can be entertained on pure questions of fact and that there is no prohibition for the High Court to entertain the Second Appeal even on question of fact where factual findings are found to be perverse.

(ii) The decision in **Easwari v. Parvathi & Ors** was relied upon to highlight the scope and sweep of powers of High Court under Section 100 of the Code of Civil Procedure. In this decision, it was held as follows:

“A plain reading of the Section 100 of the code conveys that a second appeal be allowed only when there is a ‘substantial’ question of law involved. It is settled law that the High Court can interfere in second appeal when finding of First Appellate Court is not properly supported by evidence.” In this decision, the Supreme Court had referred to the decision in **Yadarao Dajiba Sharawane (dead) by LRs v. Nanilal Harakchand Shah (dead) & Ors** [(2002) 6 SCC 404] and had held as follows:

“.....The position is well settled that when the judgment of the final court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment. The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by courts. A finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal.”

Placing reliance on this decision, it is urged that when the lower appellate court had recorded perverse findings, a second appeal is maintainable. There is no dispute with the propositions of law laid down in the cited decisions. The decision in **Union of India & others v. Vasavi Co-op. Housing Society Ltd. & Ors.** was relied upon

in support of the following proposition: “The plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against, in the absence of establishment of plaintiff’s own title, plaintiff must be non-suited.” There is also no dispute with the above stated settled proposition of law. However, having regard to the reasoned discussion supra, this Court finds that the ratios in the decisions are not helpful to the appellants in view of the facts of the present case and that the cited decisions do not advance of the case of the appellants any further.

7. On a careful analysis of the facts and the evidence and after taking note of the legal position, which is discussed supra, this Court finds that the courts below are justified in allowing the claim petitions and that there is no substance in the substantial question raised and that the appeals are devoid of merit and that there are no grounds calling for interference with the impugned common judgment.

8. In the result, both the second appeals are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these appeals shall stand closed.

M. SEETHARAMA MURTI, J

04th November, 2015

RAR

