

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.M.S.A.No.15 of 2008

JUDGMENT:

The decree holder/appellant filed the present appeal against the decree and judgment passed in A.S.No.176 of 2005 dated 27.11.2007 by X Additional Chief Judge (FTC) City Civil Court, Hyderabad confirming the decree and decretal order passed in E.A.No.144 of 2004 in E.P.No.23 of 2004 in O.S.No.1222 of 2002 dated 17.01.2005 by VII Senior Civil Judge, City Civil Court, Hyderabad, whereby both the Courts recorded concurrent finding that the applicant before the executing Court Smt.Bharathi M.Rao, 1st respondent herein, is the purchaser of the property sought to be delivered by the Court Amin to the appellant/decreree-holder.

For convenience and reference, the ranks given in this appeal as appellant and respondent will be adopted throughout the judgment.

The 1st respondent filed an application under Order 21 Rule 97 read with Section 151 and 47 Code of Civil Procedure (for short 'CPC') before the executing Court i.e., VII Additional Senior Civil Judge, City Civil Court, Hyderabad, contending that she is the owner of flat No.302 in 2nd floor, admeasuring 855 square feet, including common areas and balcony with undivided share of 28 square yards of land in premises bearing No.2-1-435 situated at Nallakunta, Hyderabad. She purchased the said plot from 2nd respondent M/s.Sayani Builders through registered sale deed dated 21.06.2003 for valuable consideration of Rs.4,90,000/- preceded by agreement of sale, dated 25.10.1999. The petitioner also purchased another flat bearing No.301 in second floor admeasuring 555 square feet including common areas and balconies from M/s.Sayani Builders under a registered sale deed dated 19.01.2000 in pursuance of the agreement of sale dated 25.10.1999. The 2nd respondent herein converted both the flats into one to her convenience and completed the construction through the said builder. Since the date of completion of construction, she has been in possession and enjoyment of the said flat

in her own right, paying property tax to the municipal corporation.

While the matter stood thus, about 50 to 60 persons along with Court Amin came to flat No.302 and tried to vacate the 1st respondent from the possession of the property. The boundaries of flat No.302 are as follows :-

North : Road
South : Flat No.301
East : Flat No.303
West : Road

Thereupon the 1st respondent produced sale deed and relevant documents pertaining to the ownership of the property. On verifying the same, the Amin went back saying that he would come back for evicting her and to deliver vacant possession of the property to the appellant herein.

The 1st respondent believing that the decree holder/appellant herein fraudulently obtained sale agreement in collusion with the builder 2nd respondent, filed a suit O.S.No.1222 of 2002, obtained an ex parte decree, later obtained a registered sale deed through process of the Court in E.P.No.43 of 2003 and E.P.No.63 of 2003 without any manner of right. Thus, the appellant has no right to evict the

1st respondent/petitioner and she is the absolute owner of the property and finally sought protection, restraining the respondents/decreed holder/appellant from interfering with her possession and enjoyment of the property.

The appellant/DHr filed counter affidavit resisting the claim of the 1st respondent on various grounds mainly contending that the petition under Order 21 Rule 97 CPC is not maintainable as the 1st petitioner is the third party to the execution proceedings. On this ground alone, the petition is liable to be dismissed.

The appellant/DHr specifically contended that she purchased the property in dispute under agreement of sale; as the 2nd respondent failed to execute registered sale deed, got issued a legal notice calling upon

the 2nd respondent to execute registered sale deed; and as the 2nd respondent did not come forward to execute the same, she filed O.S.No.1222 of 2002 for specific performance of agreement of sale dated 02.09.1998 and obtained a decree dated 05.11.2002. In pursuance of the direction issued under the decree, she deposited a sum of Rs.1,50,000/- to the credit of the suit and filed E.P.No.63 of 2003. On receipt of notice in execution petition, the 2nd respondent remained exparte. The appellant decree holder obtained a registered sale deed through process of the Court and later filed EP for delivery of the vacant possession of the property, as owner. Thus, she is the owner of the property in dispute.

She further contended that the alleged contention of the 1st respondent/petitioner that 50 or 60 persons along with Amin came to the schedule property is false. Except on 20.05.2004 neither the appellant/DHr nor any other persons went to the schedule property and it is an invention made by the 1st respondent before the executing Court. Flat No.302 is in 2nd floor but not in the 3rd floor of the building, whereas the EP schedule is situated in the 3rd floor. She also denied the alleged apprehension of the 1st respondent/petitioner about evicting her from the schedule property. Hence, she is not entitled to claim any right in the schedule property and prayed for dismissal of the execution application.

During the course of enquiry, on behalf of the 1st respondent/petitioner, PWs.1 to 3 were examined and Exs.A1 to A8 were marked; on behalf of the appellant/DHr., RW1 is marked and Exs.B1 to B6 and Exs.X1 to X3 were marked.

Upon hearing argument of both the counsel and considering oral and documentary evidence on record, the executing Court allowed the application filed by the 1st respondent/applicant while disbelieving the contention of the appellant/DHr.

Aggrieved by decretal order in E.A.No.144 of 2004 in E.P.No.23 of 2004 in O.S.No.1222 of 2002, the DHr filed appeal in A.S.No.176 of 2005. The X Additional Chief Judge (FTC), City Civil Court, Hyderabad

recorded concurrent finding upholding the order under challenge and dismissed the appeal.

The appellant/DHr being unsuccessful before the executing Court and appellate Court, preferred this Civil Miscellaneous Second Appeal before this Court on various grounds. The main contentions urged before me in grounds of appeal are :-

- a) the appellant/DHr became the owner of the property by virtue of the sale deed dated 02.09.1998 obtained through process of the Court in pursuance of the decree O.S.No.1222 of 2002 passed by the VII Additional Senior Civil Judge, Hyderabad dated 05.11.2002. The decree became final and consequently she is the absolute owner of the property. But the trial Court did not consider the background of the case.
- b) The executing Court erroneously entertained the petition under Order 21 Rule 97 of CPC on the strength of registered sale deed obtained by the 1st respondent before the executing Court. She is not entitled to file an application under Order 21 Rule 97 CPC and such remedy is available only to the decree holder but the executing Court on erroneous appreciation of the fact and law allowed the application against the appellant/DHr and thus committed an error.
- c) The trial Court did not considered the flat number and mere variation in boundaries is not sufficient to allow the application filed by the 1st respondent-applicant.

In ground No.8 of the grounds of appeal, the appellant/DHr raised the following three substantial questions of law.

- a) ***Whether a petition under Order 21 Rule 97 CPC can be maintained by a person whose possession interfered with and a judgment and decree of a competent civil Court can be challenged without approaching the civil Court by filing a civil suit ?***
- b) ***Whether the provision of Order 21 Rule 97 of CPC are only to implement the civil Courts decree in execution while the same resisted. The remedy can be availed only by a decree holder ?***
- c) ***Whether the earlier sale deed transferring the title will prevail over the subsequent sale deed wherein the original owner lost the title in view of the earlier sale ?***

This Court vide order dated 12.06.2008 admitted the appeal without

framing any substantial question of law, but however, it is necessary to frame a substantial question of law. Therefore, upon preliminary hearing of argument of the counsel for the appellant, this Court framed the following substantial questions of law.

- 1. *Whether a third party is entitled to file an application under Order 21 Rule 97 CPC for deciding her rights and title to the property in execution petition ?***
- 2. *Whether the 1st respondent/petitioner is entitled to file a petition before dispossessing her from the schedule property ?***

In re **POINT No.1** :-The first and foremost contention of learned counsel for the appellant/DHr is that under Order 21 Rule 97 CPC, the DHr is competent to file an application for removal of obstruction and resistance in execution of decree, and the third party is not competent to file any application for adjudication of his or her right and title to the property. Learned counsel for the respondents would contend that a third party can avail the remedy under Order 21 Rule 97 CPC read with Rules 99 and 101 CPC. Though it is summary in nature, the executing Court is bound to decide all questions of title without driving to file a suit in a civil Court. Both the counsel relied upon several decisions in support of their contentions.

In view of the rival contentions, it is the duty of the Court to decide as to who is competent to file an application under Order 21 Rule 97 CPC read with Rules 99 and 101 CPC.

Undisputedly, the appellant/DHr obtained a decree in O.S.No.1222 of 2002 for specific performance of agreement of sale and later by filing E.P.No.63 of 2003 obtained a registered sale deed through process of the Court and filed E.P. for delivery of the vacant possession of the property, whereas the 1st respondent-applicant resisted the execution of the decree on the strength of title to the property, delivery of vacant possession of flat No.302 in 3rd floor, she filed application under Order 21 Rule 97 CPC before the executing Court seeking adjudication of her right and title to the property. Before advertent the law declared by various Courts including Apex Court, I find that it is appropriate to extract Order

21 Rules 97 to 101 CPC for better appreciation.

Order 21 Rule 97 CPC

Resistance or obstruction to possession of immovable property:-

- a) 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.
- b) 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.

Order 21 Rule 98 CPC

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.

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Order 21 Rule 99 CPC

- a. Dispossession by decree-holder or purchaser :- 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.
- b. Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

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Order 21 Rule 100 CPC

Order to be passed upon application complaining of dispossession :-

Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination,

- a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- b) pass such other order as, in the circumstances of the case, it may deem fit.

Order 21 Rule 101 CPC

Question to be determined :-

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

The language used in Rule 101 CPC permits any person or their representatives to file an application under Order 21 Rule 97 or Rule 99 CPC to determine all questions including right, title or interest in the property.

If Rules 97, 99 and 101 CPC read together, a third party to the decree is entitled to file an application under Order 21 Rule 97 CPC. If Order 21 Rule 97 CPC alone is read, it permits decree-holder to file an application but none others. On conjoint reading of all the three Rules, it is clear that even a third party also competent to file an application under Order 21 Rule 97 CPC.

An application by a claimant to the property, which has been sold in execution for releasing the property from attachment before any allegation is made by the decree-holder of resistance or obstruction is premature in view of one line of judgment but the law declared by the Apex Court is on different footing.

In ***BRAHMDEO CHAUDHARY V. RISHIKESH PRASAD***

JAISWAL AND ANOTHER^[1], a similar contention was urged before the Apex Court, but the Apex Court in para 8 of the judgment held as follows

:-

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

1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order 21, Rule 35 then the decree-holder has to move an application under Order 21 Rule 97 CPC for removal of such obstruction and after hearing the decree-holder and the obstructionist the Court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21 Rule 98 CPC. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without a just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order 21 Rule 98, sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as decree under Order 21, Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate Court against such deemed decree.

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

After analyzing entire Rules commencing from 97 to 101 of Order 21 concluded that an application under Order 21 Rule 97 CPC read with Rule 101 CPC can be maintained by a third party and held that the order passed by the High Court in revision is erroneous as the High Court was of the view that unless the person in possession is dispossessed, he cannot maintain an application under Order 21 Rule 97 CPC while holding that it is of course true as submitted by the learned counsel for the decree-holder.

Similar issue came up before the Apex Court in **SHREENATH AND ANOTHER V. RAJESH AND OTHERS**^[2]. It is held in paras 10, 14 and 15 that

“the expression “any person” under sub-clause (1) is used deliberately for widening the scope of power so that the executing Court could adjudicate the claim made in any such application under Order 21, Rule 97 CPC. Thus by the use of the words ‘any person’ it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.

Under the old law or the present law the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under Order 21, Rule 97 CPC has to be decided by the Executing Court itself.

Rule 100 of the old law and Rule 99 of the new law covers cases where persons other than judgment-debtor is dispossessed of immovable property by the decree-holder, of course, such cases are also covered to be decided by the executing Court. But this will not defeat the right of such person to get his objection decided under Rule 97 which is a stage prior to his dispossession or a case where he is in possession. In others words, when such person is in possession the adjudication to be under Rule 97 and in case dispossessed adjudication to be under Rule 100 (old law) and Rule 99 under the new law. Thus a person holding possession of an immovable property on his own right can object in the execution proceeding under Order 21 Rule 97 CPC, one has not to wait for his dispossession to enable him to participate in the execution proceedings. This shows that such person can object and get adjudication when he is sought to be dispossessed by the decree-holder.”

In view of the law declared by the Apex Court in the above two judgments, it is difficult to uphold the contention of the learned counsel for the appellant/DHr.

In support of the contentions of the appellant/DHr, he placed reliance on the judgment in **RAJENDRA KUMAR V. 3rd ADDITIONAL DISTRICT JUDGE, MORADABAD AND OTHERS**^[3], where Allahabad High Court held as follows:-

“In view of Order 21, Rule 97(1) it is only the decree-holder or the auction purchaser of any such property who can make an application in case its possession is resisted or obstructed. In the present case petitioner was the son of judgment-debtor, who was sought to be ejected on the spot from the accommodation in dispute. He has certainly obtained the allotment order, but that order was directed by the Court to be ignored as if it was totally non est. Against that order the petitioner went to Supreme Court and there he was not successful. In this view of the matter the petitioner neither being a decree-holder nor auction-purchaser has no right to make any objection or application. No doubt he was himself responsible to create obstruction. Hence the application or objection filed by the petitioner was not maintainable under Order 21, Rule 97 CPC. Such application could be maintainable not at the behest of the son of the judgment-debtor or the person obtaining allotment order. Hence the rejection of application was justified.”

He also relied on the judgment of the Division Bench of this Court in **T.SRINIVAS AND ANOTHER V. E.RAVINDER AND ANOTHER**^[4], wherein it is held that

“A plain reading of Rule 97 of Order 21 of CPC shows that it is a remedy available to the decree-holder if he is resisted or obstructed by any person in obtaining possession of the property. Whenever such an application is made by the decree-holder under Rule 97 of CPC complaining to the Court resistance or obstruction by any person, all questions arising between the decree-holder and any such person shall be adjudicated by the executing Court itself under Order Rule 101 of CPC. May be that, such an application filed by the decree-holder can be opposed by any person in possession by seeking adjudication of his objections, however such person himself cannot maintain an application under Order 21 Rule 97 of CPC.”

In **NISAR AHMAD AND OTHERS V. V ADDITIONAL DISTRICT JUDGE, AZAMGARH AND OTHERS**^[5], wherein it is held that

“The provisions of Order 21, Rule 97 CPC is not such a provision which compulsorily require the decree-holder to make application in case of obstruction or resistance by a third party in execution of a decree for delivery of possession. Therefore the petitioners resisting delivery of possession would not be entitled for a relief for direction to the respondents-decree-holder to file application under Order 21, Rule 97 CPC. In view of the settled law also if such application was filed, the petitioner could have only raised pleas of defence. The only course open to the petitioners is to surrender possession to the decree-holder and thereafter may initiate such legal proceedings as may be advised.”

A similar view was expressed as in earlier judgment of Allahabad High Court and again drawn the attention of this Court in **SMT.USHA JAIN AND OTHERS V. MANMOHAN BAJAJ AND OTHERS**,^[6] wherein it is held that

“The executing Court has no jurisdiction to start an enquiry suo motu or at the instance of a third party other than the decree-holder/auction-purchaser under Order 21, Rule 97 CPC. This Rule is merely permissive and not mandatory so that the decree-holder/auction-purchaser need not resort to it against his will and may even apply for a fresh warrant under Order 21, Rule 35 CPC. Executing Court is not bound to stay its hands the moment a third party files an objection to the execution nor the stay would continue till an unwilling decree-holder/auction purchaser is forced to apply for investigation into the right or title claimed by the third party and negative the claim therein. If the executing Court were to stay its hands till investigation into a third party's claim is not finally decided then it would result in depriving the decree-holder of this possession by filing repeated spurious claims.

No enquiry into the title or possession of a third party is contemplated at any rate at his instance either under Rules 35 and 36 or Rules 95 and 96 of Order 21 CPC when the decree-holder or the auction-purchaser applies, for obtaining possession. Subsequently when the decree-holder or auction purchaser is met with obstruction or resistance in obtaining possession, one of the options open to him is to apply under Rule 97 but that provision is merely permissive and not mandatory and it is open to the decree-holder/auction-purchaser to apply instead for a fresh warrant of possession. An enquiry at the instance of a third party in possession is contemplated only under Order 21 Rule 100 contemplated only under Order 21 Rule 100 after he was dispossessed and not before it."

The omission by the executing Court to investigate into the objection filed by a third party does not result in injustice to the third party. It cannot be said that he would have no remedy to protect his possession and have his title judicially investigated prior to his dispossession, his only remedy then being under Order 21, Rule 100 after dispossession. Another remedy available to such a third party is to institute an independent civil suit for declaration of his title claiming therein the relief of temporary injunction to protect his possession."

He further drawn the attention of this Court to a recent judgment of Apex Court reported in **SILVERLINE FORUM PRIVATE LIMITED V. RAJIV TRUST AND ANOTHER**^[7] wherein it is held that

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

When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resistor raised it. The questions which executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g. if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-

holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. in the adjudication process envisaged in order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section. The executing Court cannot can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code.”

In the facts of the above judgment, a purchaser, pendente lite, filed an application under Order 21 Rule 97 CPC but in view of the bar contained in Order 21 Rule 102 CPC, the purchaser is not entitled to file an application under Order 21 Rule 97 CPC. Thus the principle laid down in the above judgment has no direct application to the present facts of the case.

Learned counsel mostly concentrated on the Full Bench judgment of Madhya Pradesh High Court and the Division Bench judgment of this Court and both the judgments laid down on same principle.

The Apex Court in **SHREENATH’s** case referred to supra at paras 5, 15 and 18 while holding that any person can maintain a petition under Order 21 Rule 97 CPC over ruled the Full Bench judgment of Madhya Pradesh High Court in **USHA JAIN’s** case referred to supra on which the learned counsel for the appellant strongly placed reliance.

In view of the law declared by the Apex Court in **SREENADH’s** case referred to supra, the principle laid down by the Division Bench of this Court need not be followed.

Learned counsel for the 1st respondent-applicant drawn the attention of this Court in **CHALUGU BASIVI NAIDU AND OTHERS V. CHALUGU BHEEMI NAIDU AND OTHERS**^[8], **Dr.M.PARVATHI AND OTHERS V. PENUMATCHA SATYANARAYANA RAJU AND OTHERS**^[9], **TAHERA SAYEED V. M.SHANMUGAM AND OTHERS**^[10], **AYIREDDY LAKSHMI AND ANOTHER V. PYDAH SUBRAHMANYA JAGANNADHA SATYA PRASAD AND**

OTHERS^[11] and T.N.V.RAVI KUMAR V. HABEEB AQEEL BIN MOHD. JAMAL ALLAIL AND OHTERS^[12]

This Court was pleased to held consistently that a third party can maintain an application. Even if the judgments of this Court are inconsistent with one another still the law declared by the Apex Court is a binding precedent and **SHREENATH's** case is clear on the aspect of the maintainability of the application filed by the third party under Order 21 Rules 97 and 99 CPC. In view of the law laid down by the Apex Court both in **BRAHMDEO CHAUDHARY's** case and **SHREENATH's** case referred to supra, I am of the considered view that a third party can maintain an application under Order 21 Rule 97 CPC for adjudication of her right, title etc., without resorting to a separate suit for adjudication of her right in view of Order 21 Rule 101 CPC. In view of my forgoing discussion, I find no force in the contention of the appellant/DHr. Accordingly, point No.1 is answered in favour of the 1st respondent-applicant and against the appellant/DHr.

POINT NO.2 :- One of the contentions raised by the learned counsel for the appellant/DHr is that before dispossession from the schedule property, the third party cannot maintain an application under Order 21 Rule 97 CPC. Therefore, third party claimant has to wait till dispossession and file an application thereafter. But this view is not accepted by the Apex Court in **BRAHMDEO CHAUDHARY's** and **SHREENATH's** cases referred to supra. In view of the principles laid down in the above two judgments, the third party need not wait till she is dispossessed from the schedule property in execution of the decree to file an application for possession. If that procedure is accepted, it would result in chaos and cause substantial loss to the person who was dispossessed from the property in execution of the decree. Perhaps the legislature, to avoid such chaos and substantial loss on account of dispossession, used the word 'any person' under Order 21 Rule 97 and 101 CPC permitting the executing Court to adjudicate all claims relating to the right, title etc. Hence by applying principles laid down in **BRAHMDEO CHAUDHARY's** and **SHREENATH's** cases referred to

supra, I am of the considered view that even before dispossession from the schedule property in execution of the decree, a third party applicant can file an application under Order 21 Rule 97 CPC. Accordingly, I find no substance in the contention of the learned counsel for the appellant since such contention is against the law declared by the Apex Court. Hence, the point is held against the appellant/DHr and in favour of the 1st respondent/applicant.

Though the learned counsel for the appellant/DHr contended that the property purchased by the appellant/DHr and the 1st respondent third party applicant is one and the same, this is purely a question of fact and not a question of law, since, such contention has to be established only by adducing evidence. Therefore, both the executing Court and appellate Court concluded that the property purchased by the 1st respondent-applicant is totally distinct from the property purchased by the appellant/DHr. But this finding needs no interference since the jurisdiction of this Court in the second appeal is limited to decide the substantial question of law. Therefore, I need not disturb the concurrent finding recorded by the executing Court and appellate Court with regard to the identity of the property.

The 1st respondent-applicant filed petition not only under Order 21 Rule 97 CPC but also under Section 47 CPC. Section 47 CPC is not comprehensive in nature than Order 21 Rule 97 CPC. Section 47 CPC permits the executing Court to decide all questions arising between the parties to the suit in which the decree was passed or their representatives, relating to the execution or discharge or satisfaction of the decree, shall be determined in execution proceedings itself and not by a separate suit. In the present case, both the appellant/DHr and the 1st respondent-applicant claiming right through the 2nd respondent-builder under sale deeds. Both are claiming right through 2nd respondent alone. When the executing Court is competent to decide about the executability discharge and satisfaction of the decree, the Court need not drive the parties to a separate suit to decide the title and right over the

property. There is a marked difference between Order 21 Rule 97 to 101 and Section 47 CPC. But both the provisions permits the executing Court to decide all questions relating to rights, title etc., without driving the parties to approach the Civil Court for establishing their rights by filing a suit. Therefore, the scope of Order 21 Rule 97 to 101 CPC is not limited to the parties to the decree or claiming through them but even a third party is competent to file an application under Order 21 Rule 97 CPC for adjudication of right and title. Therefore, filing of application by the 1st respondent-applicant before the executing Court to determine her right, title etc., is totally in accordance with law, and thereby, the concurrent finding recorded by both the executing Court and appellate Court do not suffer from any illegality, calling for interference of this Court. Therefore, I find no legal infirmities in the orders under challenge warranting interference. Hence, the findings of the executing and appellate Courts are hereby confirmed and the appeal is deserves to be dismissed as it is devoid of any merits.

In the result, the appeal is dismissed confirming the concurrent findings recorded by the VII Senior Civil Judge, City Civil Court, Hyderabad and X Additional Chief Judge (FTC), City Civil Court, Hyderabad but without costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date : 02.09.2015
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[1] (1997) 3 Supreme Court Cases 694

[2] AIR 1998 SUPREME COURT 1827

[3] AIR 1989 ALLAHABAD 162 = 1988 All.L.J.1463

[4] 2012(5) ALD 785 (DB)

[5] AIR 1992 ALLAHABAD 198

- [\[6\]](#) AIR 1980 MADHYA PRADESH 146
- [\[7\]](#) (1998) 3 Supreme Court Cases 723
- [\[8\]](#) 2002(2) ALT 186
- [\[9\]](#) 2013(4) ALD 608(DB)
- [\[10\]](#) AIR 1987 AP 206
- [\[11\]](#) 2009(1) ALD 546
- [\[12\]](#) 2015(3) ALT 12