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RANGANATHAN AND THE HON'BLE SRI JUSTICE S.RAVI KUMAR C.C.C.A.No.4 of 2013 JUDGMENT: (per Hon'ble Sri Justice
Ramesh Ranganathan) This appeal is preferred by the appellant-third party claim petitioner aggrieved by the order passed by the XIV
Additional Chief Judge (FTC), City Civil Court, Hyderabad in E.A.No.11 of 2012 in E.P.No.176 of 2011 in O.S.No.575 of 2006 dated
08.11.2012. The application in E.A.No.11 of 2012 was filed by the petitioner (appellant herein) under Order XXI Rule 58 CPC r/w
Section 151 thereof requesting the Court below to allow the petition, determine the claim, and pass necessary orders, lest the petitioner-
third party, besides other devotees of Mahankali Temple, sustain irreparable loss and injustice. Respondents 1 to 4 herein are the
plaintiffs in O.S.No.575 of 2006, and are the decree-holders. Respondents 5 and 6 are the defendants in the Suit and the judgment-
debtors. O.S.No.575 of 2006 was filed for declaration of title, and recovery of possession of the suit schedule property of an extent of 264
sq.yards of land in Ward No.6, Block No.1, Khairathabad, Hyderabad. The first plaintiff claimed that he was an employee working as an
Assistant Registrar of Osmania University; taking advantage of his absence, the defendants, along with others, had constructed a temple
over a part of the suit schedule property during the years 1990-92; at the time of construction of the temple, his attempts to resist the
defendants were unsuccessful as the defendants, and others from the locality, stated that the land was being used for a temple, and it
was for a public purpose; the first plaintiff donated 210 sq.yards of land to the temple, and the construction activity was completed with
his permission and in his presence; the temple was constructed on the western portion of the property; the eastern portion of the property
was left vacant, and was in the illegal occupation of the defendants; taking advantage of his lenient attitude, the defendants had, in the
year 2002, tried to grab an extent of approximately 70 sq.yards of land for construction of the association room; the plaintiff issued notice
dated 29.04.2002 and, thereafter, an oral understanding was arrived at to the effect that the plaintiff would forego his claim for an extent
of 70 sq.yards of land in favour of the Khairatabad welfare association; in all, an extent of 280 sq.yards of land was donated by the
plaintiff to the temple as well as the welfare association; an extent of 264 sq.yards of land is still vacant; the plaintiff did not part, donate
or gift the said 264 sq.yards, and he is the absolute owner; the said 264 sq.yards is open land situated behind the Mahankali temple; and
the defendants, taking undue advantage, are now proceeding with the construction activity. A written statement was filed by the
defendants contending that the temple of Matha Mahankali has been in existence since a long time; the defendants came to know that
the temple was constructed way back in the year 1952; the temple was renovated in the year 1990 under the supervision of the existing
committee; the Endowments department sanctioned funds for the purpose of renovation; and the allegation that the suit schedule
property was under the plaintiff's physical possession is false. While denying the other allegations in the plaint as false, the defendants
stated that the plaint schedule property is an unregistered endowed property; the documents of the temple are not available with the
committee; the title of Matha Mahankali was perfected by way of long uninterrupted possession of more than 55 years; the devotees of
Matha Mahankali were offering poojas since 1952; and the executive committee of the Khairathabad Welfare Association, which took up
the affairs of the temple, resolved that three commercial shops should be constructed by collecting donations from the devotees, and the
shops should be let out. In O.S.No.575 of 2006, the XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad framed five issues: 1)
whether the plaintiff is having title to the suit property; 2) whether the plaintiff is in possession of the suit property within 12 years before
filing of the suit, if not whether the suit is in time; 3) whether the plaintiff has donated any part of the suit property for construction of
temple; 4) whether the plaintiff is entitled for declaration and possession; and 5) to what relief? In its judgment dated 05.07.2011 the
Court below, while examining Issue No.1, relied on Ex.A1-registered sale deed to hold that the suit property was purchased in the year
1967; and the plaintiff had title over the property. On issue No.2 the Court below held that, as per Ex.A1, the first plaintiff was the owner
and title holder of the suit property; there was no documentary evidence to show that the defendants were in possession of the entire
property; the evidence of P.W.1 was corroborated by P.Ws.2 and 3; it was established that the plaintiff was in possession of the suit
property prior to filing of the suit; and the suit was within time. On issue No.3, the Court below held that the plaintiff had donated a part of
the suit schedule property for construction of a temple, and for the benefit of the welfare association. On issue No.4, the Court below held
that P.Ws.2 and 3 had stated that the first plaintiff was the absolute owner of 544 sq.yards of land; he had purchased the same under
registered sale deed bearing No.1456/1967 dated 18.05.1967 from its lawful owners-Sri Mohd.Ismail and others; the first plaintiff was put
in peaceful possession of the property on the same day; the first plaintiff donated 210 sq.yards to the temple and 70 sq.yards to the
welfare association; the defendants did not file any document or adduce any oral evidence to prove their contention; and, therefore, the
plaintiffs were entitled to declaration and possession as prayed for. The suit was decreed with costs and the plaintiffs were held entitled
for declaration and possession of the suit schedule property as prayed for. The plaintiffs in O.S.No.575 of 2006 filed E.P.No.176 of 2011
to execute the decree. During the pendency of the execution proceedings the appellant herein, a third party, filed a claim petition in
E.A.No.11 of 2012 stating that he was elected as a municipal corporator for Khairathabad division; he was rendering services to
Khairathabad division as a public representative; two months ago, he came to know that a warrant was ordered to be issued in
O.S.No.575 of 2006; he was surprised to learn that the plaintiffs-decree-holders had obtained a decree by misleading the Court, without
mentioning the door number and survey number of the property; he had approached the judgment-debtors, and came to know that the
property belonged to Mahankali temple which fell under T.S.No.60/1 and 2 in Ward No.83 and Block No.F of Khairathabad village,
Hyderabad; to protect the temple property, as well as the interest and sentiments of lakhs of devotees of his division, he was constrained
to file the claim petition in order to bring the truth before the Court; the TSLR report, issued by the District Collector, showed that the suit
schedule property was not located in Ward No.6, Block No.1; no door number or survey number was mentioned in the sale deed and the
plaint, despite which the Court had passed a decree in favour of the respondents-decree-holders; the plaintiff had filed E.P.No.176 of
2011, and the Court had issued a warrant of recovery of possession in respect of the suit schedule property in O.S.No.575 of 2006; the
petition schedule property i.e. Mahankali temple premises fell in T.S.No.60/1 and 2 in Ward No.83 of Khairathabad Revenue Village; it
was clear that the suit schedule property was situated in Ward No.6, Block No.1 whereas the petition schedule property was situated in
T.S.No.60/1 and 2 in Block No.F and Ward No.83 of Khairathabad Village; both were different and distinct; after due verification of the
revenue records, and after obtaining the records from the revenue authorities, it was found that the petition schedule property was
situated at a place different from that mentioned in the schedule to the suit; it was evident that the plaintiffs had no right over the petition
schedule property; he came to know that, after filing the suit, the plaintiffs had filed an interlocutory application for appointment of an
advocate-commissioner to note down the physical features of the ongoing construction of three shops in the premises of Mahankali
temple; the commissioner had executed the warrant at the premises of the Mahankali temple, and had submitted his report; the plaintiffs
were taking advantage of the report, which was not sustainable in law; the advocate-commissioner had executed the warrant at the
premises of the Mahankali temple; and the warrant issued by the Court cannot be executed without identification of the property. After
furnishing details of the suit schedule property, and comparing it with Ex.A1-sale deed and the advocate-commissioner's report, the
appellant herein stated, before the Court below, that the boundaries did not tally with each other and, as such, the plaintiffs had failed to
establish the location of the suit schedule property; not only the ward numbers, but also the locality of the properties were different and
distinct; the name of the person (present enjoyer) was shown as 'community hall'; and in Sy.No.60/1, the name of the present enjoyer
was shown as 'G.Devalayam'; though the TSLR report showed the existence of Pochamma Gudi only, as per the advocate-
commissioner's report it is mentioned that five temples are existing on the western side; the advocate-commissioner had executed the
warrant at the premises of the mahankali temple, where three shops were under construction with the funds of the devotees to generate
income for maintenance of the temples, and payment of salaries of the archakas; and the suit schedule property in O.S.No.575 of 2006
was different from the premises of Mahankali temple. The appellant herein further stated that the endowments department of the
Government of Andhra Pradesh had sanctioned some amount for reconstruction of the Mahankali temple by their letters dated
24.09.1992 and 24.07.1991; in view of interest and sentiments of his division public, he had filed a petition as an elected public
representative; and, as such, it was just and necessary to entertain the petition. A counter-affidavit was filed thereto by the respondents
denying all the allegations in the affidavit filed by the appellant herein. The respondents contended that the appellant was misleading the
Court by giving a false deposition, and stating that the subject land was located in ward No.5, Block No.1, whereas in the judgment and

Block No.6 and Block No.1; the disputed land was "Mahankali temple", and not Pochamma temple; the sale deed, in document No.1456/1967, was for an extent of 544 sq.yards of which the deceased-first plaintiff had donated some extent for the temple; and the remaining open land, in the suit schedule property, was of an extent of 264 sq.yards of land; the boundaries in O.S.No.575 of 2006, and the boundaries in the sale deed, differ as the boundaries of the suit schedule property in O.S.No.575 of 2006 cover an extent of 264 sq.yards only whereas the sale deed reflected the total extent of land of 544 sq.yards; the advocate-commissioner had given the boundaries of the south-east, instead of the east; it was a fact that, on the south-east boundary, the house of Sri M. Srinivas Rao is located, and on the eastern side boundary is located the Dargah of Hazrath Shaik Nimathullah Sahab; the boundaries of the property, shown in the plaint as well as in the judgment, were one and the same; if the physical features of the boundaries were seen, there would be no difference; as per the sale deed document, which was scribed in Urdu, the ward number is shown as 6, and in the plaint also the ward number is shown as 6; the contention that, in the sale deed, the survey number is shown as 2 is false and incorrect; the petitioner is trying to misguide and confuse the Court; the petition schedule property is situated adjacent to Mahankali temple; the petitioner, in collusion with the judgment-debtors, had filed the petition in order to usurp the suit schedule property, and deprive the respondents-plaintiffs of their legitimate rights; and the petitioner, taking undue advantage of the changes in the boundaries of the suit schedule property, had contended that the boundaries of sale deed document were different. The respondents-plaintiffs requested the court below to dismiss the application. By the order, under challenge in this appeal, the court below, after noting all the aforesaid contentions, held that the decree was passed after considering the oral and documentary evidence; as per the plaint, the first plaintiff had donated 210 sq.yards of land to Mahankali temple, and 70 sq.yards to the association library from out of 544 sq.yards; the remaining open land was 264 sq.yards; the sale deed showed that the ward number of the schedule property was 6; the petitioner's contention that it was shown as ward No.2 was not correct; as per the contents of the written statement, filed by the defendants-judgment-debtors, Mahankali temple was in existence on the suit schedule property; the advocate-commissioner had also stated in his report that the suit schedule property was situated by the side of Mahankali temple; as per the contents of the plaint and the written statement, Mahankali temple is situated in the suit schedule property; the suit schedule property and the petition schedule property were one and the same; the boundaries mentioned in Ex.A1-sale deed did not tally with the suit schedule property, as the first plaintiff had donated 210 sq.yards of land to the temple, and 70 sq.yards of land to the Khairathabad Welfare Association; a decree was passed after considering the oral and documentary evidence; and the petitioners' contention that the warrant issued by the court should not be executed, without identification of the property, was not acceptable and there is no need to determine the claim of the petitioner. Before us Sri Challa Ajay Kumar, learned counsel for the appellant, would reiterate the very same submissions urged before the Court below. He would rely on *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal* in this regard. Sri A.Ravinder Reddy, learned counsel for the respondents, would, however, question the appellant's locus standi to file an application under Order XXI Rule 58 CPC contending that he was a stranger to the proceedings, and was not entitled to file any such application. The point for consideration is whether a stranger, who is a third party to the proceedings and does not claim any modicum of right, title or interest thereupon, can file an application under Order XXI Rule 58 CPC?. Order XXI Rule 58 CPC relates to adjudication of claims to, or objections, to attachment of property and, under sub-rule (1) thereof, where any claim is preferred to, or any objection is made to, the attachment of any property, attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions contained in the said rule. Under sub-rule (2) all questions, (including questions relating to the right, title or interest in the property attached), arising between the parties to a proceeding, or their representatives, under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit. Order XXI Rule 58 is attracted only in cases where the subject property is attached. In such cases the Court is required, on its jurisdiction being invoked, to adjudicate the claims or objections to the attachment of the property. It is only a person, who claims to have an independent right, title and interest in the property attached, who can invoke the jurisdiction of the Court under Order XXI Rule 58 CPC. *Brahmdeo Chaudhary*1 was a case where a decree-holder obtained a warrant for delivery of possession from the executing court against the judgment-debtor, and when the bailiff went to the spot to execute the warrant, he was resisted by the appellant (who was occupying the decretal premises), his brothers and 20-25 others. The Executing Court directed execution of the warrant with police force. The appellant, who was occupying the decretal premises, filed an application before the Executing Court to stay operation of the warrant, and to decide his objections. The Executing Court held that the remedy of the appellant was to move an application, under Order XXI Rule 99 CPC, only after he was dispossessed, and the appellant's claim could not be entertained prior thereto. It is in this context that the Supreme Court held that if a decree-holder is resisted or obstructed in the execution of the decree for possession, with the result that the decree for possession cannot be executed in the normal manner by obtaining a 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 (2) read with Order XXI Rule 98. 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 (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, and the only remedy is to prefer an appeal before the appropriate appellate court against such a deemed decree. 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 XXI Rule 99 CPC claiming that his dispossession was illegal; and that possession should be restored to him. If such an application is allowed after adjudication then, as enjoined by Order XXI Rule 98 (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 without substance, 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 (1), would be deemed to be a decree as laid down by Order XXI Rule 103, and would be appealable before the appropriate appellate forum. However no separate suit would lie against such orders as clearly enjoined by Order XXI Rule 101 CPC. Unlike in *Brahmdeo Chaudhary*1, it is not even the case of the appellant that he is in possession of the property, much less his having any right, title or interest thereupon. Reliance placed by Sri Challa Ajay Kumar on the judgment of the Supreme Court, in *Brahmdeo Chaudhary*1, is misplaced. It is evident from the judgment in O.S.No.575 of 2006 that the Khairathabad Welfare Association, in whose favour the respondents-plaintiffs claim to have donated 70 sq.yards of land, has constructed three shops thereat. A person who is in possession of the property, which may possibly include the Khairathabad Welfare Association, can invoke the jurisdiction of the Court under Order XXI CPC. The appellant herein claims to be the former corporator of Khairathabad division. As noted hereinabove, it is not his case that he is in possession of the subject property or that he has any modicum of right or title thereupon. He claims to be espousing the cause of the members of the locality in larger public interest. While the temple or the endowments department or the Khairathabad Welfare Association, if they are in possession of the subject land, can invoke the jurisdiction of the Civil Court under Order XXI CPC, the appellant cannot invoke the provision claiming to espouse the cause of the members of the locality. The appellant can always avail his public law remedies to espouse the cause of the temple and the members of the locality, or file a representative suit before the competent Civil Court. As we are of the view that the appellant is not entitled to invoke the jurisdiction of the Court below, under Order XXI CPC, we see no reason to examine his other contentions regarding location of the disputed land and whether the land, which is now sought to be taken possession of by the respondent-decree-holders, is the same or is different from the land referred to in the schedule to O.S.No.575 of 2006. The appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs. _____ RAMESH

RANGANATHAN, J _____ S.RAVI KUMAR, J 18th June, 2015. Tsy AIR 1997 SC 856 PAGE PAGE 13 RR,J & SRK,J C.C.C.A.No.4 of 2013

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