

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 181 of 2018**

- Rishi Janghel S/o Late Kriparam Janghel, Aged About 21 Years R/o Near Balaji Mandir, Deshbadi, Anand Nagar, Raipur, District Raipur Chhattisgarh.....(Objector)

---- Petitioner**Versus**

1. Chandrabhan Kriplani S/o Shri Jiyomal Kriplani, R/o Geetanjali Nagar, Tahsil And District Raipur Chhattisgarh (**Decree Holder**)
2. Jairamdas Dengwani (Deceased) S/o Danamal Dengwani, R/o Anil Cloth Agency, Shop No. 41, Cloth Merchant, Pandari, Raipur, District Raipur Chhattisgarh.....(Judgment Debtor)... **Through Legal Heirs.**

Anil Kumar Dengwani, Aged About 26 Years, Son Of Late Jairamdas Dengwani, R/o Near Sindhu Bhawan, Devendra Nagar, Raipur, District Raipur Chhattisgarh....., District : Raipur, Chhattisgarh

3. Revati Bai Janghel, Wd/o Late Kriparam Janghel Aged About 39 Years
4. Ku. Mamta Janghel, D/o Late Kriparam Janghel Aged About 18 Years
5. Jagdish Janghel, S/o Late Kriparam Janghel Aged About 14 Years Minor
6. Ku. Manisha Janghel D/o Late Kriparam Janghel, Aged About 12 Years Minor
7. Manish Janghel, S/o Late Kriparam Janghel, Aged About 10 Years Minor
8. Ashish Janghel, S/o Late Kriparam Jkanghel Aged About 7 Years Minor

Respondents No.5 to 8 are minors, through Their Natural Guardian I.e. Mother Smt. Revati Bai Janghel, Widow of Late Kriparam Janghel,

Respondents No.3 to 8 are R/o Near Balaji Mandir, Deshbadi, Anand Nagar, Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioner : Shri Malay Kumar Bhaduri, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

01/03/2018

1. The instant petition is against the order dated 12.02.2018 whereby an application under Order 21 Rule 97 CPC preferred by the decree holder was allowed. It was further directed that the possession of the disputed suit property as per the order dated 20.12.2002 be given to the decree holder in a result the objection raised by the petitioner against execution of decree was dismissed.
2. Learned counsel for the petitioner would submit that a decree for ejectment was granted in a civil Suit No. 20-A/2002 in respect of the suit property wherein the petitioner was in possession. It is contended that petitioners were not made a party in the said suit and the decree for possession was obtained by the respondent Chandrabhan Kriplani by suppression of fact. He would further submit that when the resistance was made in the execution of decree and subsequently an application preferred under Order 21 Rule 97 CPC was preferred by the decree holder, the executing Court without any sufficient reason has allowed the application and ordered dispossession of the petitioner. He would further submit that the petitioner is in possession of the suit property since more than 30 years back and their title has become absolute which was held adversely to the true owner. Consequently, the petitioner could not have been dispossessed from the suit property and the order dated 12.02.2018 is liable to be set aside.
3. Perused the order and the documents. The facts as would reveal that initially a suit was filed by Chandrabhan Kriplani against Jairamdas Dengwani (since deceased) for ejectment and arrears of rent & damages. The said civil suit was numbered as 20-A/2002 and was decided and decreed on 20.12.2002. A decree of ejectment was passed against Jairamdas Dengwani (since deceased). No appeal was preferred against

such judgment and decree by the then judgment debtor and it attained the finality. Eventually, when execution was set into motion to obtain the possession, it was found that Jairamdas Dengwani, the judgment debtor was not residing in the disputed land and instead Revati Bai Janghel & others were found in possession of the suit land. Consequently, Revati Bai Janghel & others, the respondents herein refused to deliver the possession to the baileef of Court and decree holder and started resisting. In a result decree dated 20.12.2002 could not be executed. Subsequently, an application was preferred by Revati Bai Janghel & others before the 1st Additional Civil Judge, Class-I, Raipur under Section 94 (5) read with Section 151 of the CPC. The said application was rejected on the ground that the petitioners therein had failed to produce any document regarding possession of the land and the possession warrant was again ordered for. Against such rejection of the application, the petitioner herein had preferred a writ petition which was bearing WP No.2131/2005. In such writ petition, this Court by an order dated 15.06.2005 observed that the executing Court ought to have enquired into the possession of the petitioners in accordance with Order 21 Rule 97 CPC and Order 21 Rule 101 CPC and the decree of possession was thereafter stayed. As an fall out of such observation, an application was preferred by the decree holder under Order 21 Rule 97 CPC before the executing Court. The executing Court after adjudication has passed an order of ejectment by dismissing the objection raised by these petitioners, hence, this petition.

4. Perused the records. Order 21 Rule 97 to 103 CPC deals with resistance or obstruction to possession to the holder of a decree for possession or the purchaser of any such property sold in execution of a decree and determination of lis there off. 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) of Rule 97 of Order 21 of CPC to adjudicate upon the application in accordance with the provisions provided therein.

5. 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, he may make an application to the Court complaining of such dispossession. If the application is made, the Court is obliged to adjudicate such application. Therefore, the rule mandates that any person other than the judgment-debtor can get his right adjudicated. Rule 101 deals with the questions to be determined. It provides that all 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 i.e. execution and not by a separate suit and for the said purpose, the executing court has been conferred with the jurisdiction to decide the same.
6. Order 21 Rule 100 CPC deals with orders to be passed on an application complaining dispossession. Rule 98 deals with orders after adjudication. Sub-rule (1) provides that upon the determination of questions referred to in Rule 101, which includes all questions including question of right, title or interest in the property on an application either under Rule 97 by decree holder or under Rule 99 i.e. who is in possession, the Court may make an order allowing the application and directing that the applicant be put in possession of the property or dismiss the application or pass such other order. In the instant case upon application having filed by the decree holder

under Rule 97 of Order 21 of CPC, complaining resistance to the decree, the executing Court has held that the decree to be executed in favour of decree holder in respect of decree passed on 20.12.2002.

7. After such question under Rule 97 of Order 21 CPC is determined 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.”

8. In the matter of ***Sameer Singh and another Vs. Abdul Rab & others {AIR 2015 SC 591}*** the Supreme Court has laid down that in order to avoid multiplicity of proceedings the legislature has empowered the executing court to conduct necessary enquiry and adjudicate by permitting the parties to adduce evidence, both oral and documentary, and to determine the right, title and interest of the parties and, therefore, such an order has been given the status of a decree.
9. In the instant case, as would reveal that in the initial round of litigation, this Court in WP No.2131/2005 by order dated 15.06.2005 has ordered for enquiry as contemplated under Order 21 Rule 97 of CPC and thereafter Executing Court had conducted the enquiry and the evidence was led by the parties. The said application under Order 21 Rule 97 CPC originated from the resistance offered by the petitioner herein when the decree was sought to be executed. The Supreme Court in Sameer Singh (supra) again reiterated the view taken in the matter of ***Brahmdeo Chaudhary V. Rishikesh Prasad Jaiswal and Another {AIR 1997 SC 856}*** and held as under:-

“... 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.”

10. Therefore, reading of Order 21 Rule 97, 99 and up till Rule 103, it spells out that the executing court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. Prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order 21 Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree.
11. In the instant case, the order would show that the executing Court has not dismissed the petition on the ground that it has no jurisdiction, but it has decided the question raised by the petitioner after an application under

Order 21 Rule 97 CPC was moved. Having once decided the question of right of parties after enquiry by way of evidence, the finding would be a decree and hence the appeal would lie against such order.

12. Consequently, in view of the aforesaid discussion the provisions of Article 227 of the Constitution of India cannot be invoked as the order under challenge is a decree, therefore, the petition has no merit. It is accordingly dismissed. The petitioner would be at liberty to file the appeal, if so advised. No order as to costs.

Sd/-

Goutam Bhaduri
Judge

Ashu