

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 249 of 2018**

Sita Devi Sharma Wd/o Late Nand Lal Sharma Aged About 66 Years R/o Village Basna P.S. And Tehsil Basna District Mahasasmund Chhattisgarh.

---- Petitioner

Versus

Smt Mukta Ben aged 83 yrs Wd/o Late Bhagvan Das Gujrati, R/o Village Basna P.S. And Tehsil Basna District Mahasamund Chhattisgarh.

--Respondent

For petitioner- Shri S.N. Nande, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order****22/03/2018**

Heard.

1. Instant petition is against the order dated 6/02/2018 passed by the Additional District Judge, Saraipali, District Mahasamund in Misc. Civil Appeal No.04/2016.
2. Learned counsel for the petitioner submits that a decree was obtained by respondent Mukta Ben against Nandlal Sharma husband of the petitioner. It is submitted that at the same time petitioner herein had filed a suit against respondent who was decree holder. In different suit however same suit property was involved. It is contended that the application which is filed under Order 21 Rule 97 of CPC was only an intimation to the executing court, therefore order passed adjudicating application cannot be treated as decree and as such if decree is executed then it will be against the provision of Order 21 Rule 104 of CPC and suit filed by the petitioner shall become infructuous.
3. The petitioner herein has not disputed the fact that decree when

was put to execution by the respondent Mukta Ben against husband of the petitioner an objection was preferred under Order 21 Rule 97 of CPC. Subsequently, the same was adjudicated. The Original decree was obtained by Mukta Ben on 27/07/2002, therefore if such decree was put to execution and the objection having been preferred by the petitioner herein under Order 21 Rule 97 CPC any finding therefore would be treated as decree and appeal would lie.

4. In this case as would be evident that against adjudication of application under Order 21 Rule 97 read with Section 101 CPC dated 18.01.2016 was subject of first appeal in Appeal No.4/16. In the case in hand rightly so first appeal was filed. Subsequently, the First Appeal was dismissed and in such order it was observed that the ground which was being taken by the petitioner that earlier the subject property was sub judice is already been adjudicated in another civil suit No.117A/2000. The first appellate Court thereby conclusively held that the ownership of the house is not with Sita Devi Sharma, the petitioner herein. The first appeal was eventually dismissed, wherein the detail reasons were assigned. Against such appeal, the present petition is filed.

5. Whether the instant petition is maintainable which is against the finding of appeal is being examined. Therefore, the entire scheme of Civil Procedure Code is being evaluated. Facts of this case shows that at the first instance when the application under Order 21 Rule 97 read with Section 101 CPC was preferred and having been dismissed, the first appeal was preferred. Order 21 provides that all questions "including question relating to right title or interest in the property" on an application under Rule 97 or Rule 99 shall be determined by the Court dealing with the application and not by a separate suit. For better appreciation Order 21, Rule 101. C.P.C. is quoted here in below:--

"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."

6. Rule 100 provides that on determination of such question court shall make an order allowing application and directing that applicant be put in possession of the property or dismiss the application. Such adjudication and determination under Rule 98 or Rule 100 shall be treated as a decree. Order 21, Rule 103 is worth to be quoted herein below:--

"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 condition as to an appeal or otherwise as if it were a decree."

7. Therefore, the scheme of the Order and Rule in order to prevent to give birth to a fresh litigation, the provisions have been incorporated for the interest of a person when is raised under Rule 97 CPC, it is to be decided in the same execution and that would be a "decree". The decree having been passed, the first appeal was preferred. When the application of Order 21 Rule 97 CPC is adjudicated, it is enveloped within the definition of decree and first appeal having been preferred, the provisions of CPC will come into play. When the proceeding of this character reach the District Court in a state of appeal, the procedure which is prevailing in ordinary Court of the country with regard to the proceeding, the ordinary Rule of CPC will apply.

8. In the case of **R.M.A.R.A. Adaikappa Chettiar v. R Chandrasekhara Thevar**, AIR 1948 PC 12, while considering a similar ratio of law Lord Simond observed :

"The true rule is that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary

rules of procedures applicable thereto and an appeal lies, if authorized by such rules, notwithstanding that the legal right claimed arises under a special Statute which does not in terms confer a right of appeal"

9. In this case against the adjudication of decree first appeal was preferred by ordinary application of civil procedure code, therefore, if the first appeal is adjudicated by ordinary application of procedure of CPC, second appeal would lie.

10. The aforesaid propositions is further followed in **Jogendra Kaur Vs. Kali Prasad {AIR 2003 Jharkhand 67}**.

11. As a conclusion, it is stated that the right of appeal is conferred by the very provision of Order 21 Rule 103 CPC. It says that the order passed on adjudication shall have the same force and subject to the same conditions as to appeal as if it was a decree. Therefore, the ordinary rules of Civil Procedure will apply and the aggrieved party shall have further right of appeal i.e. the second appeal.

12. In a result this Court will not enter into appreciate the rival claim of claimants to re-appreciate the finding of facts. In a result the petition has no merit, it is dismissed.

Sd/-

(Goutam Bhaduri)
JUDGE