

CR-3745-2013 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-3745-2013 (O&M)

Date of decision : 26.11.2018

Rukmani Bai (deceased) through LRs and others

... Petitioners

Versus

Pirithi Singh @ Pirithi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the petitioners.

Mr. Naveen Mandhan, Advocate for
Mr. Pankaj Bali, Advocate
for respondent Nos.1 to 3.

None for respondent Nos.4 to 7.

AMIT RAWAL, J.

CM-24425-CII-2017

For the reasons stated in the application, the legal representatives of petitioner No.1 are permitted to be brought on record for the purpose of prosecuting the revision petition.

CM stands disposed of.

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The short point in the present revision petition is whether the appeal preferred against the dismissal of the objections filed under Order 21 Rules 97 and 99 read with Section 151 of the Code of Civil Procedure having trapping of a decree, was maintainable or not.

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In order to determine the aforementioned question, the facts in brief are that Pirthi Singh-decree-holder filed a civil suit claiming declaration of ownership and possession in respect of land left by his father being co-sharer and proprietor of the Village, which in the family settlement was given to him, but the possession was not handed over.

The defendants admitted the claim of the decree holder and on the basis of the admission, Civil Suit No.392 of 1991 titled as "Pirthi Singh V/s Deva Ram" was decided on 24.09.1991. During the pendency of the execution application, warrant of possession were issued against the judgment debtor, but one Bhagwan Dass, filed the third party objections, which did not culminate into any decision owing to the withdrawal of the execution application on 04.10.1997. However, in the year 2002, another execution application was filed and third party objections were again filed on 22.07.2003 on the premise that the decree obtained by Pirthi Singh was based upon the fraud as the land, subject matter of the decree, was in their possession. The father of the decree holder was neither co-sharer nor proprietor in the *shamlat deh* land of the village.

The Executing Court vide order dated 20.03.2009 dismissed the objection on the premise that the second execution application stood satisfied vide order dated 29.03.2003 and the appeal was preferred, which has been dismissed holding to be not maintainable with a liberty to file the objections under Order 21 Rule 99 read with Rules 100 and 103 of the Code of Civil Procedure.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Abhishek Dhull, learned counsel appearing on behalf of the petitioner submitted that the lower Appellate Court has committed illegality of grave

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nature as the objections were not only under Order 21 Rule 97 CPC, but under the provisions Order 21 Rule 99 as well and in this regard, the attention of this Court has been drawn to the objections (Annexure P-1). Even if the execution application was satisfied, the trial Court is, as per the provisions of Order 21 Rule 101 CPC, is enjoined upon an obligation to try the objections as if it were a suit.

Per contra, learned counsel appearing on behalf of the respondents supported the impugned order and submitted that once the execution application stood satisfied, remedy was to take the benefit of the provisions of Order 21 Rule 100 of CPC, as noticed by the lower Appellate Court.

I have heard learned counsel for the parties, appraised the paper book and of the view that the impugned order, under challenge, is totally erroneous and perverse, for, on plain and simple reading of the head-note of the objections (Annexure P-1) which is extracted hereinbelow, they were filed not solely under Rule 97, but 99 of CPC as well.

"Copy of objection u/o 21, Rule 97, 99 read with Section 151 CPC is attached herewith."

This fact could not be controverted by the counsel for the decree holder.

It would be apt to reproduce the Rules 99 and 100 of Order 21 of CPC which read thus:-

"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 execution of a decree, by the purchaser thereof, he may*

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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.

100. 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."*

On conjoint reading of the provisions, aforementioned, Rule 100 of CPC envisaged the decision of the application filed under Rule 99 of CPC and the question to be determined has been envisaged under Rule 101 of CPC, which also reads as under:-

"101. 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."*

thus, adjudication of the objections would have a trapping of a decree, therefore, the appeal, in such circumstances, would be maintainable.

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Keeping in view the aforementioned facts, the impugned order is hereby set aside and the matter is remitted to the lower Appellate court to decide the appeal in accordance with law as expeditiously as possible preferably within a period of six months from the date of receipt of the certified copy of this order.

The parties or through their counsel are directed to appear before the Lower Appellate Court on 10.01.2019.

Resultantly, the present revision petition stands disposed of.

26.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No