

S/L 9 with 10
23.11.2022
Court. No. 12
Sourav

**CO 296 of 2019
With
CO 184 of 2019**

**Sri Dipak Pandit
Vs.
Smt. Sudama Devi & Ors.**

*Mr. Arup Krishna Das
Mr. Sanjoy Ghosh*

...for the petitioner.

*Mrs. Shohini Chakraborty
Ms. P. Das
Mr. Arijit Sarkar*

...for the Opposite Party No. 4.

In Re: CO 184 of 2019

Affidavit-of-service as filed in Court today, be kept with the record.

Mr. Arup Krishna Das, learned advocate for the petitioner and Mr. Arijit Sarkar, learned advocate for the opposite party no. 4 are present.

Heard learned advocates for both the parties at length. The instant case is now taken up for passing appropriate order.

The instant revisional application under Article 227 of the Constitution of India arises out of Order No. 191 dated 13.09.2017 as passed by learned Civil Judge (Junior Division), 2nd Court, Asansol in Misc. Case No. 1 of 2016 whereby and whereunder the said Court by the impugned order was pleased to hold that the said Misc. Case No. 1 of 2016 as filed under Order 21 Rules 97 and Rule 101 of the Code of Civil Procedure is not maintainable and, thus, dismissed the said Misc. case on contest.

The petitioner of the said Misc. Case No. 1 of 2016 felt aggrieved and thus, preferred the instant revisional application.

In support of the instant revisional application, Mr. Arup Krishna Das, learned advocate for the petitioner at the very outset draws attention of this Court to the photocopy of the petition under Order 21 Rules 97 and 101 of the Code of Civil Procedure (hereinafter referred to as the said petition) as filed before the learned trial Court which was registered as Misc. Case No. 1 of 2016. Attention of this Court is also drawn to the certified copy of the impugned order. It is argued on behalf of the petitioner that in the said petition as filed before the learned trial Court, the petitioner before this Court as well as before the learned trial Court has averred his independent right, title and interest over the decretal property and, thus, approached the learned trial Court to decide such right, title and interest of the petitioner in accordance with law more specifically under the provisions of the Order 21 Rule 101 of the Code of Civil Procedure.

It is contended that the learned trial Court while passing the impugned order failed to realize the true implication of the provisions of the Order 21 Rule 101 CPC and thus, misdirected himself in passing the impugned order. It is, thus, submitted that the impugned order as passed by the learned trial Court is not sustainable in law and the same may be set aside by allowing the instant revisional application. In support of his contention, learned advocate for the petitioner places his reliance upon a

reported decision in *Shreenath and Another Vs. Rajesh and Others*. reported in *AIR 1998 Supreme Court 1827*.

While opposing the instant revisional application, the learned advocate for the opposite party no. 4 also draws attention of this Court to the certified copy of the impugned order. It is contended that learned trial Court has rightly passed the impugned order and thus, there is no necessity to interfere with the impugned order.

This Court has meticulously gone through the entire materials as placed before this Court. This Court has also given its anxious consideration over the submissions of the learned advocates of both sides. This Court has also perused the reported decision of *Sreenath and Another (Supra)* as cited from the side of the petitioner.

In considered view of this Court for effective disposal of the instant revisional application, the provision of Order 21 Rule 101 CPC may be looked into and the same is reproduced hereunder in verbally:

“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.”

Keeping in mind the aforesaid provisions of law, this Court proposes to look into the facts as involved in the instant revisional application. Admittedly, the predecessor of the opposite parties of the instant revisional application obtained a decree for recovery of possession against the proforma opposite parties of the instant revisional application in Title Suit No. 64 of 1989 from the Court of learned Civil Judge (Junior Division), 2nd Court, Asansol. By filing Misc. Case No. 1 of 2016 under Order 21 Rule 97 and 101 of the Code of Civil Procedure, the petitioner of the instant revisional application has sought to establish his own independent right, title and interest over the decretal property.

In view of such, the right, title and interest of the present petitioner, if there be any, has got to be adjudicated under the provisions of Order 21 Rule 101 of the Code of Civil Procedure and not by a separate suit and, therefore, this Court considers that the learned trial Court was not at all right in holding that Misc. Case No. 1 of 2016 is not maintainable.

At this juncture, this Court also proposes to look to the relevant paragraphs of the reported decision of *Sreenath and Another (Supra)* wherein the Hon'ble Apex Court has expressed the following:

“14. *We find both either 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 has to be decided by the Executing Court itself.*

15. *Rule 100 of the old law, as referred in the aforesaid Full Bench decision of the Madhya Pradesh High Court is a situation different from what is covered by Rule 97. Under Rule 100 (old law) and Order 99 (Rule) the new law covers cases where persons other than judgment-debtor is dispossessed of immovable property by the decree-holder, or 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 state prior to his dispossession or a case where he is in possession. In other 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 right can object in the execution proceeding under Order 21, Rule 97. 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. For all the aforesaid reasons, we do not find the Full Bench in Smt. Usha Jain (Supra) correctly decided the law.”*

In view of the discussion above, this Court finds sufficient merit in the instant revisional application and the same deserves to be allowed.

It is thus ordered that the instant revisional application is allowed on contest. As a result, the impugned order No. 191 dated 13.09.2017 as passed by the learned Civil Judge (Junior Division), 2nd Court, Asansol in Misc. Case No.

1 of 2016 arising out of Title Execution Case No. 1 of 2001 is hereby set aside.

Learned Civil Judge (Junior Division), 2nd Court, Asansol is hereby directed to dispose of the Misc. Case No. 1 of 2016 in accordance with law after giving opportunities to the opposite parties of the said Misc. case to file their written objection if there be any. The learned trial Court is further directed to dispose of the Misc. Case No. 1 of 2016 positively within a period of six months from the date of communication of this order and he shall not grant unnecessary adjournments to either sides.

Let a copy of this judgment be tagged with the file of CO 296 of 2019.

In Re: CO 296 of 2019

Mr. Arup Krishna Das, learned advocate for the petitioner and Mr. Arijit Sarkar, learned advocate for the opposite party no. 4 are present.

In view of the order as passed in **CO 184 of 2019**, the instant revisional application has become practically infructuous.

With the aforementioned observation, the instant revisional application being **CO 296 of 2019** is disposed of.

Department is directed to keep a copy of the final order/judgment as passed in CO 184 of 2019 along with this file.

(Partha Sarathi Sen, J.)