

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.786 of 2021

Rama Lingeswar Swamy Bije

Petitioner(s)

Mr. D. Mohapatra,
Advocate

-versus-

Pramila Das & Ors.

Opposite Party(s)

Mr. B. Routray,
Sr. Adv. being assisted by
Mr. J. Biswal,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
28.03.2022**

Order No.

10. 1. Undisputed background involved in this case is that the suit involved in the execution proceeding involving Opposite Parties has come to close by way of a decree in favour of the Plaintiff. The matter has gone to the Hon'ble apex Court level and for the submission of both the learned counsels in the disposal of the proceeding before the Hon'ble apex Court there is finality to the *lis*. involving the suit vide T.S. No.154 of 2000. The list of dates also discloses the judgment and decree involving T.S. No.154 of 2000 involved appeal vide R.F.A. No.31 of 2011 / the R.F.A. No.100/2010 GDC then the proceedings involved RSA No.38 of 2012 and RSA No.61 of 2012. The Second Appeals were ultimately

ended with an order of dismissal. The dispute went up to the Hon'ble apex Court and was decided upholding the civil court judgment and decree in SLP No.28108 & 28109 of 2015 in between. There have been some writ appeals, writ petitions and C.M.Ps also being disposed of at different levels, but however, involving miscellaneous issues. On the finality of such issue through the judgment and decree at the Hon'ble apex Court level the execution proceeding vide E.P. No.3 of 2012 initiated earlier came to be opened. On their appearance in the first round of litigation some of the devotees attempted to bring themselves to the fold of the execution proceeding by filing an application U/o.1 rule 10 of C.P.C. It also appears, there has also been moving of application U/o.21 Rule 97 of C.P.C. by the same devotees, which all have been rejected. It is while the matter stood thus the present Petitioner-the deity filed application U/o.21 Rule 97 of C.P.C along with Section 47 of C.P.C. It is on consideration of both the applications the trial court came to reject both the application giving rise to file the present C.M.P. It also comes to the notice of this Court through the submission as well as pleadings of both the parties that in the meantime there has been filing of an independent suit by the deity Petitioner involved herein for appropriate relief therein by way of civil suit vide C.S. No.432 of 2021 pending on the file of the learned Civil Judge (Sr. Divn.), Berhampur. Both the parties also bring to the notice of this Court that the above suit not only involves the parties in the disposed of suit, but there has also been interim protection by prohibiting all the parties from entering into any 3rd party right.

2. Mr. Mohapatra, learned counsel for Petitioner in his challenge to the impugned order involving the rejection of application U/o.21 rule 97 of C.P.C. alongwith Section 47 of C.P.C., taking this Court to the plea available in the suit pending contested the order on the premises that in the event the execution is allowed, the deity will be seriously prejudiced and ultimately nothing will be there to be considered in the suit pending at the instance of the deity. Taking this Court to the provision at Order 21 rule 97 of C.P.C. and reading through the same, an attempt is also made to satisfy this Court that at the time of moving the suit it was very much entitled to bring such application. Reading through the same Mr. Mohapatra, learned counsel for the Petitioner attempted to justify the stand in moving such application and thereby contended that there has been illegal rejection of such application by the Executing Court. Taking this Court to the decision of the Hon'ble apex Court in the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.*** in Civil Appeal Nos.1659-1660/2021 as reported in AIR 2021 SC 2161 & (2021) 6 SCC 418 Mr. Mohapatra, learned counsel for the Petitioner attempted to take help of the said judgment to the case of the deity.

3. In his opposition Mr. Routray, learned Sr. Advocate being assisted by Mr. J. Biswal, learned counsel for the Opposite Party No.1 taking this Court to the application U/o. 21 rule 97 along with Section 47 of the C.P.C. reading together with the pleadings and prayer involving C.S. No.432 of 2021 and also for the own submission in the newly constituted suit brought by the deity seeking a decree for recovery of possession, contended that since the deity was not in possession of the disputed property involved in the disposed of suit and there involves a direction for recovery of

possession of the subsequent suit, the deity was not entitled to bring an application U/o.21 rule 97 of C.P.C along with the provision of Section 47 of C.P.C. This Court here takes into account the submission of Mr. Mohapatra, learned counsel for Petitioner that undisputedly at the time of filing of the application U/o.21 rule 97 along with Section 47 of C.P.C. the deity was not in possession of the property. This Court here also finds, such a stand remains in consonance with the prayer of the Petitioner in C.S. No.432 of 2021, where the deity has sought for decree for recovery of possession.

4. For the serious involvement of provision of C.P.C., this Court here takes into account the provision at Order 21 rule 97 of C.P.C., which reads as follows:-

“97. Resistance or obstruction to possession of immovable property – (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under Sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

This Court here also takes into account the provision at Section 47(I) of the C.P.C which reads as follows:

“47. Questions to be determined by the Court executing decree – (1) All questions arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[* * *]

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

5. Reading the provision at Order 21 Rule 97 of C.P.C. this Court finds, the contingency for bringing such application arises when a 3rd Party is in possession of the immovable property and his such right is likely to be taken away in the execution of a decree in not involving such 3rd party. Looking to the application and keeping in view the submission of Mr. Mohapatra, learned counsel for the Petitioner that at the time of moving such application, it was not in possession of the disputed property, this Court finds, there was no scope for bringing application U/o.21 Rule 97 of C.P.C. considered in the impugned order and this Court, accordingly, finds, the impugned order so far it relates to the application U/o.21 Rule 97 of C.P.C. remains justified.

6. Similarly looking to the consideration aspect involving the application U/s.47 of C.P.C., this Court reading the provision quoted hereinabove, finds, such contingency is available only to decide the question arises between the parties to the suit. This Court here observes, since the deity was not a party to the suit undertaken through the execution proceeding, it was not entitled to bring any application U/s.47 of C.P.C. requiring the executing court to consider its *lis*.

In the circumstance, this Court is not inclined to interfere in the impugned order for finding the same being justified. However, taking into consideration the oral submission of Mr. Mohapatra, learned counsel for the Petitioner in course of argument that there

has been part delivery of possession by one of the party to the suit and since the execution proceeding is pending, this Court directs, if the Petitioner is so advised, may move appropriate application keeping in view the development taken place involving the suit property in the meantime at least within a period of ten days hence, which shall be considered in accordance with law and without being influenced by the observation already made in disposal of the application U/o.21 rule 97 along with Section 47 of C.P.C. In the decision process the trial court shall also keep in mind the decision of the Hon'ble apex Court in the case of **Rahul S Saha** (Supra).

7. The C.M.P. stands disposed of with the above direction.

(**Biswanath Rath**)
Judge

Ayaskanta Jena

