

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.195 OF 2022
WITH
INTERIM APPLICATION NO.1427 OF 2022
IN
SECOND APPEAL NO.195 OF 2022**

Sameer Dattatraya Deshpande &
Ors.

...Appellants

Versus

Kishor Shamrao Jadhav

...Respondents

...

Mr.M.M. Sathaye i/b Ms.Chitrالي A. Deshmukh for the Appellants.
Mr.R.P. Kasbekar for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 20th JUNE, 2022.

ORAL JUDGMENT:-

1. With consent, heard finally at the stage of admission.
2. The Appellants herein have challenged the judgment and order dated 23 December 2021, passed by the learned District Judge No.3, Kolhapur in Civil Appeal No.66 of 2021. By the impugned judgment the learned District Judge dismissed the Appeal and thereby confirmed the order dated 8 February 2021 passed by the learned Joint Civil Judge Junior Division, Kolhapur in Regular Darkhast No.88 of 2017.

3. The brief facts necessary to decide the Appeal are as under:-

The Respondent, hereinafter referred to as the Plaintiff had filed Regular Civil Suit No.819 of 2016 before the CJJD, Kolhapur, for possession and recovery of arrears of rent. The case of the Plaintiff was that Sudhir Dattatray Deshpande, (hereinafter referred to as 'the Defendant') owned the western portion of the property under City Survey No.1185-C/41 along with a structure admeasuring 151.63 sq. meters, situated at Rajarampuri, Kolhapur (hereinafter referred to as the 'suit property'). The Defendant had availed loan from various banks and co-operative credit societies to meet the financial requirements of his family. He put up the suit property for sale to repay the loan. The Plaintiff agreed to purchase the the suit property and upon receipt of the major part of the sale consideration, the Defendant entered into an agreement for sale dated 30/05/2011. Upon receipt of the balance sale consideration, the Defendant put the Plaintiff in possession of the suit property and executed a sale deed dated 26/04/2016 and thereby transferred the title of the suit property in favour of the Plaintiff.

4. The Plaintiff claimed that since the Defendant was unable

to find alternative premises, he requested to permit him to occupy the premises for a period of two months as a care taker. The Plaintiff acceded to the request and by agreement dated 31/05/2016 permitted the Defendant to occupy the suit premises as care taker till 24/07/2016 on payment of Rs.16,000/- per month. The Plaintiff filed the Suit for eviction alleging breach of terms and conditions of the agreement and failure to handover possession of the suit property even after expiry of the agreement.

5. The Defendant admitted that he had availed loan from several banks, credit societies, etc., to meet the financial needs of the family. The suit property was attached in the recovery proceedings initiated by the UCO Bank. He put the suit property for sale to pay off the loans availed from the Bank and to clear other financial liabilities. The Defendant admitted having entered into an agreement for sale with the Plaintiff and having put him in possession of the suit property on receipt of the sale consideration. The Defendant claimed that as per the terms of the subsequent agreement, it was agreed that the Defendant would repay the sale consideration within two years and on receipt of the sale consideration the Plaintiff would cancel the sale transaction. The Defendant was unable to repay the money. Hence, he

transferred the property in favour of the Plaintiff by registered sale deed dated 26/04/2016.

6. The Defendant denied that he was put in possession of the suit property as a care taker and claimed that he was in possession of the suit property on leave and license basis. He further claimed that he was looking out for alternative premises and had requested the Plaintiff to extend the agreement by two months with an assurance to pay the arrears of rent and to vacate the premises within two months.

7. The Defendant did not really contest the suit but had only sought extension of time to vacate the suit property. Learned Judge by judgment dated 6 June 2017 decreed the suit and directed the Defendant to handover possession of the suit property to the Plaintiff within a period of one month and to pay arrears of rent of Rs.32,000/- and mesne profit. The Defendant neither challenged nor satisfied the decree resulting in filing of Regular Darkhast No.88/2017. The Defendant – Sudhir Deshpande died during the pendency of the execution proceedings and the Appellant Nos.2, 3 and 4 were brought on record as the legal representatives.

8. The Appellants herein being the brother, children, widow

and uncle of the deceased Defendant filed an Application under Order 21 Rule 97 of C.P.C., claiming that the suit property, which was originally owned by Govind was allotted to Dattatray, the father of the Defendant-Sudhir and the Appellant No.1-Sameer. These objectors claimed that the suit property being a co-parsonary property, the Defendant was not competent to sell the same. The Appellants claimed independent rights in the suit property. The Appellants contended that the decree, which was obtained by fraud, is challenged in a separate suit and the same is not executable.

9. The Application came to be dismissed on the ground that the executing court cannot travel beyond the decree and cannot examine validity of the decree passed by the Competent Court. The executing court further held that only the decree holder or the purchaser of the property sold in execution can apply under Order 21 Rule 97, complaining resistance and obstruction to his possession. The remedy of the objector or the third party is under Order 21 Rule 99 after he is dispossessed in execution of the decree.

10. The said order was challenged in appeal No.66 of 2021 before learned District Judge, Kolhapur. Learned Judge has held that the appeal is not maintainable against an order under Section 47 of

CPC. Learned Judge did not concur with the finding of the executing court that remedy for the Objector is under Order 21 Rule 99 of CPC and held that the obstructionist can resist execution even before he is dispossessed. On merits, learned District Judge has observed that the Appellants are trying to make out a case which the deceased defendant himself did not set up. Learned Judge held that Appellant Nos.2 to 4 being the legal representatives of the deceased defendant are not permitted to raise any plea which is inconsistent with the plea raised by the defendant. The learned Judge further held that Appellant Nos.1 and 5 brother and uncle of the deceased defendant prima facie, do not have any right, title or interest in the suit property and being strangers to the decree, have no right to resist the decree. It is observed that the deceased Sudhir Deshpande did not challenge validity of the Agreement and the Sale Deed and that the executing court has no jurisdiction to decide the issue of fraud, which is otherwise the subject matter of a separate suit. Being aggrieved by this order, the Appellants have filed this appeal under Section 100 of CPC.

11. Mr. Sathaye, learned counsel for the Appellants submits that the executing court has erred in holding that Order 21 Rule 97 can be invoked only by the decree holder or by the purchaser and not by

any other person. He submits that the term ‘any person’ in Rule 97 of order 21 includes all persons claiming right, title or interest in the property. He further submits that the Appellants herein had raised a specific ground that the suit property is an ancestral property, and that they have an independent right in respect of the same. He submits that the executing court has failed to exercise jurisdiction vested in it by law by shirking to adjudicate upon the claim of the Appellants. He further submits that determination of such claim is conclusive between the parties as if it was a decree. Hence, the order passed under Rule 97 or 99 of Order 29 is appealable. He has relied upon the decision of the Apex Court in case of *NSS Narayan Sarma and Others V/s. Goldstone Exports (P) Ltd. & Ors.*¹, *Tanzeem-E-Sufia V/s. Bibi Haliman & Ors.*² and *Shreenath and Another V/s. Rajesh and Others*³.

12. Per contra, Mr. R.P. Kasbekar, learned counsel for the Respondent-Plaintiff states that the Second Appeal is not maintainable in view of the provisions under Section 29 of the Maharashtra Rent Act. He submits that the Appellants have resisted execution of the decree on a plea which is inconsistent with the defence set up by the defendant. He submits that the Appellants herein have no right, title or

1 (2002) 1 SCC 662

2 (2002) 7 SCC 50

3 (1998) 4 SSC 543

interest in the suit property and that they cannot obstruct the decree which is passed by a Competent Court. He further submits that the executing court cannot go beyond the decree. In support of his contention he has relied upon the decision of the Apex Court in case of *Darshan Singh V/s. State of Punjab*⁴.

13. I have perused the records and considered the submissions advanced by the learned counsel for the Respective parties. The substantial questions of law raised in the appeal are :-

- (i) Whether an application under Order 21 Rule 97 of CPC, can be filed by a person who is a stranger to the decree ;
- (ii) Whether the decree can be resisted or obstructed on a ground inconsistent with the defence set up by the judgment debtor.
- (iii) Whether the Order passed under Order 21 Rule 97 is appealable.

14. Before advertng to the facts of the case and the case law on the subject, it would be advantageous to refer the relevant statutory provisions which read thus:-

4 (2007) 14 SSC 262

Order 21, Rule 35. Decree for immovable property.-

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Order 21 Rule 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 the upon the application in accordance with the provisions herein contained.

Order 21 Rule 98 :- Orders after adjudication.

(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(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.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

Order 21 Rule 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 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.

Order 21 Rule 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.

Order 21 Rule 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.

Order 21 Rule 103. Orders to be treated as decrees.

Where any application has been adjudicated upon under rule 98 or rule 100 the other 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.

15. In *Brahmdeo Chaudhary v/s. Rishikesh Prasad Jaiswal and anr.* 1997 3 SCC 697, the Hon'ble Supreme Court has held that :-

“4... A conjoint reading of Order XXI Rules 97, 98, 99 and 101 projects the following picture:

(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order XXI Rule 35, then the decree-holder has to

move an application under Order XXI Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the Court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order XXI Rule 98 sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a decree under Order XXI Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order XXI Rule 99, CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order XXI

Rule 98 sub-rule (1) CPC the Executing Court can direct the stranger applicant under Order XXI Rule 99 to be put in possession of the property of if his application is found to be substanceless it has to be dismissed. Such an order passed by the Executing Court disposing of the application one way or the other under Order XXI Rule 98 sub-rule (1) would be deemed to be a decree as laid down by Order XXI Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order XXI Rule 101.

5. In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of

purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that 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 de hors 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. With respect the High Court has totally ignored the scheme of Order XXI Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order XXI Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard or merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose

grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree- holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI Rules 97 and 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.

6.....A reading of Order 21, Rule 97 CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in

addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person...”

16. In ***Shreenath*** (supra), the Application under Order 21 Rule 97 was filed by the tenants who were not parties to the suit. The question was whether the tenants could maintain an Application under Order 27 Rule 97. The Hon’ble Supreme Court while interpreting the words ‘any person’ held that any person includes even persons not bound by the decree. Paragraphs 10 and 11 read thus:-

“10. Under sub-clause 1 order 21, Rule 35, the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by he decree. Order 21, Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the Court delivers possession by fixing a copy of the warrant

in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21, rule 99 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". this may be either by the person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree holder, in such case, may make an application to the Executing Court complaining such resistance, for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the executing Courts when such claim is made to proceed to adjudicate upon the applicants claim in accordance with provisions contained hereinafter. This refers to Order 21, Rule 101 (As ammended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21, Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit, By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstructed by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the Executing court could adjudicate the

claim made in any such application under order 21, Rule 97. Thus by the use of the words 'any person' it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.

11. So, under order 21, Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to relegate itself to the long drawn out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that order 21, Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21, Rule 36 only symbolic possession is given where tenant is in actual possession. Order 21, rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. 'Any person' , as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including stranger.”

17. In ***Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr 1998 (3) SCC 723*** a three Judge Bench of the Hon'ble Supreme Court has observed that a third party to the decree including the transferee pendente lite can offer resistance or obstruction and his right has to be adjudicated under Order 21 Rule 97 of CPC. It is held as under:-

9. At the outset, we may observe that it is difficult to agree with the High Court that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by- "any person" in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable

property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of property Act.

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- 14. It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refused to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not*

necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination. If the Court deems it necessary.

18. In **NSS Narayan** (supra) the Apex Court has held as under:-

“15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree holder entitled to possession of the property encounters obstruction from any person. From the provisions in these rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with all issues relating to such matters. It is a general

impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that 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. On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in

the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting the relevant issues arising in the case.

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19. From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree.”

19. In ***Samir Singh and Anr. vs. Abdul Rab, (2015) 1 SCC 379*** the Hon’ble Supreme Court after considering the previous judgment in ***Brahmadeo Chaudhary*** (supra) has held thus:-

26. The aforesaid authorities clearly spell out that the 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. The self-contained Code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because 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 XXI, 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. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different....”

20. A conjoint reading of the relevant provisions and the principles laid down by the Hon’ble Supreme Court leaves no doubt that in execution of decree for possession of immovable property, the executing court delivers actual physical possession of the decreetal land to the decree holder. Rule 35 confers jurisdiction on the executing Court to remove any person, who is bound by the decree and who

refuses to vacate the property. The words ‘any person who is bound by the decree’, clearly mandate that removal can only be of a person who is bound by the decree. Rule 97 to 101 deal with situation when execution is obstructed or resisted by ‘any person’ claiming right, title or interest in the property. The words ‘any person’ include even a stranger to a decree resising the decree of possession as not being bound by a decree or by claiming independent right, title or interest to the property.

21. Thus Rule 97 not only provides remedy to a decree holding in obtaining possession of an immovable property but also to a stranger who obstructs or resists delivery of possession of the property by claiming derivative title from the judgment debtor or independent right, title or interest in the decreetal property. Whereas Rule 99 gives right to a third party claiming right, title or interest in the property to seek restoration of the decreetal property. Suffice it to say that the remedy under Rule 99 is available when a person claiming right to the decreetal property is already dispossessed.

22. Rule 101 enjoins upon the executing Court dealing with application under Rule 97 or 99 to determine all questions including

questions relating to right, title or interest in the property, arising between the parties and relevant to the adjudication of the application. As held by the Hon'ble Apex Court in ***Silverline Forum*** (supra) the question which executing court obliged to determine under Rule 101 must possess to adjuncts viz. (i) that such question should have legally arisen between the parties and (ii) such question must be relevant for consideration and determination between the parties. Upon adjudication of such questions, the executing court is under an obligation to pass appropriate order as contemplated under Rule 98 or 100, as the case may be. When eventually such order is passed, it would be treated as decree and no separate Suit would lie against such order. It therefore follows that the only remedy is to prefer an appeal before the appropriate court against such deemed decree.

23. Reverting to the facts of the present case the Appellants herein had obstructed the decree claiming that the suit property, which was originally owned by Govind was allotted to Dattatray Deshpande, the father of the Defendant-Sudhir. The Appellants being the widow, children and brother of the deceased-Sudhir resisted the decree by claiming independent right, title and interest to the suit property, being a co-parsonary property. The executing court was therefore

required to adjudicate upon all the issues including the issue of fraud raised by the Appellants in the said proceedings, instead the executing court dismissed the application stating that the executing court cannot travel beyond the decree. The appellate court skirted this issue and proceeded on the ground the appellants being strangers to the decree cannot set up a plea inconsistent with the plea raised by the defendant and further observed that prima facie the appellants have no right, title or interest to the property.

24. The principle that the executing court cannot go beyond a decree passed by a court of competent jurisdiction and construe it otherwise than its tenor, is not in issue. Such decree, even if erroneous, is still binding between the parties and the executing court cannot entertain objections on the ground that the decree was incorrect in law or facts. These principles have been reiterated in Darshan Singh (supra). The Appellant in the said case was held to be entitled for interest on due amount from the date the amount became due till its actual payment. The executing court dismissed the objections of the State, but in revision the High Court set aside the order of the executing court and held that the interest was payable from the date of the decree till actual payment. It was in this context that the Hon'ble

Supreme Court held that the High Court in exercise of its revisional jurisdiction cannot vary the terms of the decree in execution, which had attained finality.

25. Reliance on this judgment is totally misplaced in as much as the Appellants had not challenged the decree on the ground that the decree was erroneous in law or fact, but had exercised statutory remedy under Order 21 Rule 97 claiming independent right, title, interest in the suit property. It was therefore incumbent upon the executing court to adjudicate upon all the questions relating to right, title or interest of the Appellant in respect to the suit property including the issue of fraud and pass appropriate order as envisaged under Order 21 Rule 97 (2) r/w. Order 21 Rule 101 and 98 of CPC.

26. It is also pertinent to note that the learned District Judge without conducting any enquiry and without affording opportunity to the Appellant has recorded a prima facie finding that the Appellants have no right, title or interest in the property. These observations are in breach of principles of natural justice. Furthermore, the view taken by the executing court and the appellate court that the Appellants being strangers to the decree cannot set up a plea inconsistent with a

plea raised by the defendant is totally contrary to the scheme of Order 21 Rule 97. The executing court as well as the first appellate Court have failed to exercise the jurisdiction vested in it by law by refusing to adjudicate upon the obstruction and the claim of the Appellants.

27. Under the circumstances, the impugned order of the executing court as well as of the appellate court cannot be sustained. Consequently, the appeal is allowed. The impugned judgment dated 23/12/2021 in Civil Appeal No.66 of 2021 as well as the order of the executing court dated 08/02/2021 in Regular Darkhast No.88 of 2017 is hereby quashed and set aside. Proceedings are remanded to the executing court, Kolhapur to adjudicate upon the claim of the Appellants to the suit property after hearing the decree holder as well as the Appellants and pass appropriate orders under Order 21 Rule 97 (2) r/w Rule 101 and 98 CPC.

28. Pending applications, if any, stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.).