

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1377 of 2017**

1. State Prevention For Cruelty To Animal, Bihar, Patna through its Secretary, Sri Ratneshwar Prasad Singh
2. Ratneshwar Prasad Singh, Son of Shri Parmeshwar Prasad Singh, Resident of Daya Mandir Bhavan, Patliputra Colony, Police Station-Patliputra, District-Patna.

... .. Petitioner/s

Versus

1. Amar Paswan, Son of Late Sakal Deep Paswan, Resident of Mohalla-Mainpura, Police Station-Patliputra, District-Patna
2. Rajandan Paswan, Son of Late Sant Lall Paswan,
3. Jitan Paswan, Son of Late Sakaldeo Paswan.
4. Rajnath Paswan, Son of Late Tulsi Paswan
5. Avinash Paswan @ Bhola Paswan, Son of Sri Rajnath Paswan All are resident of Mainpura, Police Station-Patliputra, District-Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Advocate Mr. Lawnish Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ranjeet Kumar, Advocate Mr. Ayush Kumar, Advocate Mr. Yogesh Kumar, Advocate Mr. Kanishk Kaustabh, Advocate Mr. Shikhar Mani, Advocate Mr. Mohit Srivastava, Advocate
For the Intervener	:	Mr. Ashok Kumar Singh, Advocate Mr. Dhanjay Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 03-11-2023

Heard learned counsel for the petitioners and learned counsel for the respondents and learned counsel for the intervener.

2. Learned counsel for the petitioners submits that due to inadvertence in the 5th line of the paragraph 4 of the petition, plot No. 1134 has wrongly been typed instead of plot



No. 1133 and seeks permission to correct the same. Permission is granted accordingly, to correct the same in the course of the day.

3. The present Civil Misc. Jurisdiction No. 1377 of 2017 has been filed for setting aside the order dated 15.07.2017 passed in Misc. Case No. 08 of 2016 (arising out of Execution Case No. 1446 of 2014) passed by learned Sub-Judge 1st, Patna by which the miscellaneous case of the petitioners filed under Order XXI Rule 97 and 99 of Code of Civil Procedure for setting aside the judgment dated 28.11.2013 passed in Title Partition Suit No. 251 of 2013 as well as the decree prepared and signed on 07.12.2013 under Order XII Rule 6 of the Code of Civil Procedure has been rejected.

4. Learned counsel for the petitioners submits that petitioner No. 1 is a registered society under Societies Registration Act, 1860 and the petitioner No. 2 is the Honorary Secretary of petitioner No. 1. He also submits that the petitioner No. 1 has purchased vacant piece of land appertaining to plot No. 1092, 1093, 1094 and 1133 bearing Khata No. 24 and 18 measuring 1 acre 28 decimals of land situated at Mauza-Mainpura Mahal Chak pargana-Phulwari, Thana No. 2, Tauzi No. 43, Police Station-Digha, District- Patna through two



registered sale deeds in the year 1957. He further submits that after execution of sale deed, the lands were mutated in the name of the petitioner No. 1 and payment of rent started after opening jamabandi, but subsequently, one Ramji Paswan has challenged the said mutation before the District Collector Land Reforms and again before the Additional Collector, Patna which are decided in favour of the petitioners and since then, name of the petitioner No. 1 is continuing in the records of right.

5. Learned counsel for the petitioner submits that upon constructing a small house, the part of the said premises were given to the occupation of the Patliputra Police Station on rent. He submits that on the issue of the rent, the dispute occurred between the petitioner and the State of Bihar in which vide order dated 03.01.2011 passed in C.W.J.C. No. 39 of 2008, this Hon'ble Court has pleased to pass order in favour of the petitioner for the payment of rent which was affirmed in Civil Review No. 57 of 2011 arising out of C.W.J.C. No. 39 of 2008. Learned counsel for the petitioner further submits that in the year 2014 also, some persons of Mainpura locality have also tried to disturb the possession, but upon contest, the matter was settled. He further submits that the petitioner surprised to receive information in the year 2016 that the ministerial staff of



the civil court came on the land of the petitioner with order of delivery of possession passed in Execution Case No. 1446 of 2014 arising out of judgment and decree passed in the Title Partition Suit No. 251 of 2013 dated 28.11.2013. As soon as the petitioner received the said information, he filed two applications before the Civil Court. One application he has filed bearing Misc. Case No. 104 of 2016 before the District Judge, Patna requesting to stop the Delivery of Possession and second application he has filed before the Executing Court bearing Misc. Case No. 08 of 2016 under Order XXI Rule 97 and 99 with other sections of Code of Civil Procedure. Counsel submits that Misc. Case No. 104 of 2016, was disposed of by the District Judge, Patna with a direction to take remedy in Misc. Case No. 08 of 2016 in accordance with law. Thereafter, the counsel started persuading the said Misc. Case No. 08 of 2016 which was pending before the Executing Court, but his miscellaneous application was rejected, and the Executing Court has refused to adjudicate his case. Thereafter, the petitioner filed the Civil Misc. application before this Hon'ble Court to set aside the said order dated 15.07.2017 passed in Misc. Case No. 08 of 2016 and further directing the Executing Court to hear the petitioner on merit and upon adjudication, pass fresh order. Counsel



further submits that in the said Title Partition Suit No. 251 of 2013, he was not made party and partition decree has been obtained relating to the properties appertaining to plot No. 1092, 1093, 1094 and 1133, Khata No. 24 and 18 measuring 1 acre 28 decimals of land, which the petitioner No. 1 had purchased through two registered sale deeds dated 15.05.1957 from one Mehi Lal Paswan, S/o of Roshan Lal Paswan and another from Ram Tahal Mahto.

6. Learned counsel for the petitioners submits that the trial court has refused to entertain the petition of the petitioner on the ground that the parties to the Title Partition Suit No. 251 of 2013 have demanded/claimed the said property through one Biltu Paswan who was khatiyani raiyat of the land and the vendor of the present petitioner is in no way related to said Biltu Paswan, and therefore, the claim of the petitioners relating to title and possession of the land is not sustainable at all and he is completely stranger for the said title suit, therefore, petition under Order XXI Rule 97 and 99 and other sections of CPC are not entertainable. Counsel further submits that Order XXI Rule 97 CPC well empowers even to the strangers to file an objection under the said provision even though they are not party to the said case, and in this regard, counsel for petitioner



relied on 3 important judgments of the Hon'ble Supreme Court, *Jini Dhanrajgir and Anr. Vs. Shibu Mathew and Anr., a reportable judgment passed in Civil Appeal No. 3758-3796/2023 arising out of SLP(C) Nos. 28258-28296/2018 passed on 16.05.2023., Shreenath and Anr. Vs. Rajesh and Ors. reported in 1998 4 SCC 543 and Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and Anr. reported in (1997) 3 SCC 694.* According to said judgments, the petitioner even being the stranger having interest in the property have right to file an application under Order XXI Rule 97 of the CPC before the Executing Court and Executing Court is bound to adjudicate his case, and therefore, mere rejection is not correct order and it is fit to be set aside.

7. Learned counsel for the respondent on the other hand submits that they are parties to the Title Partition Suit No. 251 of 2013 and they are related to one Biltu Paswan who is the khatiyani raiyat of the said land and being khatiyani raiyat, they are entitled for the suit property and court has rightly decided the said judgment and decree in favour of the parties to the Title Partition Suit No. 251 of 2013 and also rightly issued the delivery of the possession when the petitioners reached on the spot for delivery of the possession in the year 2016, the



petitioners have filed objection under various provisions including Order XXI Rule 97 of the CPC which is not entertainable at all. He further submits that against the delivery of the possession, the petitioners have filed miscellaneous application before the District Judge, Patna to stop the D.P in Misc. No. 104 of 2016, but the said case was rejected. He also submits that the petitioners are in no way related to the property in question.

8. Learned counsel for the respondent submits that petitioners have not purchased the land from Biltu Paswan rather, he has purchased the said land from one Mehi Lal Paswan about whom they are claiming that said Mehi Lal Paswan, S/o of Roshan Lal Paswan is the grand son of Jhabu Paswan. He further submits that the petitioners are not in a position to explain that who is the father of Roshan Lal Paswan and who is the son of Jhabu Paswan and he also submits that there is no link between Jhabu Paswan and Roshan Lal Paswan.

9. Learned counsel for the respondent conclusively submits that in no case, the petitioner has any right to file any application before the Executing Court as he was not party to the said suit and Order XXI Rule 97 of CPC has only intention that the party to the suit may sue.



10. In response of the arguments, made by the respondent, counsel for petitioner submits that the document on which the respondents are relying is basically a document which has not acquired finality and it is basically a draft Cadastral Survey Records of Right. Counsel for petitioners also submits that the final Survey Records of Right has annexed as Annexure-P/15 of the rejoinder affidavit (running page No. 170) in which name of Biltu Paswan is not present rather, the said land was recorded in the name of Jhabu Paswan. Counsel for petitioner further submits that in the running page No. 174, there is a remark made by the officials that it is record of right finally published under section 103A(2) of Bengal Act viii of 1985.

11. Learned counsel for the petitioners further submits that in the draft khatian, the name of Biltu Paswan is recorded only for 39 decimals of land whereas, in the final Cadastral Survey Records of Right, Jhabu Paswan is recorded showing several plots in his name. He also submits that he has purchased those plots from two persons one Ram Tahal Mahto and one another from Jhabu Paswan and name of both the persons are there in the Cadastral Survey Records of Right. Concluding his argument, the counsel for the petitioner submits that he has documents as well as the orders from the different



courts by which, it transpires that he is continuously in the physical possession of the said land since 1957 onwards till today and he has annexed the order passed by the several courts as well as the order passed by the Hon'ble High Court also in the supplementary affidavit.

12. After going through the pleadings and hearing of the parties, there are only two issues which has to be decided by this Court.

13. The first issue is that whether the petitioners have any right to file application under Order XXI Rule 97 and 99 of the CPC before the Executing Court when he is not party to the Title Partition Suit No. 251 of 2013?

14. The second issue is that whether in the light of the documents produced by the parties before the court, it is necessary for the Executing Court to complete adjudication between the parties or what direction requires in the present facts and circumstances of the case?

15. Prior to deciding those issues, it is necessary to reproduce the provisions laid down under Order XXI Rule 97 and 99 of the Code of Civil Procedure, which are as under:-

*“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 upon the application in accordance with the provisions herein contained.”

“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.”

16. Similarly it would be apposite to quote paragraph 17 to 22 of the judgment rendered in the case of ***Jini Dhanrajgir and Anr. Vs. Shibu Mathew and Anr., a reportable***



judgment passed in Civil Appeal No. 3758-3796/2023 arising out of SLP(C) Nos. 28258-28296/2018 passed on 16.05.2023 is being reproduced which is relevant to decide this case as under:-

“para-17) Section 47 of the CPC, being one of the most important provisions relating to execution of decrees, mandates that the court executing the decree shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit. What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree. Should there be any resistance offered or obstruction raised impeding due execution of a decree made by a court of competent jurisdiction, the provisions of Rules 97, 101 and 98 of Order XXI enable the executing court to adjudicate the inter se claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits. No wonder, the provisions contained in Rules



97 to 106 of Order XXI of the CPC under the sub-heading "Resistance to delivery of possession to decree-holder or purchaser" have been held by this Court to be a complete code in itself in **Brahmdeo Chaudhary** (supra) as well as in a decision of recent origin in **Asgar vs. Mohan Verma**". In the later decision, it has been noted that Rules 97 to 103 of Order XXI provide the sole remedy both to parties to a suit as well as to a stranger to the decree put to execution."

"para-18) In **Bhanwar Lal vs. Satyanarain**, this Court held that when any person, whether claiming derivative title from the judgment-debtor or sets up his own right, title or interest de hors the judgment debtor, the executing court whilst executing the decree, in addition to the power under Rule 35(3), is empowered to conduct an enquiry whether the obstruction by that person is legal or not."

"para-19) This Court in **Noorduddin v. Dr. K.L. Anand**" reiterated that the executing court was bound to adjudicate the claim of an obstructionist and to record a finding allowing or rejecting the claim which was laid before the executing court, the person being neither a party to the earlier proceedings nor the decree being passed



against him.”

*“para-20) Yet again, in **Babulal v. Raj Kumar & Ors.**”, this Court after setting aside the order impugned held that a determination is required to be conducted under Order XXI Rule 98 before removal of the obstruction caused by the objector and a finding is required to be recorded in that regard. It was also held that the executing court was required to determine the question relating to when the appellants had objected to the execution of the decree as against those appellants who were not parties to the decree for specific performance.”*

*“para-21) The decision in **Brahmdeo Chaudhary** (supra) cited by Mr. Chitambaresh, is also to the same effect.”*

*“para-22) Considering the scheme of Order XXI Rules 97 to 106, this Court in **Silverline Forum Pvt. Ltd. v. Rajiv Trust & Anr.**” found it difficult to agree with the High Court that resistance or obstruction made by a third party to the decree put to execution cannot be gone into under Order XXI Rule 97. Referring to Rules 97 to 106, this Court further held that they were intended to deal with every sort of resistance or obstruction raised by any person and that Rule 97(2) made it*



incumbent on the court to adjudicate upon such complaint in accordance with the procedure laid down. This Court also proceeded to observe:

"It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refuses 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".

17. Similarly it would be apposite to quote paragraph 9 of the judgment rendered in the case of ***Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and Anr. reported in (1997) 3 SCC 694*** is being reproduced which is relevant to decide this case as under:-



“para-9) In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of the 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 21, Rule 97, sub-rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order 21, Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21, 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 21, 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 21, Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualize 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 21, Rule 99. Order 21, 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 21, 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 21 and it not as if that such a stranger to the decree can come in the picture only at the final stage after losing 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 21, Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order 21, 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 on 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 21, 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 21, Rules 97 to 103 would remain a complete code and the sole remedy for the parties concerned to have their grievances once and for all finally resolved in execution proceedings themselves.”



18. Similarly it would be apposite to quote paragraph 13, 14, 15 & 19 of the judgment rendered in the case of ***Shreenath and Anr. Vs. Rajesh and Ors. reported in 1998 4 SCC 543*** is being reproduced which is relevant to decide this case as under:

“para-13) So far sub-clause (1) of Rule 97 the provision is the same but after the 1976 Amendment all disputes relating to the property made under Rules 97 and 99 are to be adjudicated under Rule 101, while under unamended provision under sub-clause (2) of Rule 97, the executing court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 the court puts back a decree-holder in possession where the court finds obstruction was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the court has to dismiss the decree-holder's application. Thus even prior to 1976, right of any person claiming right on his own or as a tenant, not party to the suit, such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. By this, he is saved from a long



litigation. So a tenant or any person claiming a right in the property on the own, if resists delivery of possession to the decree-holder, the dispute and his claim has to be decided after the 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he was to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the executing court itself finally under Rule 101.”

“para-14) We find that 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.”

“para-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, the new law covers cases where persons other than the judgment-debtor is dispossessed of



immovable property by the decree-holder, of course, such cases are also covered to be decided by the executing court. But this will not defeat the right of such a person to get his objection decided under Rule 97 which is a stage 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 possession of an immovable property on his own 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 a 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 Usha Jain correctly decided the law.”

“para-19) We direct the executing court to consider and dispose of the objections and the application of the appellants under Order 21 Rule 97 after giving opportunity to the parties in accordance with law. The appeal is accordingly allowed. On the facts and circumstances of the case, cost on the



parties.”

Answer to First Issue:-

19. This Court is of the opinion that law as decided and as laid down under Order XXI Rule 97 of CPC, the judgment debtor, decree holder and any person through him or even any stranger who is in a position to show his interest in any manner whatsoever it may be, have right to file an application under Order XXI Rule 97 of CPC and it is a legislative direction that the Executing Court has to adjudicate this matter instead of taking shelter of filing the fresh suit. As this Court interprets the Order XXI Rule 97 clubbing with the findings as discussed above in the 3 judgments of Hon'ble Supreme Court namely ***Jini Dhanrajgir (supra)***, ***Shreenath (supra)*** and ***Brahmdeo Chaudhary (supra)***.

Answer to Second Issue:-

20. So far as the second issue is concerned, the position of the law is very clear that if there are two survey records of rights i.e. one is draft survey and another is final survey, then it is the final survey which shall prevail. It transpires to this Court, that the claim of the petitioners is by virtue of final Survey Records Of Right, and subsequently, the



said land was transferred by virtue of sale deed by the records holder/his descendants in favour of the petitioners, whereas on the other hand, the respondents are claiming the said land by virtue of draft Cadastral Survey Records of Rights. The position of the law is very clear that final Survey Records of Rights shall prevail.

21. The another aspect which creates doubt in the minds of this Court that the petitioners are coming in the possession of the property since 1957 onwards. They have contested litigation in the records of rights on many occasions, but the alleged respondent has never come forward and directly by way of filing Title Partition Suit No. 251 of 2013, started claiming the property and in the said partition suit, they were not made party to the present petitioners. One more aspect which creates doubt in the mind of this Court is that the petitioners by virtue of their document has claimed for 1 Acre 28 decimals of land, whereas, the draft Cadastral Survey Records of Rights shows the name of Biltu Paswan only certain area is there and that aspect is also necessary to be looked into, and hence, this Court is of the opinion that the Executing Court must have to examine all those aspects of the matter as like that of original Court since under Order XXI Rule 97 of the CPC the



word ‘adjudication’ is there. Legally speaking, the word ‘adjudication’ used in Order XXI Rule 97 of the CPC and word ‘adjudication’ used in the section 2(2) of the CPC are basically identical and therefore, this Court is hereby set aside the order dated 15.07.2017 passed in Misc. No. 08 of 2016. It has been directed to the parties that they shall be at liberty to file any supplementary petition/pleading in Misc. Case No. 08 of 2016 and upon completion of their pleading, the Executing Court is directed to pass a reasoned and speaking order within a reasonable period of time following the procedure of CPC, 1908. Till final adjudication between the parties status-quo with regard to property shall be maintained.

22. With the aforesaid observation and direction, this Civil Misc. Jurisdiction case is hereby allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.11.2023
Transmission Date	NA

