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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.8 OF 2016

1. RATNABAI RAIKAR, [Deleted since
deceased]
Major of age.

2. SANTOSH NARAYAN RAIKAR,
Major of age,
and his wife

3. SWATI SANTOSH RAIKAR,
Major of age,
all r/at Narayan Ratna,
Violem Bhat, Mercedes,
Ilhas, Goa.

4. MAHENDRA RAIKAR,
Major of age,
and his wife

5. MATHURA MAHERENDRA RAIKAR,
Major of age,
Both r/at E-324, Raikar
Niwas, St. Caetan,
Merces, Ilhas, Goa.

... Applicants.

Versus

1. JOAO FERNANDES
Major of age,
Gaunchem Bhat, Near Alua Hotel,
Merces – Goa.

1(a) Evelina Olinda Dias,
Wife of Joao Fernandes,
Widow, Major of age,

1(b) Viriato Romulo Leucadio Dias
Fernandes, S/o Joao Fernandes,
Major of Age, Married,

1(c) Maria Do Ceu Gracinda Gonsalves,
W/o Virito Romulo
Leucadio Dias Fernandes,
Major of age, Married,

1(d) Sertorio Constancio Jesus Dias
S/o Joao Fernandes,
Major of age, Married

1(e) Stella Lourdes
Ursula Fernandes, W/o
Sertorio Constancio Jesus Dias
Fernandes, Major of age, Married

1(f) Avito Amancio Dias Fernandes,
S/o Joao Fernandes, Major of
Age, Married

1(g) Maria Saozionha Soares,
W/o Avito Amancio Dias
Fernandes, Major of
Age, Married

1(h) Vilma Conceicao Dias e
Fernandes,
D/o Joao Fernandes,
Major of age, Married,

1(i) Pedro Tiburcio Joao,
W/o Vilma Conceicao Fias e
Fernandes, Major of age,
Married,
Above all are the residents of
118 Villa Eva Buttem
Bhat, Mercês, Goa

1(j) Blaise Ignatius Lazarus
Fernandes,
Son-in-law of Joao Fernandes,
Major of age, Widower,
R/o E-52, Mercês Vaddy Ilhas,
Goa

1(k) Anita Leonilda Dias Fernandes,
D/o Joao Fernandes, Major of
Age, Married,

1(l) Paulo Pedrinho Aureliano
Fernandes, Husband of Anita
Leonilda Dias Fernandes, Major
of age, married,

1(m) Erasmo Xavier Dias
Fernandes, S/o Joao Fernandes,
Major of age, Married,

1(n) Julieta Braganca, W/o Erasmo
Xavier Dias Fernandes, Major
of age, Married,
Above all the Residents of 118 Villa Eva
Buttem Bhat, Mercês, Goa.

2. AHILABAI K. ANVEKAR,
Major of age,
C/o Flat No. 5, 1st floor,
Om Shanti Society,
Kurtarkar Nagar, Ponda,
Goa.

3. VASANTI ALIAS SUVARNA
SUBHASH BANDODKAR,
Major of age,
Flat No. 5, 1st floor, Om
Shanti Society, Kurtarkar
Nagar, Ponda, Goa.

4. SURESH ALIAS SUBHASH BANDODKAR,
Major of age,
Flat No. 5, 1st Floor, Om
Shanti Society, Kurtarkar
Nagar, Ponda, Goa.

5. SHAILA S. ANVENKAR,
Major of age,
Near Mahalaxmi Temple
Benaullim, Salcete, Goa.

6. MR. ROHIDAS P. RAIKAR,
Major of age,
Near Mahalaxmi Temple
Benaullim, Salcete, Goa.

7. SURENDRA NARAYAN RAIKAR,
Major of age,
and his wife

8. AARTI SURENDRA RAIKAR,
Major of age,
Both r/at Kalika, Voilem
Bhat, Mercas, Ilhas, Goa.

9. SUPRIYA SHIRODKAR,
Major of age,
and her husband

10. SURESH SHIRODKAR,
Major of age,
Both r/at Esmeralda,
Ribandar, Ilhas, Goa.

11. ROSHAN PEDNEKAR,
Major of age,
and her husband

12. DR. PURUSHOTTAM PEDNEKAR,
Major of age,
Both r/at Peddem, Mapusa,
Bardez, Goa.

13. SHOBHAN RAIKAR,
Major of age,
and her husband

14. ARVIND NETALKAR,
Major of age,
CIVIL APPLI.,
Both r/at Near District
Hospital, Mapusa, Bardez,
Goa.

15. RUPA RAIKAR,
Major of age,
r/at Novo Cidade Complex,
Porvorim, Bardez, Goa.

... Respondents.

**Mr Nitin Sardessai, Senior Advocate with Mr Shivam Fadte,
Advocate for the Applicants.**

**Mr A.D. Bhobe with Ms A. Kuvelkar, Advocates for
Respondent No.15.**

CORAM:	BHARAT P. DESHPANDE, J.
RESERVED ON:	07 January, 2023
PRONOUNCED ON:	09 January, 2023

JUDGMENT:

By way of present revision application, the Applicants are challenging the order dated 22.01.2016 passed by the learned Civil Judge, Senior Division, Panaji in Civil Misc. Application No.4/2016 thereby rejecting the application filed by the Applicants under Order 21 Rule 97 CPC in Execution Application No. 24/2004. The learned Executing Court dismissed said application on the ground that execution proceedings have been disposed of and therefore, the application is not maintainable.

2. Heard learned Senior Counsel Mr Nitin Sardessai along with Advocate Mr. Shivam Fadte for the Applicants, learned Counsel Mr Ashwin D. Bhobe with Ms A. Kuvelkar for Respondent No.15. No one appeared on behalf of L.Rs. of Respondent No.1 though duly served by way of publication.

3. Mr Nitin Sardessai submitted that impugned order is bad in law as the learned Executing Court committed jurisdictional error by

rejecting application only on the ground that the execution proceedings are disposed of. He submitted that Applicants filed objections to the execution of decree in Execution Application No. 24/2004 under Order 21 Rule 97 CPC thereby objecting to alleged ownership and possession of Respondent No.1 therein and consequently seeking cancellation of sale deed dated 02.12.2006 to the extent of property bearing Survey No.238/1 which was executed under Order 21 Rule 34 of CPC in favour of Respondent No.1 being the Decree Holder in Special Civil Suit No.110/1984. Respondent No.1 allegedly entered into agreement for sale on 20.12.1965 with Srimatibai Vinaeca Anvekar for a price of ₹28,000/- for purchase of property known as 'DEULIM' OR 'CAPEACHI MOLOI' or 'DAGINACHI MOLOI' situated at Morombi-O-Grande at Mercedes, bearing Land Registration No. 17307 and Matriz No. 109. Respondent No.1, in order to enforce specific performance of such agreement, filed Special Civil Suit No.110/1984 against late Srimatibai Vinaeca Anvekar and her legal heirs. No specific details including boundaries of the suit property were mentioned in the plaint. The said suit was dismissed on 02.02.2000 holding that the said suit is time barred. Accordingly, Respondent No.1 challenged the said Judgment and Decree of the Civil Court by preferring Regular Civil Appeal No.36/2000. Learned District Judge vide his Judgment and Decree dated 25.05.2004 allowed the said appeal and the suit. It was held that Respondent No.1 is entitled to purchase the said property from the vendors and accordingly directed to specifically perform their part within 60 days. Respondent No.1 then filed execution proceedings before the learned Civil Court under Order 21 Rule 34.

Vide order dated 28.11.2006, the learned Executing Court allowed the application and directed the Officer of the Court to execute the sale deed in favour of Respondent No.1. Accordingly, Respondent No.1 deposited remaining balance amount and thereafter, Officer of the Civil Court was pleased to execute and register sale deed in favour of Respondent No.1 dated 02.12.2006. In the sale deed, for the first time, apart from land registration and matriz records, the survey number of the property was mentioned as Survey No.236 admeasuring an area of 9075 sq. mts., Survey No.237 admeasuring an area of 4336 sq. mts. and Survey No.238 admeasuring an area of 17993 sq. mts.

4. It is the contention of the Applicants that such survey numbers along with the areas are erroneously mentioned in the sale deeds thereby enlarging the scope of the decree and travelling beyond the decree.

5. On the basis of such sale deed dated 02.12.2006, Respondent No.1 filed mutation application in respect of Survey Nos.236/1, 237/1 and 238/1 which was allowed vide order dated 27.02.2008. Thereafter, Respondent No.1 filed partition proceedings before the Deputy Collector, North Goa on the basis of mutation and in order to dispossess the Applicants and the other Respondents Nos.7 to 15 from the suit property. The Deputy Collector issued summons to the Applicants and others as names of ancestors of the Applicants and others are mentioned in Survey No.238/1 as owners. This is the stage when the Applicants got the knowledge about the mutation, sale deed and decree passed in the said civil suit.

6. It is the case of Applicants that they along with Respondent Nos.7 to 15 continue to possess the suit property as owners and on receiving notice for partition proceedings, they immediately applied for certified copies. It was noticed by the Applicants that the Executing Court and more specifically in the deed of sale dated 02.12.2006, the property bearing Survey No.238/1 admeasuring 17993 sq. mts. has been wrongly included and transferred in the name of Respondent No.1 even though the Judgment and Decree refers to Survey Nos. 236/1 and 237/1 only. Applicants therefore immediately filed review petition before the Deputy Collector in DYC/PNJ/PROM/2/2007. The Deputy Collector allowed the review petition vide order dated 24.03.2011 and the mutation order dated 27.02.2008 was cancelled.

7. Applicants being aggrieved by the deed of sale dated 02.12.2006 by virtue of which Respondent No.1 allegedly got the title over Survey No.238/1, on the basis of execution proceedings, filed Civil Miscellaneous Application No.4/2016 before the Executing Court under Order 21 Rule 97 CPC, which came to be dismissed on the sole ground that the execution proceedings stand disposed of.

8. Mr. Nitin Sardessai urged only two grounds. He submitted that provisions of Section 47 of CPC are squarely applicable and that the question which Executing Court is required to entertain and decides is arising out of the execution proceedings. In this respect, he placed reliance on the following decisions:-

i. ***Harnandrai Badridas vs. Debidutt Bhagwati Prasad and Others¹***,

¹ (1973) 2 SCC 467

- ii. *Shreenath and Another vs. Rajesh and Others*²,
- iii. *Ram Kumar Tiwari and Ors. vs. Deenanath and Ors.*³,
- iv. *Minati Ghosh vs. Lakshmi Narayan Sarkar and Ors.*⁴.

9. The learned Counsel Shri Bhobe appearing for Respondent No.15 is in fact supporting the case of the Applicants. In spite of service on the legal heirs of Respondent No.1, who was the contesting party before the Executing Court, failed to appear and contest the present matter.

10. Rival contentions now fall for consideration of this Court.

11. The only aspect which needs consideration is whether the learned Executing Court was justified in rejecting the application on the sole ground that the execution proceedings stands closed.

12. The facts disclosed earlier clearly goes to show that Applicants were not parties to the civil proceedings or at the execution proceedings also. Their knowledge with regard to inclusion of their property in the sale deed executed by the Officer of the Court in favour of Respondent No.1 while executing the said decree, is only on the basis of the notice received from the Court of Deputy Collector during partition proceedings. No doubt, by that time execution proceedings were disposed of on the ground that the decree stands satisfied. However, fact remains that a consequence of the sale deed being executed in favour of Respondent No.1 needs to be taken into account. It is not the case that while executing sale deed in favour of

² (1998) 4 SCC 543

³ AIR 2002 CHH 1

⁴ AIR 2004 CAL 74

Respondent No.1, the Court was also asked to hand over possession of the suit property including the portion claimed by the present Applicants as belonging to them. Therefore, the question needs to be determined by the Executing Court as governed by Section 47 of Order 21 Rule 97 CPC.

13. For the purpose of better understanding, Section 47 of CPC reads thus:-

“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 representatives, 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.

*[***]*

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation 1.- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(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.]”

14. Similarly, the provisions of Order 21 Rule 97 to Rule 101 of CPC are also attracted and read thus:-

“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.

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.

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.

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.

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.”

15. In the case of *Harnandrai Badridas* (supra), the Supreme Court in para Nos. 5 to 8 has observed thus:-

“5. As we have already said, the appellant relied on the Full Bench decision of the Lahore High Court. We have carefully gone through the various decisions cited before us and we find ourselves in agreement with the opinion of the full bench of the Calcutta High Court in Kailash Tarafdar's case (supra). If a confirmation of the sale would finally terminate all questions as to execution of the decree it is difficult to appreciate why the legislature would frame such rules as rules 95 to 102 under Order XXI of the Code of Civil Procedure. We are in respectful agreement with G. K. Mitter J., that the legislature must have thought that the duty of the executing court should not end with the confirmation of the sale and it is because the legislature thought "that the auction-purchaser should have the right of applying for possession under the provisions of Rules 95 and 96 that proceedings for obtaining possession were included in the catena of rules relating to the execution of the decree".

6. Section 47 in our view should be construed liberally. As far back as in 1892, the Privy Council spoke strongly in favour of putting a liberal construction on Section 244 of the Code of Civil Procedure of 1882

which corresponded to present Section 47 of the Code of Civil Procedure 1908. The Privy Council reiterated this in Ganapathy v Krishnamachariar. If a liberal construction be put upon Section 47 it is difficult to understand why a decree-holder who has been a party to the decree will shed his character as such party merely upon purchasing the property at the execution sale. After all, a decree-holder purchases the property in execution of his decree with the permission of the court. There is no reason why he should not retain his character of a party to the suit until the delivery of possession to him of the property purchased by him. Having regard to this consideration, if any question is raised by the judgment debtor at the time of delivery of possession concerning the nature of the rights purchased and if the judgment-debtor offers any resistance to delivery of possession the question must be one which in our view relates to the execution, discharge and satisfaction of the decree and arises between the parties to the suit.

7. Speaking of the two conflicting, views on this section the learned commentator of the 13th Edition of Sir Dinshaw Mulla's Code of Civil Procedure makes the following observation :

"The cases in which it has been held that an auction-purchaser even if he is the decree-holder is not a party to the suit, require reconsideration in view of the ruling of the Judicial Committee that such in auction-purchaser is a party to the suit."

The decision of the Judicial Committee which the learned commentator had in mind is that of Ganapathy v. Krishnamachariar (supra).

It is important to remember that after the decision of the Privy Council in Ganapathy's case (supra), there

has been an amendment of Section 47 as a result of which the purchaser at a sale in execution of a decree, whether he is the decree-holder or not, is unquestionably a party to the suit for the purpose of Section 47. Having regard to this, all questions arising between the auction-purchaser and the judgment-debtor must in our view be determined by the executing court and not by a separate suit.”

16. In the case of *Shreenath and Anr.* (supra), the Supreme Court while considering the provisions of Order 21 Rule 97 and 99 observed in paras 10, 11, 13 to 15 as under:-

“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 97 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.

13. So far sub-clause (1) of Rule 97 the provision is same but after 1976 Amendment all disputes relating to the property made under Rules 97 and 99 is 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 he 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 his own, if resists delivery of possession to the decree-holder the dispute and his claim has to be decided after 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 has 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.

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, the new law covers cases where persons other than 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 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 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.”

17. In the case of *Ram Kumar Tiwari* (supra), the Chhattisgarh High Court after discussing the decision in the case of *Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal*; MANU/SC/0191/1997 observed that not only the Decree Holder or the person dispossessed in execution of the decree has a right to make an application to the Executing Court but a person who is apprehending dispossession can also make an application to such Court and when such an application is brought before the Court, said Court shall be obliged to make an inquiry into the allegations and pass an order after making the inquiry into the right, title and interest of that party. Such observations are squarely applicable to the matter in hand as on the basis of sale deed executed in favour of Respondent No.1 during execution proceedings of the Judgment and Decree, Applicants are apprehending dispossession at the hands of the Decree Holder. Therefore, it squarely falls within the ambit of Section 47 read with Order 21 Rule 97 of CPC and even though such execution proceedings were disposed of as satisfied, dispossession of any third party under such sale deed executed while executing the decree, squarely falls within the ambit of above provisions.

18. Applicants are claiming to be in possession and ownership of a specific portion of Survey No.238/1 admeasuring 17993 sq. mts.

19. It is the contention of the Applicants that there is no reference to Survey No. 238/1 of Village Mercas in the description given of the suit property in the original suit, the Judgment of Trial Court and also the Judgment of the First Appellate Court. It is their contention that for the first time Survey No.238/1 was included in the deed of sale which was executed by the Officer of the Court, for and on

behalf of the Judgment Debtors in favour of Decree Holder. Form I & XIV produced along with the present revision shows that in Survey No. 238/1, the name of the ancestors of the Applicants is figuring in the occupants column. Admittedly, the Applicants were not parties to the civil suit, in the appeal as well as in the execution proceedings. Thus, their apprehension of dispossession on the basis of sale deed is quite genuine. The claim of Applicants over the said property bearing Survey No. 238/1 which is seen as part of the property in the sale deed, needs to be entertained and decided only by the Executing Court and not by way of separate suit as mentioned in Section 47 of CPC and also as provided under Order 21 Rule 99 and Rule 101 of CPC. Only because execution proceedings were closed, cannot be a ground to straight away reject such genuine claim. It is the duty of Executing Court to conduct an inquiry into the title of the Applicants claim over the property which is subject matter of the execution proceedings and more specifically having independent right over such property or part of it.

20. Having said so, the impugned order, that too without disclosing any reasons and without conducting any inquiry as contemplated under Rule 101 of Order 21, needs to be interfered and quashed and set aside. The application filed by the Applicants as Civil Misc. Application No.4/2016 in Execution Application No.24/2004 is required to be entertained and decided in accordance with Section 47 read with Order 21 Rule 97 and Rule 101 of CPC.

21. It is made clear that by quashing the impugned order, this Court has not considered and opined on the claim raised by the Applicants over Survey No.238/1 of Village Mercus. The learned Trial

Court shall decide such claim on its own merit and in accordance with law without getting influenced by any observations made in the above order.

22. Having said so, revision must succeed.

23. Revision Application stands allowed. The impugned order dated 22.01.2016 passed by the Executing Court is quashed and set aside.

24. Civil Misc. Application No.4/2016 in Execution Application No. 24/2004 is restored to the file of the Executing Court. Said application shall be decided on its own merit and in accordance with law. Needless to say that the Executing Court shall issue notice to all the parties and give them opportunity to appear and contest.

25. The parties shall appear before the Executing Court on 06.02.2023 at 10:00 a.m. without fail. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.

JOSE
FRANCISCO
DSOUZA

Digitally signed by JOSE
FRANCISCO DSOUZA
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