

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR 7739/2017 (O&M)

Date of decision: 15.02.2023

Arun Kumar

.....Petitioner

Vs.

Atam Parkash and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. K.S.Dadwal, Advocate for the petitioner/ DH.
Service upon respondent no.1/JD dispensed with vide
order dated 31.8.2022.

Mr. Vinod Kataria, Advocate for respondent no.2/
Objector.

Nidhi Gupta, J.

Present revision petition has been filed seeking setting
aside of the order dated 3.10.2017 passed by the Id. Civil Judge (Junior
Division) Hoshiarpur in execution proceedings whereby respondent no.2/
third party/ Objector, has been permitted to file Objections.

In order to appreciate the controversy at hand, it is
necessary to consider the brief chronological sequence of events, which is
as follows:

03.11.2008 – The Petitioner/ Decree Holder entered into an agreement to
sell with respondent no. 1/ Judgment Debtor regarding land measuring 10
marlas bearing khasra no. 35//7 situated in the area of Village Kotla
Gonspur, Hadbast No.369, Tehsil and District Hoshiarpur alongwith 4

rooms, Kitchen, Lobby, Washroom, Bathroom (hereinafter referred to as 'the suit property'), for a sum of Rs. 5 lakhs. At the time of execution of agreement, Rs 1,50,000 was given as earnest money. Sale deed was to be executed on or before 30.04.2009. It is the petitioner's case that the respondent no.1 did not carry out the terms and conditions of the agreement.

17.12.2009 – In the meantime, unknown to the petitioner, Respondent no.1 allegedly entered into another agreement dated 17.12.2009 (Annexure P-2) with respondent no 2, in respect of the same suit property, which already stood sold to the petitioner by respondent No. 1 vide aforementioned Agreement to Sell dated 3.11.2008.

02.08.2010 – As respondent No. 1 failed to execute the Agreement to Sell dated 3.11.2008, the Petitioner filled civil suit (Annexure P-1) seeking specific performance of the contract dated 3.11.2008.

01.02.2012 – In the said suit, the Respondent no. 1 was proceeded Ex-Parte vide order dated 1.2.2012.

1.2.2012 – On the basis of abovesaid agreement dated 17.12.2009, Respondent no. 2 moved an application under Order 1 Rule 10 CPC for impleading her as defendant in the above said Civil Suit Annexure P-1, filed by the petitioner. In her application, respondent No. 2 termed the agreement in favour of the petitioner as a forged and fabricated document.

17.05.2013 – Vide order dated 17.5.2013 Annexure P-4, Id. Additional Civil Judge allowed the application filed by respondent no. 2 on the ground that she has agreement to sale dated 17.12.2009 in her favour and thus, can associate in the proceedings.

2013 - Against the above said order dated 17.5.2013, the Petitioner filed Civil Revision no. 4899 of 2013 before this Court.

02.02.2015 – Vide order dated 2.2.2015 (Annexure P-5), this Court set aside the order dated 17.5.2013 (P-4) and allowed the revision petition by holding that the applicant/respondent no. 2 is not the necessary party to the suit. Vide said order, this Court held that respondent No. 2 has no right, title or interest in the suit property and she can file separate suit for specific performance on the basis of agreement of 2009. Thus, while allowing the revision, her application was dismissed.

25.09.2015 – Thereafter, vide judgment and decree dated 25.9.2015 (Annexure P-6), the Id. Civil Judge (JD) Hoshiarpur decreed the suit of the petitioner for execution of the sale deed and also to hand over the possession.

Nil – Accordingly, Petitioner/ DH filed execution application under Order 21 Rule 11 CPC for execution of the abovesaid judgment and decree dated 25.9.2015.

19.12.2016 – In the meantime, the respondent no. 2/ Objector filed Suit (Annexure P-9) for Specific Performance of the Agreement dated 17.12.2009, wherein the petitioner/ DH has also been impleaded as defendant no. 2.

17.01.2017 – That despite the fact that Respondent no. 2 had failed to become party to the Civil Suit Annexure P-1 filed by the petitioner, and despite the fact that the respondent No. 2 had already filed abovesaid suit for specific performance of agreement to sale dated 17.12.2009, yet, respondent No. 2 still filed third-party objections dated 17.1.2017 (Annexure P-7) in the Execution Petition filed by the petitioner.

9.3.2017 - Reply to the objections was filed by the petitioner(Annexure P-8).

03.10.2017 – Vide impugned order dated 3.10.2017 (Annexure P-10), Id. Civil Judge has entertained the objections and granted the opportunity to the objector to lead evidence.

Hence, present Revision Petition.

It is vehemently submitted by the learned counsel for the petitioner that from the facts as noted above, it is clear that this Court has already held that the respondent No. 2 is not having any interest in the suit property, and separate suit should have been filed by her. It is submitted that pursuant thereto, the respondent No. 2 has indeed, filed a separate suit wherein the petitioner is arrayed as defendant no. 2, and said suit is pending. It is submitted that the Id. Executing Court has failed to correctly appreciate this fact. It is submitted that in fact, the rights of respondent No. 2 have already been adjudicated upon in the earlier round of litigation whereby her application under Order 1 Rule 10 CPC had been dismissed.

It is submitted that by filing the present objections, the respondent No. 2 is trying to overreach the due process of law and Court. It is submitted that the present objections have been filed with the sole purpose of stalling the execution of the decree which is even yet not challenged. It is further submitted that the agreement dated 3.11.2008 of the petitioner is prior in time to that agreement dated 17.12.2009 of respondent no.2 and therefore, will have precedence over any purported agreement alleged to have been entered into between the respondents.

It is submitted by learned counsel for the petitioner that the impugned order passed by the learned Civil Judge (JD) Hoshiarpur,

amounts to overriding and nullifying the order dated 2.2.2015 passed by this Court. It is further submitted that the observation of the learned Civil Judge (JD) Hoshiarpur, to the effect that objections under Order 21 Rule 99 CPC can be filed by anyone, are misplaced in view of the fact that respondent No. 2 cannot be construed as 'any person' as she had already approached this Court in an earlier round of litigation, where her rights had been already adjudicated upon.

It is vehemently submitted that the learned Civil Judge (JD) Hoshiarpur, has grossly misinterpreted, the provisions of Order 21 Rule 102 CPC, which provides that transferee pendente-lite does not have any right to resist or obstruct execution of a decree for possession of immovable property. It is submitted that the agreement to sell dated 17.12.2009, which was subsequent to that in favour of the petitioner, is hit by the principle of lis-pendens.

In support, Id. Counsel for the petitioner relies upon judgment of Hon'ble Supreme Court in **Usha Sinha v Dina Ram and others, Law Finder Doc Id # 143463**. Id. Counsel also relies upon judgments of this Court in **Surjit Kaur v Harjinder Kaur and others, Law Finder Doc Id # 605773; Dinesh Kumar v Baldev Raj and another, Law Finder Doc Id# 636956; State of Punjab v Sanjogta and others, Law Finder Doc Id @ 72422; and Pirthi Singh v Naresh Kumar and another, Law Finder Doc Id # 865084**.

In particular, Id. Counsel for the petitioner makes reference to Paras 12, 22 and 23 of the judgment in **Usha Sinha's** case (supra), which are as under:-

“12. Bare reading of the rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law. He should be careful before he purchases the property which is the subject matter of litigation. It recognizes the doctrine of lis pendens recognized by Section 52 of the Transfer of Property Act, 1882. Rule 102 Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree holder will never be able to realize the fruits of his decree. Every time the decree holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the rule has been enacted.*

22. For invoking Rule 102, it is enough for the decree holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 Order 21.

23. So far as the present case is concerned, the facts are no more in dispute. As already noted earlier, Title Suit No. 140 of 1999 was instituted by the respondent-plaintiff on April 10, 1999. Thus, the litigation was pending in respect of the property and the matter was sub-judice. The appellant thereafter purchased the property from original defendant Nos. 4 and 5 by a registered sale deed on February 15, 2000 i.e. during the pendency of the suit. It is also not in dispute that ex parte decree came to be passed against the defendants on May 24, 2001. In the situation, in our considered opinion, the doctrine of lis pendens would apply to the transaction in question, and the High Court was wholly right in holding that the case was covered by Rule 102 Order 21 of the Code. The appellant could not seek protection of pendency of suit instituted by her. The

Executing Court was not justified in granting stay of execution proceedings. The High Court was, hence, right in setting aside the order of the Executing Court”.

It is submitted that as per prevalent law on the issue Objections filed under Order 21 Rule 99 CPC should be rejected at the threshold, if they are frivolous and have been filed with an intention to delay the process of law. It is submitted that in cases such as the present one where the third party has already filed remedy available to it, by instituting the suit P-9, it has been held that execution of the decree should not be delayed. Accordingly, respondent no.2 will agitate her rights in the civil suit filed by her. Even this Court in **Pirthi Singh’s** case (supra) has held that where false and frivolous objections have been filed, the Court is not obligated to follow regular procedure.

Ld. Counsel for the petitioner further vehemently denies alleged possession of respondent No. 2 over the suit property. Ld. Counsel maintains that Respondent no. 1/JD is in possession of the suit property. It is submitted that in any event, it is evident that Respondent no.1/JD was in possession at the relevant time, and even if respondent no.2 was given possession subsequently, still admittedly she has filed separate civil suit dated 19.12.2016 for confirmation of possession over the suit property and therefore, her rights, if any, will be decided therein.

On the other hand, it is submitted by the learned counsel for the respondent no.2 that respondent no.2 is an NRI and she has bought the suit property from respondent no.1 in good faith by paying Rs.6 lacs upfront to respondent no.1, and the remaining amount of Rs.5 lacs was paid to the bank to clear the loan taken by respondent no.1. It is submitted that in contrast the petitioner had bought the suit property only for Rs.5

lacs. It is submitted that in the agreement dated 3.11.2008 wherefrom the petitioner is claiming ownership of the suit property, it has been mentioned that the petitioner will pay the loan amount of respondent no.1. Admittedly, this has not been done, whereas respondent no.2 has paid the entire amount. It is stated that respondent no.1 had taken a loan of Rs.8 lacs therefore, it is improbable that he would sell the suit property to the petitioner for a sum of Rs.5 lacs only. It is submitted that the transaction between the petitioner and respondent no.1 is a sham transaction and respondent no.2 is an unwitting victim as she has paid Rs. 6 lacs to the respondent no.1 as well as cleared his loan with the bank by making payment of Ra. 5 lacs, and has thus paid a total amount of Rs.11 lacs.

It is further submitted that respondent no. 2 was never served in the Civil Revision filed by the petitioner before this Court and had never engaged any counsel in the said Civil Revision. It is stated that the rights of respondent no.2 were not represented properly and case on her behalf was not argued properly. It is submitted that a General Power of Attorney was given by respondent no.1 to the husband of respondent no.2 to get the sale deed executed at any time in regard to the suit property. It is repeatedly submitted that respondent no.2 is a genuine purchaser and petitioner being an Advocate is playing fraud. It is accordingly, prayed that the Objections filed by respondent no.2 be decided as a civil suit and/or the respondent's civil suit (Annexure P-9) and the Objections filed by her be decided together. It is next submitted that in allowing the Objections filed by respondent no.2 the Executing Court has taken right decision in conformity with the provisions of Rule 100 and 101 CPC. Learned counsel, in support relies upon a Full Bench judgment of the

Karnataka High Court passed in **V.K.Rama Setty v A. Gopinath, Law**

Finder Doc Id # 15558, and judgment of the Hon'ble Supreme Court passed in **Shreenath Vs Rajesh, Law Finder Doc Id # 15977**.

In rebuttal it is submitted by the learned counsel for the petitioner that there is no whisper in the civil suit (Annexure P-9) filed by respondent no.2 to the effect that Power of Attorney was not given by her to the Advocate who represented her in the Civil Revision filed by the petitioner before this Court. It is submitted that on the contrary it is respondents who are conniving with each other to the huge loss and detriment of the petitioner who is a genuine purchaser. It is submitted that it has been rightly noted by this Court in the order dated 2.2.2015 passed in the earlier Civil Revision No.4899 of 2013 that respondent no.2 is not prohibited from filing her own civil suit to pursue her rights. It is further submitted that in any event, the petitioner is defendant no.2 in the civil suit dated 19.12.2016 (Annexure P-9) filed by the respondent no.2, and therefore, the rights inter-se the parties will be determined therein.

Heard Ld. Counsel for the parties.

The relevant provisions for consideration in the present dispute are contained in Order 21, Rules 99, 101 and 102 CPC. The same are reproduced hereinbelow:

[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 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.]

[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.]

[102. Rules not applicable to transferee pendent lite. - Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.-In this rule, "transfer" includes a transfer by operation of law.]

A reading of the above provisions broadly evinces that in an application made under Rule 99, all questions relating to right, title or interest in the property, arising between the parties, will be decided in the application itself, and not by way of a separate suit.

In my view, the only plausible interpretation, or the discernible legislative intent behind Rule 101 is, to ensure that the Executing Court does not relegate the Objector to another round of protracted litigation by way of a separate suit, and determines the right, title and interest of the Objector in the application under Rule 99 itself.

However, what would transpire in a case such as the present one where the Objector had already filed separate suit (Annexure P-9) for determination of her rights, title and interest in the suit property?

In my view, there is a bar/ necessary presumption that once the Objector has opted to agitate its rights by way of an application under Rule 99, it would not be open to the objector to avail of the remedy of a separate suit. This has to be the necessary inference drawn/ interpretation given to the provision(s) to obviate the possibility of conflicting decrees. Needless to say, even the vice versa would hold true i.e. in a case where such a suit is already pending, an Application under Rule 99, and ensuing determination under Rule 101 cannot be entertained. The objector cannot avail of both the remedies simultaneously.

In my considered view, keeping in mind the pendency of the earlier suit where the relief sought by the Objector is *relating to the right, title or interest* in the suit property itself, the Id. Executing Court could not have taken it upon itself to instead, determine the rights of Objector in respect of the suit property in present proceeding under Order 21 Rule 99 CPC. Impugned order shows that the Id. Court below has totally ignored this aspect of the matter, as also the factum of the pendency of the earlier suit for specific performance of agreement dated 17.12.2009 already filed by the Objector, where the DH is arrayed as defendant No. 2. Thus, in my view, the reliance of the Id. Executing Court on Rule 101 to the effect that “*Rule 101 further provides that all such questions relating to the right, title or interest in the property arising under Rule 99, shall be determined by the executing court and not by way of separate suit*”, is prima facie erroneous as, in the present case the separate suit (P-9) filed by the Objector for determination of her rights *relating to the right, title or interest in the property*/ in respect of the suit property was already subsisting.

In holding as above, I draw support from the case of **V.K.Rama Setty (supra)**, relied upon by the Objector, where, in a similar situation the Objector therein too had taken resort to both the remedies, of filing an application under Rule 99, as well as a Civil Suit in respect of the suit property therein. In said similar circumstances, a Full Bench of the Karnataka High Court held as under:

*“10. We are of the view that keeping in view the language employed in Order 21, Rule 99 it is optional for a person, who is other than judgment-debtor and has been dispossessed, to make an application to the Court complaining of such dispossession. Under Rule 99 the use of word "may" gives an option to a person to file application before the executing Court averring his grievance. But this rule does not make his remedy exhaustive thereby debarring him from preferring a suit for possession completely. It will be for him to choose either of the two forums. This explains the observation of the Division Bench. The Division Bench had not pronounced that even if an aggrieved person prefers an application under Rule 99, then still he will have a right to file a separate suit as well. We are clearly of the opinion that drawing of any such inference is a misreading of the judgment of the Division Bench since such an inference will be in the death of Rule 101 Order 21, Civil Procedure Code and therefore the same cannot be held to be a good law, if at all it was intended to be so laid down. We do not find it necessary to record any detailed reasoning of our own on the said aspect since, in our opinion, the issue is now finally concluded by the judgement of the Supreme Court in the case of **Noorduddin v. Dr. K.L. Anand, 1995(1) SCC 242 : 1995(2) RRR 556 (SC)**”.*

Reading of the above makes it crystal clear that the Objector cannot avail of both the remedies of a suit, as well as an application under Rule 99 simultaneously, as to do so would, in the venerable words of the Hon’ble Full Bench, ‘*be in the death of Rule 101 Order 21 CPC.*’

The same principle has been enunciated by the Hon'ble Supreme Court in the case of **Noorduddin v. Dr. K.L. Anand, (SC) : Law Finder Doc Id # 38202**, wherein Their Lordships in para 8 have held as follows:

“8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order [21](#), Rule [97](#), the Court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken.” (Emphasis supplied)

It is therefore, clear that the Code under Order 21 Rules 99 and 101, does not contemplate or even permit parallel proceedings. In my respectful view, if a separate suit has already been filed, an application under Rule 99 cannot be entertained, as that would be perverse and contrary to the scheme and purpose of Rule 101 and would lead to an anomalous situation. Both remedies cannot be availed of simultaneously, and since in the present case, the Objector had filed the civil suit prior to the filing of the present application under Order 21 Rule 99, the said application was not maintainable. The right of an objector to file the resistance application, or opt for a separate suit, is not disputed. However, as per the ratio of the above judgments, both remedies cannot be availed of simultaneously and therefore, in view of the pending civil suit filed by the objector, she could not have filed the present application. Thus, in a case such as the present one, where the suit already filed by the Objector was pending, the Executing Court could not have entertained the application under Rule 99.

Further, in my considered view, what would also take the present case out of the purview of the Order 21 Rules 99-101CPC for the purposes of the present proceeding is the extenuating fact peculiar to this case, that this Court vide order dated 2.2.2015, had already adjudicated upon the rights of the objector and held therein that she had no right, title or interest in the suit property. Accordingly, Executing Court ought to have also borne in mind that in the present case, this Court vide order dated 2.2.2015 had already held that the Objector did not have any rights, title or interest in the suit property and separate suit should have been filed by her. The said observations of this Court as made in order dated 2.2.2015, are reproduced hereinbelow:

“I have heard learned counsel for the parties and after examining the record, am of the considered opinion that this petition suffers from irregularity as respondent No.2 is not a necessary party to the suit. She has no right, title or interest in the suit property as there is no sale deed in her favour. Moreover, if respondent No.2 was having an agreement in her favour alleged to have been executed by respondent no.1 in the year 2009, she should come forward with a suit for specific performance if respondent No.1 had not honoured the agreement with her. In the absence of such suit, respondent No.2 has lost her right on account of expiry of limitation.

Be that as it may. In view of the aforesaid discussions, the order passed by the Court below is without any merit, hence the present revision petition is allowed and the order dated 17.5.2013, passed by Civil Judge (Sr.Divn.) Hoshiarpur is hereby set aside”.

Admittedly, this order was not challenged by the objector/ respondent No. 2, and had attained finality. Hence, in the execution petition emanating from the above proceedings, the resistance application could not have been entertained.

However, the learned Civil Judge (Jr. Div.) Hoshiarpur has totally ignored the abovesaid observations of this Court, made in no uncertain, and clear, absolute and unambiguous terms, and which are binding in respect of the present proceedings. Once this Court had already held that the Objector was not a necessary party to the petitioner's civil suit and that she had no right, title or interest in the suit property as there was no sale deed in her favour and the remedy available to her was to file a civil suit for specific performance of the agreement, the Objections filed by respondent no. 2 could not have been entertained as the same amounts to abrogation of the order dated 2.2.2015 passed by this Court. This is especially so in view of the fact that respondent no.2 is not stated to have challenged the said order dated 2.2.2015 which has become final.

Further, in view of the earlier round of litigation between the parties where the application filed by the Objector under Order 1 Rule 10 CPC stood dismissed up to this Court, the learned Executing Court could not have considered respondent No. 2 as 'any person' in terms of Order 21 Rule 99 CPC. Learned Court below ought to have fathomed that what relief respondent no.2 could not get by way of impleadment, she is now seeking by way of filing Objections in the petitioner's execution petition. In my view, that amounts to an attempt on part of the Objector to outreach due process.

In the present case, admittedly, the agreement to sell dated 3.11.2008 in favour of the petitioner is prior in time to the alleged agreement dated 17.12.2009 in favour of respondent No. 2. Pursuant thereto, even a decree in favour of the petitioner was passed as far back as on 25.9.2015. However, the petitioner is still being denied the fruits of the

decree. In my view, the execution of the decree, and the rights that have accrued to the petitioner by way of the said decree, cannot be stalled/ held in abeyance. To do so, would be gravely unjust and unfair to the petitioner. As held by the Hon'ble Supreme Court, as also various High Courts in numerous judicial pronouncements, frivolous objections that lead to unnecessary delay in execution of the decree, are to be discouraged.

In this regard, the following observations of this Court as contained in Paras 6 and 7 in case of **Pirthi Singh (supra)** are relevant:

“6. The controversy also stood settled by the Civil Court in earlier litigation vide judgment and decree dated 20.10.2015. The objector never depicted the boundaries of property No.1003. By levelling the objections to be third party objections, the objector/petitioner has tried to impress upon the Court that the third party objections should have been decided by following the procedure i.e. necessary issues should have been framed.

7. The Court is not obligated to follow regular procedure in every false and frivolous objections. Issues are not to be framed in every unfounded, false and frivolous objections filed by someone in execution of a decree. In considered opinion of this Court, the objections were rightly rejected by the executing Court and the lower Appellate Court was fully justified in dismissing the appeal against the order of dismissal of objections”.

As regards the argument advanced on behalf of the respondent No. 2 to the effect that because the petitioner is an Advocate he had paid lesser amount than the respondent No. 2/ objector and therefore, his transaction is sham transaction, the same already stands rejected as petitioner has a decree in his favour. As regards the second argument put forth by the respondent No. 2 that she was never served in the Civil Revision No. 4899 of 2013, there is not an iota of material placed on record in support of the said allegation. Judgments relied upon by the

Objector have already been discussed hereinabove. Accordingly, arguments raised on behalf of the Objector do not stand up to legal scrutiny and are therefore, rejected.

To sum up, it is reiterated that there is no issue with the clear mandate of Order 21 Rules 99-101 that it is incumbent upon the Executing Court itself to decide the objections of the third-party objector under the resistance application. This Court is well aware of the well-entrenched legal position by way of judicial pronouncement in respect of Order 21 Rule 99 and Rule 101, CPC. The clear and categorical enunciation in a plethora of judgments is undisputedly to the effect that the object of Rule 99 r/w Rule 101 is to ensure that *“a party is not thrown out to relegate itself to the long drawn out, arduous procedure of a fresh suit”*. There can be no issue with the well-acknowledged legal position that after amendment in Civil Procedure Code in 1976 claims of the third parties to the property in execution are now required to be determined by the executing court itself in accordance with provisions under Order 21 Rule 101 with right of appeal to the higher court against such adjudication treating it to be a 'decree' under Order 21 Rule 103 of the Code. However, in a case such as the present one there are three extenuating factors – 1. Suit of the Objector/Respondent no. 2 in respect of the suit property was already pending, having been filed prior to the filing of the resistance application under O21 Rule 99 CPC; 2. Simultaneous proceedings undertaken by the Objector by way of the suit as well as the resistance application would/ may result in conflicting decrees; 3. Order dated 2.2.2015 whereby this Court has held that Respondent no. 2 has no right, title, or interest in the suit property- which order was never challenged by the respondent No. 2, and attained finality.

Accordingly, for the reasons stated above, present
Revision Petition is allowed and the impugned order dated 3.10.2017
(Annexure P-10) passed by the Executing Court is set aside.

Pending applications, if any, stand disposed of.

(Nidhi Gupta)
Judge

15.02.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No