

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.118 of 2022

Pappu Singh, Son of Late Suryanath Singh, Resident of Bhabua Town Ward No. 10, P.O. and Police Station - Bhabua, District - Kaimur (Bhabua)

... .. Petitioner/s

Versus

1. Chandra Prakash Arya, Son of Late Badri Prasad Arya, Resident of Bhabua Ward No. 12, P.S. Bhabua, District - Kaimur (Bhabua)
2. Shiv Narayan Mallah Son of Late Nanhu Mallah, Resident of Bhabua Ward No. 5, Post and P.S. - Bhabua, District - Kaimur (Bhabua)
3. Brajesh Prasad, Son of Late Satya Narayan Mallah, Resident of Bhabua Ward No. 5, Post and P.S. - Bhabua, District - Kaimur (Bhabua)
4. Most. Daljira Kuwer, Widow of Late Shiv Govind Mallah, Resident of Bhabua Ward No. 15, Post and P.S. - Bhabua, District - Kaimur (Bhabua)
5. Ramesh Mallah, Son of Late Shiv Govind Mallah, Resident of Bhabua Ward No. 15, Post and P.S. - Bhabua, District - Kaimur (Bhabua)
6. Ghaghar Mallah, Son of Late Shivgovind Mallah, Resident of Bhabua Ward No. 15, Post and P.S. - Bhabua, District - Kaimur (Bhabua)
7. Dharmasheela Mallah, Daughter of Late Shivgovind Mallah and Wife of Shyam Sunder Chaudhary (Mallah), Resident of Village - Sagarpur, Post - Khudwa, P.S. and District - Aurangabad.
8. Dharmendra Kumar, Son of Late Mithai Paswan, Resident of Bhabua Ward No. 2, P.O. and P.S. - Bhabua, District - Kaimur (Bhabua).
9. Mahendra Kumar Son of Late Mithai Paswan, and under guardianship of his mother namely Most. Malati Devi, Resident of Bhabua Ward No. 2, P.O. and P.S. - Bhabua, District - Kaimur (Bhabua).
10. Most. Malati Devi, Widow of Late Mithai Paswan, Resident of Bhabua Ward No. 2, P.O. and P.S. - Bhabua, District - Kaimur (Bhabua).
11. Mira Kumari, D/o Late Mithai Paswan, under guardianship of his mother namely, Most Malati Devi, Resident of Bhabua Ward No. 2, P.O. and P.S. - Bhabua, District - Kaimur (Bhabua).
12. Bholi Kumari D/o Late Mithai Paswan, under guardianship of his mother namely, Most Malati Devi, Resident of Bhabua Ward No. 2, P.O. and P.S. - Bhabua, District - Kaimur (Bhabua).
13. Krishna Singh, Son of Late Shyama Singh, Resident of Bhabua Ward No. 13, Post and P.S. Bhabua, District - Kaimur (Bhabua)
14. Radhika Devi, Wife of Late Shyama Singh, Resident of Bhabua Ward No. 13, Post and P.S. Bhabua, District - Kaimur (Bhabua)
15. Usha Devi, Wife of Pradip Singh, Resident of Village - Sarangpur, P.S. - Bhabua, District - Kaimur (Bhabua)
16. Pushpa Devi, Wife of Awadhesh Singh, Resident of Village - Sirihira, P.S. - Chand, District - Kaimur (Bhabua)
17. Rupa Devi, Wife of Sharda Singh, Resident of Village - Mahesua, P.S. -



Bhabua, District - Kaimur (Bhabua)

18. Neelam Devi, Wife of Prabhat Singh, Resident of Village - Shivpur, P.S. - Bhabua, District - Kaimur (Bhabua)
19. Dhananjay Singh, Son of Late Jai Prakash Singh, Resident of Bhabua Ward No. 20, Bhabua, District - Kaimur (Bhabua)
20. Sonu Singh, Son of Nagina Singh, Resident of Bhabua Ward No. P.S. Bhabua, District - Kaimur (Bhabua)

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr.Ashok Kumar Garg, Advocate
For the Respondent/s	:	Mr. K.N. Chaubey, Sr. Advocate Mr.Ambuj Nayan Chaubey, Advocate Mr. Dineshwar Pandey, Advocate, Mr. Sanjay Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 03-04-2024

The decree-holder/petitioner has filed the instant petition under Article 227 of the Constitution of India seeking following reliefs :

“(i) For issuance of an appropriate writ/order/direction, for quashing the order dated 08.04.2021 passed by Learned Sub Judge 2nd, Kaimur (Bhabua)/ Learned Executing Court in Execution case No.03 of 2017 (Pappu Singh Vs. Sheo Narayan Mallah and others) whereby the Learned court below has accepted the objection/petition filed by Respondent no.1/objector Under Order 21 Rule 97 C.P.C. by which the Learned Court below has stayed the proceeding of Ex. Case no.03/2017 till determination of Right, title and possession of



respondent no.1/objector.

(ii) For issuance of an appropriate writ/order/direction, for directing the Learned Executing court to decide the Execution case No.03/207 filed by petitioner within short span of time and as well as within Time limit framed by larger bench of Hon'ble Apex court in Civil Appeal No.1659-1660 of 2021 (Rahul S Shah Vs. Jitendra Kumar Gandhi and others) reported in 2021(3)BLJ 414 (SC) vide judgment dated 20.04.2021 by which Hon'ble Apex court has directed to the Executing courts to decide the execution case within six month.

(iii) For grant of any relief (s) the petitioner would be entitled to in the facts and circumstances of the case”.

2. The shorts facts of the case, as it appears from the record, are that Title Suit No.301/1999 was filed by the plaintiff/decree-holder/petitioner and subsequent thereto Title Appeal No.24/2011 was filed which was decided vide judgment dated 09.11.2016 in favour of the decree-holder/petitioner. The Title Suit No.301/1999 was filed with a prayer that title and possession of plaintiff be declared over the suit land and in case the plaintiffs were found to be out of possession, the possession be restored through the process of the court. However, learned Sub Judge, 2nd, Kaimur at Bhabua dismissed the title suit vide judgment and decree dated 28.02.2011 and 15.03.2011,



respectively. Against the dismissal of the title suit, the plaintiff preferred title appeal before the learned District Judge, Kaimur at Bhabua and the said appeal was decreed in favour of the decree-holder/petitioner by the learned Additional District Judge-5, Kaimur at Bhabua vide judgment and decree dated 09.11.2016 and 21.11.2016, respectively whereby the learned first appellate court set aside the judgment and decree of the learned trial court by declaring the title and possession of the decree-holder/petitioner over the suit land and further directed the defendant nos. 4 and 5 to remove the encroachment within one month. The said judgment and decree of the learned first appellate court remained unchallenged. After filing of the Execution Case No.03 of 2017, the objector/respondent no.1 filed objection under Order 21 Rule 97 of the Code of Civil Procedure (hereinafter referred to as 'the Code') with averment that the land mentioned in the Execution Case No.03/2017 was purchased land of his grandmother, namely, Ramvarti Kuer, vide Sale Deed No.4328 dated 16.07.1943. Further averment was made that out of entire purchased land, the grandmother of objector/respondent no.1 has exchanged some part of land with Gajadhar Mallah vide Exchange Deed No.1294 dated 05.06.1944. However, the learned first appellate court



disbelieved the existence and legality of Sale Deed dated 16.07.1943 in its judgment dated 09.11.2016 passed in Title Appeal No.24/2011. It also appears from the record that the objector/respondent no.1 claimed title and possession over Plot Nos.272, 273, 276, 277 and 278 on the basis of entry made in the municipal *Khatiyān*. Thereafter, the learned executing court heard both the sides and passed the order dated 08.04.2021 admitting the objections of the objector/respondent no.1 and stayed the execution proceeding. Aggrieved by the said order of the learned Sub Judge, 2nd, Kaimur at Bhabua, the decree-holder/petitioner has approached this Court by filing the instant civil miscellaneous petition.

3. Mr. J.S. Arora, learned senior counsel, appearing on behalf of the decree-holder/petitioner assailed the impugned order on a number of grounds. Mr. Arora submitted that the order of the learned executing court is completely illegal and arbitrary. The learned executing court has missed the point that the decree-holder/petitioner has filed the execution case for execution of decree upon the Plot Nos. 370, 379, 390, 391, 392, 395, 396, 323, 326, 327, 272, 273, 274, 277 and 278, whereas the objector/respondent no.1 has only been claiming his right over Plot Nos. 272, 273, 276, 277 and 278. Still on the petition



field by the objector/respondent no.1 under Order 21 Rule 97 of the Code, the whole execution proceeding has been stayed by the learned executing court. So the order has been passed in a mechanical manner. Further, the learned executing court has not considered the well established principle of law that entry made in the revisional survey or municipal survey *Khatiyani* is not the proof of title and the Sale Deed dated 16.07.1943 had already been declared illegal by the learned first appellate court in Title Appeal No.24 of 2011 and the claim of the objector is based on the aforesaid sale deed. The judgment of the learned first appellate court has not been challenged by the objector or any other person, hence, it has attained finality. The learned trial court has not taken into consideration the fact that the objector/respondent no.1 has no right over the land in question and it is only the municipal survey entry based on sale deed of the year 1943 which is the sole foundation of the claim of the objector/respondent no.1, but that sale deed has been declared illegal by the learned first appellate court. So, allowing the application of the objector/respondent no.1 in the aforesaid facts and circumstances is completely against the provisions of law. The learned executing court also did not take into consideration the fact that the objector has all along been knowing about the



proceeding going on in the Title Suit No.301/1999 as well as in the Title Appeal No.24/2011. Still he chose not to put his appearance and contest either the suit or the appeal.

4. Mr. Arora referred to the decision of the Hon'ble Apex Court in the case of ***Ghan Shyam Das Gupta vs. Anant Kumar Singh*** reported in ***AIR 1991 SC 2251*** on the point that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the court must not allow the judgment debtor or any person instigated or raising frivolous claim to delay the execution of the decree. Since the objector/respondent no.1 wants to prolong the proceedings by filing frivolous petition, it should have been nipped in the bud.

5. Mr. Arora further referred to the decision of the Hon'ble Apex Court in the case of ***Rahul S Shah Vs. Jinendra Kumar Gandhi and Others*** reported in ***2021 (6) SCC 418*** on the point that the executing court must dispose of the execution proceeding within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.



Mr. Arora pointed out that the learned executing court has stayed the proceeding of Execution Case No.03/2017 on the objection of stranger to the proceedings till adjudication of right, title and possession of objector/respondent no.1 which is totally illegal, arbitrary and liable to be set aside by this Court.

6. On the issue of suffering of decree-holder due to delay in execution of decrees, Mr. Arora referred to the decision of Privy Council in the case of *The General Manager of the Raj Durbhunga vs. Maharaja Coomar Ramaput Singh*, reported in (1871-72) 14 Moore's I.A. 605, wherein it has been observed that the actual difficulties of a litigant in India begin when he has obtained a decree. Similar is the plight of the petitioner.

7. Mr. Arora further relied on the decision of the Hon'ble Apex Court in the case of *Shub Karan Bubna @ Shub Karan Prasad Bubna vs. Sita Saran Bubna* reported in (2009) 9 SCC 869 wherein the Hon'ble Apex Court held that the execution proceedings which are supposed to be handmaid of justice and to sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.

8. Mr. Arora further submitted that the learned executing



court has misinterpreted the judicial pronouncements of the Hon'ble Apex Court in the cases of *S.Bhaskaran Vs. Sebastian (dead) by L.Rs.* reported in *2019 (4) PLJR (SC) 1*, *Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal* reported in *AIR 1997 SC 856* and *Silverline Forum Pvt. Limited vs. Rajiv Trust* reported in *AIR 1998 SC 1754* while passing the impugned order dated 08.04.2021.

9. Thus, Mr. Arora submitted that the objector/respondent has filed the objection petition with a view to frustrate the decree of the decree-holder/petitioner and to deny him the fruits of the decree. Hence, the impugned order be set aside and the learned trial court be directed to expedite the execution proceedings and complete the same within the time frame stipulated by the Hon'ble Apex Court in the case of *Rahul S Shah* (supra).

10. On the other hand, Mr. K. N. Choubey, learned senior counsel, appearing on behalf of the objector/respondent no.1 vehemently contended that the contention of Mr. Arora, learned senior counsel, appearing on behalf of the decree-holder/petitioner is not at all sustainable. Mr. Choubey submitted that it has been contended on behalf of the decree-holder/petitioner that the objector did not challenge the claim of



the decree-holder/petitioner either in suit or in appeal, but when he has not been made a party, how could he challenge the claim of the decree-holder/petitioner before the learned trial court or the learned first appellate court. It is not the case of the decree-holder/petitioner that subsequent to the passing of the appellate order, the objector has come into possession, still the decree-holder/petitioner played fraud upon the court and did not mention about five plots, namely, Plot Nos. 272, 273, 276, 277 and 278 being in possession of the objector and the objector being a necessary party in the case. With regard to the aforesaid five plots, the plaintiff/petitioner has not come before the learned subordinate courts with clean hands and the judgment of learned first appellate court is based on fraud.

11. Mr. Choubey further submitted that the suit property of the execution decree is the purchased property of the grandmother of the objector which she purchased vide registered Sale Deed No.4328 dated 16.07.1943. Out of this purchased property, she exchanged some part of it vide an Exchange Deed No.1294 dated 05.06.1944 with one Gajadhar Mallah. The land remaining after exchange came to be entered into the municipal *Khatiyani* in the name of only son of Ramvati Kuer, namely, Badri Pd. Arya, who was father of the objector



and the land consisted of M.S. Plot Nos. 272, 273, 276, 277 and 278. From the averments made in Title Suit No. 301/1999, it is apparent that much prior to filing of the said title suit, the suit property was sold vide registered Sale Deed No.4328 dated 16.07.1943 and the name of the vendees came to be entered into the municipal survey *Khatiyān*. Even after having knowledge of the sale deed, no suit was brought within three years for declaring the said sale deed illegal and void and hence, as per the ratio laid down by the Hon'ble Supreme Court in the case of ***Mohd. Noorul Hoda v. Bibi Raifunnisa & Ors.*** reported in **(1996) 7 SCC 767**, the suit of the plaintiff was barred under Section 31 of the Specific Relief Act. It is also evident from bare perusal of the plaint of Title Suit No. 301/1999, the persons, whose names were existing in municipal *Khatiyān* with regard to the suit property, have not been made party and no relief was sought against them. So, the decision of the Title Appeal No. 24/2011 was not binding upon the objector who is still in peaceful possession of the land. Furthermore, since the objector/respondent no.1 was not made party by the petitioner/decreed holder/appellant/plaintiff, the finding of the learned first appellate court with regard to sale deed of 16.07.1943 would not be binding upon the objector/respondent



no.1.

12. Mr. Choubey relied on paragraphs 21 to 30 of the decision of Hon'ble Apex Court in the case of ***A.V. Papayya Sastry & Ors. Vs. Government of A.P. & Ors.*** reported in **2007 (2) PLJR (SC) 201** on the aspect of fraud vitiating everything.

13. Mr. Choubey further submitted that fraud is also apparent from the records that M.S. *Khatiyani* was available on record in Title Suit No. 301/1999 and the plaintiffs were having knowledge of the entries in the *Khatiyani*, still they did not make the objector as a party in the case and thus a fraud was committed upon the court. So relying on the decision of ***A.V. Papayya Sastry & Ors. (supra)***, the plaintiffs have not come before the subordinate courts with clean hands and their claim was liable to be thrown out at the threshold. Since the decision in the Title Appeal No. 24/2011 was obtained in absence of the *Khatiyani raiyat* and his legal heirs, the judgment and decree were nullity against the objector/respondent.

14. Mr. Choubey further submitted that since the decree has been obtained against the aforesaid five plots playing fraud upon the court, the same is nullity from the beginning. He has relied on Halsbury's laws of England Vol-16 (4th Edition) Para 1553 on the principle that a party must come to the court with



clean hands and equity demands that if the party has not approached the court with clean hands, in such a case, his case should be thrown out at the threshold, The relevant extract reads as under :

“1553. Judgment obtained by fraud. Fraud is an extrinsic, collateral act which vitiates the most solemn proceedings of court of justice. A judgment obtained by fraud or collusion, even, it seems, a judgment of the House of Lords, may be treated as a nullity. An exception to the generality of these propositions should probably be made where a purchaser has acquired title to property in good faith and for value upon the faith of a judgment in rem. Apart from this they may be accepted without qualification in favour of persons who were not party to the judgment, whether it was in rem or in personam. On this principle the recovery of penalties, which it is not intended to enforce, in a friendly action instituted in order to prevent hostile actions, is no bar to a second action by another party for penalties for the same offence.

In order to avoid being estopped by it, a party to a judgment obtained by fraud should generally apply to have it set aside”.



15. Mr. Choubey also referred to the observation of the Chief Justice Edward Coke of England made about three centuries ago that “fraud avoids all judicial acts, ecclesiastical or temporal”. Mr. Choubey further reiterated that a judgment or decree obtained by playing fraud on the court is a nullity and non-est in the eyes of law.

16. Mr. Choubey further submitted that there is no merit in the contention of the decree-holder/petitioner that the objector/respondent no.1 has no rights to get his claim adjudicated. If objector is in possession claiming his independent title, Order 21, Rule 97 to 106 of the Code takes care of such eventualities.

17. Mr. Choubey referred to the decision of the Hon’ble Supreme Court in the case of ***Brahmdeo Chudhary vs. Rishikesh Prasad Jaiswal and another*** reported in ***AIR 1997 SC 856*** on the point that even a stranger can put his claim adjudicated, that too, prior to losing possession to decree-holder. On the same aspect, he referred to the decision of the Hon’ble Supreme Court in the case of ***Shreenath and another vs. Rajesh and others*** reported in ***AIR 1998 SC 1827*** on the point that third party in possession can object and get his claim adjudicated when sought to be dispossessed by the decree-



holder and he need not wait until he is dispossessed.

18. Mr. Choubey further submitted that in the case of ***Silverline Forum Pvt. Ltd vs. Rajiv Trust and another*** reported in ***AIR 1998 SC 1754***, the Hon'ble Supreme Court held that resistance or obstructions made even by a third party to the execution of decree can 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" and the Hon'ble Supreme Court further observed that these 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.

19. Mr. Choubey further submitted that all relevant issues arising in the matter of an application under Order 21 Rule 97 or Rule 99 of the Code shall be determined by the learned executing court and not by separate suit and referred the



decision of the Hon'ble Supreme Court in the case of ***N. S. S. Narayana Sharma and others vs. M/s. Goldstone Exports (P) Ltd. and others*** reported in ***AIR 2002 SC 251***. Similar to the effect is the decision of Rajasthan High Court in the case of ***Smt. Sarita Gupta Vs. Sudhir Jaju & Ors.*** reported in ***1997 (2) CCC 122 (Raj.)*** wherein it has been held that all questions (including the question 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. Thus, Mr. Choubey submitted that there is no infirmity in the impugned order and the same be sustained.

20. By way of reply, Mr. Arora submitted that if there were intention of the plaintiff not to make party the objector, he would not have made other persons parties as well as altogether 19 persons were made parties before the learned subordinate courts. The decree holder/petitioner does not admit the claim of



the objector and as he did not seek any relief against the objector, there was no occasion to make objector as party in the case. The objector has been waiting all along and one fine morning came before the executing court and filed his objection without disclosing the fact how he came to know about the execution proceeding and no material to this effect has been brought on record. This means the objector was having knowledge of the cases with regard to suit property. Now he has appeared only with the intention to obstruct the execution proceeding at the final stage. Mr. Arora further submitted that except the statement made in the objection petition, no material has been brought on record to substantiate his claim by the objector and for this reason, the authorities relied upon by Mr. Choubey, learned senior counsel appearing on behalf of the objector/respondent no.1, i.e., ***Brahmdeo Chudhary (supra), Shreenath and another (supra), Silverline Forum Pvt. Ltd. (supra)*** and ***N.S.S. Narayana Sarma and Ors. (supra)*** are not of any help to the case of the objector/respondent no.1. Moreover, as the plaintiffs were having possession over the suit property and the persons whose names though appeared in the municipal survey entry, but they never challenged the title, interest and possession of the plaintiff, they were not made



parties and, hence, it could not be said that the plaintiffs perpetrated any fraud upon the court by not making the objector as a party. Thus, Mr. Arora submitted that the impugned order has been passed brushing aside the objection of the decree-holder/petitioner and the learned executing court stayed the execution proceeding against the established canons of law and hence, the impugned order be set aside.

21. I have given my thoughtful consideration to the different aspects of the matter as well as the rival submissions of the respective parties. The law on the point is well settled that when there is resistance to delivery of possession to decree-holder or purchaser under Order 21 Rule 97 and Rule 99, all questions (including the question 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, as prescribed under Rule 101 of Order 21 of the Code. So, the objector has got a right and



as already discussed in the aforesaid decisions, namely, ***Brahmdeo Chudhary (supra), Shreenath and another (supra), Silverline Forum Pvt. Ltd. (supra)*** and ***N.S.S. Narayana Sarma and Ors. (supra)***. On objection being made by the objector, learned executing court is duty bound to decide the objection.

22. The other aspect of the matter is with regard to the objector/respondent no.1 or the persons whose name appear in the municipal survey *Khatiyani* and being in possession, not being made party and the suit of the plaintiff/petitioner and the decision of the learned first appellate court being nullity against the objector on this account, I find certain merit in the submission of Mr. Choubey, learned senior counsel appearing on behalf of the objector/respondent no.1. If the name of the father of the objector had been appearing in the municipal survey *Khatiyani* and the said issue was raised on behalf of the other defendants/respondents before the learned first appellate court as is evident from the discussion of point no.3 about non-joinder of the parties in the judgment of the learned first appellate court, it would not suffice for the purpose of proper adjudication of the *lis* to say that since no relief was claimed against such person, they were not made party as they did not



challenge the title and possession of the plaintiffs. But such claim is contradictory. It is evident that the objector is in possession of the five plots for which delivery of possession has been sought. The plaintiffs made the submission that the persons and their successors whose names have been entered into the municipal survey entries did not challenge the title and possession of the plaintiffs and for this reason, they were not made parties. But then how come the plaintiffs are seeking enforcement of decree and delivery of possession with regard to Plot Nos. 272, 273, 276, 277 and 278. So the defence of the decree-holder/petitioner on this ground is without any merit and his conduct appears to be fraudulent.

23. There can be no quarrel over the contention of Mr. Arora about expeditious disposal of the execution case and the guidelines provided in the case of **Rahul S Shah** (supra) had to be followed by the executing courts in letter and spirit. However, making hurry in matters of execution proceeding under certain conditions could even be detrimental to the cause of justice. Whatever might be the situation from the perspective of decree-holder, but the law, as it stands, has to be given effect whether the court likes the result or not as has been observed by the Hon'ble Supreme Court in the case of **Jini Dhanrajgir &**



Anr. v. Shibu Mathew & Anr. reported in **2023 SCC OnLine 643**. In paragraph 3, the Hon'ble Supreme Court referred to its earlier decision in the case of *Martin Burn Ltd. v. Corporation of Calcutta* reported in **AIR 1966 SC 529** wherein the Hon'ble Supreme Court held that the court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. When the legislature has provided certain rights even to stranger under Rule 97 to 106 of Order 21 of the Code, the courts are duty bound to give effect to such provisions and if in giving effect, such provisions result into delay in disposal of execution proceeding, the same cannot be said to be causing injustice to the decree-holder.

24. In the light of the discussions made so far, I do not find any infirmity in the impugned order since I am of the considered opinion that in the given facts and circumstances, the objector/respondent no.1 has got every right to agitate his claim before the learned executing court and the learned executing court has rightly allowed the application filed on behalf of the objector/respondent no.1 staying the execution proceeding. However, as the objector has laid his claim only against the Plot Nos. 272, 273, 276, 277 and 278, stay of execution proceeding against other plots was simply unwarranted and the learned



executing court exceeded its jurisdiction. Hence, I do not think the learned executing court was correct in its approach in staying the execution proceeding against all the plots and to that extent the impugned order needs modification and stay should operate only against municipal survey plot nos. 272, 273, 276, 277 and 278.

25. In the aforesaid facts and circumstances and discussions made hereinbefore, the impugned order is affirmed with modification that the stay granted by the learned executing court would operate only against Plot Nos. 272, 273, 276, 277 and 278.

26. With the aforesaid modification in the impugned order dated 08.04.2021, the instant petition stands dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	06.03.2024
Uploading Date	03.04.2024
Transmission Date	NA

