

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.411 of 2024

1. Zaibunnisha Wife of Late Makdum Khan Resident of Old G.T. Road, Sadar Chowk, P.O. and P.S.- Dehri-on-Sone, Gangauli, Rohtas, Bihar- 821305
2. Anavarul Khan Son of Late Makdum Khan Resident of Old G.T. Road, Sadar Chowk, P.O. and P.S.- Dehri-on-Sone, Gangauli, Rohtas, Bihar- 821305
3. Imran Khan Son of Late Makdum Khan Resident of Old G.T. Road, Sadar Chowk, P.O. and P.S.- Dehri-on-Sone, Gangauli, Rohtas, Bihar- 821305
4. Md. Abdullah Khan Son of Late Makdum Khan Resident of Old G.T. Road, Sadar Chowk, P.O. and P.S.- Dehri-on-Sone, Gangauli, Rohtas, Bihar- 821305
5. Munna Khan Son of Late Makdum Khan Resident of Old G.T. Road, Sadar Chowk, P.O. and P.S.- Dehri-on-Sone, Gangauli, Rohtas, Bihar- 821305
6. Daud Ali Son of Late Makdum Khan Resident of Old G.T. Road, Sadar Chowk, P.O. and P.S.- Dehri-on-Sone, Gangauli, Rohtas, Bihar- 821305
7. Shahnawaz Khan son of Late Makdum Khan Resident of Old G.T. Road, Sadar Chowk, P.O. and P.S.- Dehri-on-Sone, Gangauli, Rohtas, Bihar- 821305
8. Enamul Khan Son of Late Makdum Khan Resident of Old G.T. Road, Sadar Chowk, P.O. and P.S.- Dehri-on-Sone, Gangauli, Rohtas, Bihar- 821305

... .. Petitioners

Versus

1. Naseema Khatoon Wife of Nurul Hoda, Resident of Mohalla- Islamganj, Dehri, P.S.- Dehri, District- Rohtas, Bihar- 821305.
2. Musarat Khatoon Wife of Gyas Khan R/o- Bario, Post- Sakardih, P.S.- Govindpur, District- Dhanbad, Jharkhand- 828109.
3. Bano Khatoon Wife of Naushad Khan R/o Raja Bhag Mohalla, P.S.- Rafiganj, Rafiganj, District- Aurangabad.
4. Juhi Khatoon Wife of Majhar Khan R/o Ajad Nagar, 2 Post Ground, Kulti, West Bengal, Post-Kulti, P.S. Kulti.
5. Rukaiya Khatoon Wife of Late Munir Khan Resident of Raja Muhalla, Puab Muhalla, Piro, District- Bhojpur, Post-Piro, P.S.-Piro.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Puneet Siddhartha, Advocate Mr. Girish Pandey, Advocate
For the Respondent/s	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Akhouri Vipin Bihari Shrivastava, Advocate Ms. Patla Kumari, Advocate



CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 22-10-2024

The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 20.02.2024 passed by the learned Munsif, Dehri-on-Sone, Rohtas in Execution Case No. 01 of 2013, whereby and whereunder the petition dated 23.01.2014 filed by the petitioners under Order 21 Rules 97 and 99 the Code of Civil Procedure, 1908 (for short 'the Code') and also the petitions dated 19.04.2018 and 06.09.2018 have been rejected.

02. The conspectus of the case, as it emerges from the record, is that one Khadim Khan was the ancestor of the petitioners. Khadim Khan was married with Rabia @ Rabia Khatoon and out of the said wedlock, one son, namely Makdum Khan and three daughters, namely Anisha Khatoon, Kaniz Khatoon and Buchun Khatoon were born. Rabia Khatoon died in the year 1955 and after her death, Khadim Khan solemnized marriage with Ashma Bibi @ Ashma Khatoon and out of the said wedlock, Naseema Khatoon was born. Ashma Khatoon died in the year 1974. Khadim Khan died on 24.12.1984 leaving behind Makdum Khan, Anisha Khatoon, Kaniz Khatoon, Buchun Khatoon and Naseema Khatoon as his legal heirs/representatives. Khadim Khan solemnized marriages of



her daughters, Anisha Khatoon, Kaniz Khatoon and Buchun Khatoon during his lifetime and all the three daughters are no more. Further, Makdum Khan died on 24.12.2015, leaving behind petitioners and respondent nos. 2 to 5 as his legal heirs/representatives. Petitioner No. 1 is the wife of Makdum Khan and petitioner nos. 2 to 8 are sons of Makdum Khan. Respondent Nos. 2 to 5 are the daughters of Makdum Khan. Respondent No. 1 is the daughter of Khadim Khan. Khadim Khan and Ashma Khatoon died intestate. It further transpires that Khadim Khan had purchased two properties in the name of his second wife Ashma Bibi @ Ashma Khatoon with following descriptions;

(i) A property pertaining to House situated at Ward No. 3/10, Holding No. 442, Area 2 M.S. Khata No. 243, M.S. Plot No. 573, Old Khata No. 140, Plot No. 1111 at Dehri, Dalmiyanagar through registered sale deed dated 25.11.1968 from one Hussaini Bhai.

(ii) A plot having an area of 5 *kattha* situated at Dehri-on-Sone, District Rohtas, Bihar.

It is claimed by the petitioners that Ashma Khatoon was not having any source of income and entire consideration



amount of sale deed dated 25.11.1968 and also the consideration amount of the plot having an area of 5 *kattha* were paid by late Khadim Khan. Thereafter, Ashma Khatoon orally gifted the property purchased through the registered sale deed dated 25.11.1968 to her husband, Khadim Khan. It is further claimed that after death of his wife Ashma Khatoon, Khadim Khan executed a registered gift deed dated 18.04.1981 in favour of his son, Makdum Khan pertaining to the property purchased through sale deed dated 25.11.1968 and since then Makdum Khan, his heirs and legal representatives are having the possession of the same and have been paying *Malguzari Tax*.

It further appears that Respondent No. 1 filed a title suit bearing Title Suit No. 129 of 1991 against Makdum Khan for setting aside the registered gift deed dated 18.04.1981 in the court of learned Munsif-2nd Sasaram on the ground that property of the title suit was orally gifted to the respondent no. 1 by her mother, Ashma Khatoon. The learned trial court allowed the said title suit vide judgment dated 20.02.1993 declaring registered gift deed dated 18.04.1981 to be null and void. Being aggrieved by the judgment dated 20.02.1993 and decree dated 25.02.1993 passed in Title Suit No. 129 of 1991, Khadim Khan preferred Title Appeal No. 27 of 1993 and the learned



Additional District Judge, Fast Track Court No. 3, Rohtas at Sasaram, vide judgment dated 27.12.2005 dismissed the appeal. However, the learned first appellate court held that both, oral gift as claimed by the respondent no. 1, and registered gift deed dated 18.04.1981 as claimed by the husband of the petitioner no. 1, were not proved. Thereafter, Khadim Khan preferred a second appeal before this Court bearing Second Appeal No. 33 of 2006 and the said second appeal has been admitted by this Court vide order dated 20.10.2008 and the same is pending for hearing. It further transpires that during pendency of the Title Appeal No. 27 of 1993, respondent no. 1 had preferred an eviction suit bearing Eviction Suit No. 09 of 1993 before the learned Munsif, Dehri-on-Sone, Rohtas for payment of arrears of rent and personal necessity against Hussaini Bhai stated to be the tenant of Khadim Khan. In the said Eviction Suit No. 09 of 1993, Hussaini Bhai filed a written statement stating therein that there was no landlord-tenant relationship between him and respondent no. 1. The eviction suit was allowed vide judgment dated 14.03.2013 and decree dated 20.03.2013. Being aggrieved by the judgment dated 14.03.2013 and decree dated 20.03.2013 passed in Eviction Suit No. 09 of 1993, the said Hussaini Bhai preferred an appeal being Title Eviction Appeal No. 42 of 2013



before the District Judge, Rohtas at Sasaram but later on, Hussaini Bhai left pairvi in title eviction appeal and left the suit premises and went to Gujarat and died there. The said title eviction appeal was dismissed in default vide order dated 09.02.2016 passed by the learned Additional District Judge-II, Rohtas at Sasaram. Thereafter, since the Hussani Bhai had left the premises, the execution of the eviction case bearing Execution Case No. 01 of 2013 is being proceeded against Makdum Khan and his family members as they claimed possession of the suit property. Makdum Khan then preferred an application under Order 21 Rule 97 and 99 of the Code on 23.01.2014, praying therein that the possession of Makdum Khan is valid and further requested that the eviction proceeding may be stayed till decision of Second Appeal No. 33 of 2006. The learned executing court did not pass any order on the petition dated 23.01.2014 during the life time of Makdum Khan. Makdum Khan died on 24.12.2015. After death of Makdum Khan, petitioner no. 2 filed a petition on 02.07.2016 in Execution Case No. 01 of 2013 and gave information to the learned executing court about death of his father and had also given the details of legal heirs of his father. A rejoinder to the said petition was filed by the respondent no. 1 stating therein



that the petition filed by the heirs of late Makdum Khan is misconceived and the same should be rejected. In the year 2016, Hussaini Bhai died and in these circumstances, petitioner no. 2 filed petition dated 19.01.2017 in the Execution Case No. 01 of 2013 praying therein that execution cannot proceed against a dead person and proceeding should be dropped. The respondent no. 1 filed a rejoinder with averment that since judgment debtor is dead, Order 22 Rule 4 of the Code is not applicable in the question of execution of decree against dead person. Learned executing court rejected the petition 19.01.2017 filed by the petitioner no.2 vide order dated 04.01.2018 holding thereby that the petitioner is stranger to the said execution case and he has no *locus standi*. This order has been confirmed up to this Court. The petitioners again moved an application dated 19.04.2018 before the learned trial court and prayed for disposal of the petition dated 23.01.2014 filed by late Makdum Khan. Another application dated 06.09.2018 had further been moved making prayer for disposal of the petition dated 23.01.2014. Thereafter, the learned executing court proceeded to pass the order dated 21.07.2018 whereby and whereunder a direction has been given for ejectment of the petitioners from the premises. The petitioners, aggrieved by the order dated 21.07.2018, filed civil



miscellaneous petition in this Court bearing Civil Misc. No. 1499 of 2018, but the same was dismissed by this Court vide order dated 29.08.2023 and the learned executing court was directed to expedite the hearing in application dated 23.01.2014 filed under Order 21 Rules 97 and 99 of the Code. Being aggrieved by the order dated 29.08.2023, the petitioners moved before the Hon'ble Supreme Court by filing special leave petition bearing SLP (Civil) No. 20762 of 2023. The Hon'ble Supreme Court vide order dated 20.09.2023 issued notice to the respondent no. 1 and the stayed the Execution Case No. 01 of 2013. During pendency of the Special Leave Petition, the application of the petitioners filed under Order 21 Rules 97 and 99 of the Code has been dismissed by the learned executing court vide order dated 20.02.2024. Accordingly, the Hon'ble Supreme Court disposed of the Special Leave Petition (Civil) No. 20762 of 2023 vide order dated 11.03.2024 with liberty to the petitioners to approach appropriate authority and further ordered that interim order dated 23.09.2023 would continue for four weeks. The said order dated 20.02.2024 is under challenge before this Court in the present civil miscellaneous petition.

03. Learned senior counsel, Mr. Amit Shrivastava, appearing on behalf of the petitioners submitted that the



impugned order is not sustainable in the eye of law as it has been passed without consideration of the relevant facts. The judgment debtor of eviction suit, late Hussaini Bhai, was inducted as tenant in the suit premises by father-in-law of petitioner no. 1 and the said tenant, Hussaini Bhai, before leaving to Gujarat, had handed over the possession of tenanted premises to late Makdum Khan and since then the petitioners are in actual possession of the suit premises. Mr. Shrivastava further submitted that respondent no. 1 filed a Mutation Case No. 63 of 1989-90 before Circle Officer, Dehri. During pendency of the said mutation case, an objection was filed by Makdum Khan on 31.07.1989 and the Circle Officer, after perusing the registered gift deed dated 18.04.1981, dismissed the mutation case filed by the respondent no.1. Mr. Shrivastava further submitted that Municipal Tax Receipts (Exhibit-B to B/3) were filed on record and the said receipts were issued in the name of Makdum Khan. On the other hand, it is case of the respondent no. 1 that her mother died in the year 1975 and it prima facie shows that late Makdum Khan was in possession of the suit property and the petitioners are not stranger to the suit property and they are having interest in the property. Mr. Shrivastava further submitted that being aggrieved by the order



of the Circle Officer, respondent no. 1 preferred an appeal in the court of DCLR but in the grounds of appeal, it has nowhere been stated by respondent no. 1 that her mother had orally gifted the suit property to her whereas it has been stated that the mother of respondent no. 1 was in possession of the property till her death. This shows that the claim of the respondent no. 1, that her mother had gifted the suit property to her, was only an afterthought. Mr. Shrivastava further submitted that observation of the learned trial court that the petitioners were not having any interest in the suit property is an erroneous observation and is completely irrational, unreasonable and without application of judicial mind. Learned senior counsel further submitted that the learned trial court failed to appreciate the fact that Khadim Khan and Ashma Khatoon had died intestate. Mr. Shrivastava further submitted that there is a piquant situation. The learned trial court by judgment dated 20.02.1993 passed in Title Suit No. 129 of 1991 has held that registered gift deed dated 18.04.1981 is null and void and the first appellate court while upholding the said finding further held in Title Appeal No. 27 of 1993 that respondent no. 1 failed to prove that her mother had orally gifted the suit property to her. This order has not been challenged by the respondent no.1. Once, the respondent no. 1



has failed to prove the oral gift deed in her favour, the property of Ashma Khatoon could only be inherited by the legal heirs of late Ashma Khatoon since she died in 1975 and at that time her husband was alive and therefore, her legal heirs were her husband Khadim Khan and her daughter-Naseema Khatoon, who would inherit the property of Ashma Khatoon. Thus, the property in question was inherited by Khadim Khan and Naseema Khatoon. According to Muslim Law of Inheritance, a husband is entitled to 1/4th share in the property of his deceased wife when there is a child or child of a son. In this manner, after death of Ashma Khatoon, Khadim Khan inherited $\frac{1}{4}$ th share out of the property pertaining to House situated at Ward No. 3/10, Holding No. 442, Area 2 M.S. Khata No. 243, M.S. Plot No. 573, Old Khata No. 140, Plot No. 1111 situated at Dehri, Dalmiyanagar. After death of Khadim Khan his $\frac{1}{4}$ share devolved upon his legal heirs/representatives, i.e., Makdum Khan and his four daughters and in the like manner, after death of Makdum Khan, the petitioners and respondent nos. 2 to 5 inherited the share of Makdum Khan. Mr. Shrivastava further submitted that even if part share has been obtained by the petitioners through inheritance, the petitioners cannot be said to be strangers in respect of the suit property. Mr. Shrivastava



further submitted that the learned executing court failed to appreciate that it is well settled law that even a stranger, who has got interest in the property which is subject matter of the execution proceeding, can maintain an application under Order 21 Rule 97 of the Code. Makdum Khan, ancestor of the petitioners, had preferred an application under Order 21 Rule 97 and 99 of the Code on 23.01.2014 and after his death, his son, petitioner no. 2, Anavarul Khan, had filed a petition on 02.07.2016 in Execution Case No. 01 of 2013 informing the learned trial court about death of his father and also gave the details of legal heirs of late Makdum Khan. The petitioners could not be said to be strangers as the petition dated 23.01.2014 filed under Order 21 Rules 97 and 99 of the Code was dismissed on the ground that it was not maintainable as the petitioners were not the interested parties nor they were in possession of the suit property. Mr. Shrivastava further submitted that the petitioners are in actual possession of the suit premises and the issue of title of the petitioners and respondent no. 1 is still pending before this Court in Second Appeal No. 33 of 2006. Mr. Shrivastava further submitted that even from the cause title showing the address of the petitioners and respondent no. 1, it is clear that the respondent no. 1 is not resident of place



of the suit property, which she has claimed to be in her possession and the learned trial court has also not considered the fact that Hussaini Bhai, was inducted as tenant in the suit premises by Khadim Khan and the said tenant, Hussaini Bhai, had handed over the possession of rented house to late Makdum Khan and since then the petitioners are in actual possession of the suit premises.

Mr. Shrivastava further submitted that during pendency of the second appeal, the *status quo* is required to be maintained and, in this regard, he referred to the decision of Hon'ble Supreme Court in the case of ***Mool Chand Yadav v. Raza Buland Sugar Co. Ltd.***, reported in ***(1982) 3 SCC 484***, wherein the Hon'ble Supreme Court has held that judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended, more so when appeal is admitted. On the same proposition, learned senior counsel referred to the decision of Division Bench of this Court in the case of ***Tej Rani Devi v. Indira Devi***, reported in ***(2001) 1 PLJR 661***, and submitted that in this case during pendency of the appeal, the appellants were in possession of the house in question and same is the issue here in the present case. Further reliance has been placed in the case



of ***Sanjoy Verma @ Sanjay Kumar Verma Vs. Smt. Longi Devi & Ors. {Civil Appeal No. 8775 of 2013 (arising out of S.L.P. (Civil) No. 26142 of 2012)}*** decided on 30.09.2013, wherein the Hon'ble Supreme Court has held that second appeal is pending before the High Court and the appellant is in possession of the subject property and if the decree of the first appellate court is allowed to be executed during the pendency of the second appeal, the appellant may be put to irreparable loss and hence, the appeal was allowed and it was directed that during the pendency of the second appeal status quo with regard to subject property shall be maintained in all respects by all concerned. Learned senior counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***Union Of India And Ors vs West Coast Paper Mills Ltd. & Anr.***, reported in ***AIR 2004 SC 1596***, wherein it has been held that even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the Court of Appeal.

Mr. Shrivastava further submitted that Order 21 Rule 101 of the Code provides that all questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or



rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and the question of title is still pending and second appeal of the petitioners is yet to be decided. Mr. Shrivastava further submitted that while disposing the petition under Order 21 Rule 97 and 99 of the Code, no issues were framed and no adjudication was made with regard to right, title and interest of the petitioners and referred to a decision of the learned Single Judge of this Court in the case of *Sanjha Devi Vs. Amar Yadav and Ors.*, reported in *2007(4) PLJR 727*, wherein the learned Single Judge held that in a proceeding pursuant to objection in terms of Rule 97 of Order 21 of the Code the proceeding is like a suit and the paraphernalia of suit would follow. But, in the present case, the learned trial court has not passed any order in terms of the provision of Order 21 Rule 101 of the Code. Learned senior counsel further referred to the decision of Hon'ble Supreme Court in the case of *Noorduddin Vs. K. L. Anand*, reported in *(1995) 1 SCC 242*, wherein the Hon'ble Supreme Court has held 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 regard be made. The Hon'ble Supreme Court further held that adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. It has further been held that adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is *sine qua non* to a finality of the adjudication of the right, title or interest in the immovable property under execution. Learned senior counsel further submitted that the impugned order is completely silent on the second appeal filed by the petitioners though the petitioners have specifically mentioned in their application about pendency of the Second Appeal No. 33 of 2006 in which substantial questions of law have been framed. Non-consideration of relevant fact and omission to mention the second appeal of the petitioners goes to the root of the matter and makes the impugned order perverse. Learned senior counsel lastly submitted in alternative that till the disposal of the second appeal, the execution proceeding should be kept in abeyance.

04. Learned senior counsel, Mr. Devendra Kumar Sinha, appearing on behalf respondent no. 1 vehemently



contended that there is no infirmity in the impugned order requiring any interference by this Court. Mr. Sinha further submitted that the petitioners have been trying to mix up two things. The dispute over title stands settled with the decision in Title Suit No. 129 of 1991 and even the first appeal against the judgment and decree of Title Suit No. 129 of 1991 has been dismissed. Mr. Sinha further submitted that the plaintiff of title suit also filed eviction suit against the tenant, Hussaini Bhai and the tenant denied landlord-tenant relationship with respondent no. 1, but this contention was negatived and suit was decreed in favour of the respondent no. 1, granting eviction vide judgment and decree dated 14.03.2013. Since then, the matter has been coming up for eviction. The appeal against the decree in original eviction suit has also been dismissed. The petitioners never applied to become party in the eviction suit or in the eviction appeal. Mr. Sinha further submitted that the proceedings in execution of decree in an eviction suit and other suit must be differentiated. In a decree passed in eviction suit, the matter is only between the landlord and tenant and any claim of petitioners over the title could not be adjudicated and for this reason, there could be no strict application Order 21 Rules 97-101 of the Code in the present matter. The learned senior



counsel stressed upon the fact that second appeal is entirely different matter and its pendency could not have any bearing in the execution of the eviction decree. The gift deed of the petitioners have been declared to be a void document and the petitioners cannot claim any right on the basis of said gift deed. Mr. Sinha further submitted that the respondent no. 1 has got the decree in her favour in eviction suit and the petitioners have been denying her the fruit of the decree by filing frivolous applications. The impugned order has discussed everything and it is a reasoned order and cannot be faulted. Thus, Mr. Sinha submitted that there is no merit in the present petition and the same is liable to be dismissed.

05. Responding the contention of learned senior counsel for the respondent no.1, Mr. Shrivastava submitted that even if the petitioners have no right, still they have vested interest in the suit property and for this reason, they have right to object under Order 21 Rule 97 of the Code. Mr. Shrivastava further submitted that Order 21 Rules 97 r/w 101 of the Code do not categorize suits and execution of a decree in eviction suit cannot be differentiated from execution of decree passed in another suit. Mr. Shrivastava further submitted that the language of Rule 101 of Order 21 of the Code is quite clear and right, title



or interest are disjunctive and not conjunctive. In this regard, Mr. Shrivastava referred to the decision of Hon'ble Supreme Court in the case of *Union of India & Ors. Vs. Shapoorji Palloonji and Co. Pvt. Ltd*, reported in *AIR 2023 Sc 5153*, wherein the Hon'ble Supreme Court discussed that the word "or" is normally disjunctive while the word "and" is normally conjunctive. Even if the petitioners are not having interest, there is requirement of having right so as to bring in operation Order 21 Rule 101 because it does not say that right, title and interest should be all be present for application of the said provision.

06. I have given my thoughtful consideration to the rival submission of the parties and perused the record. The issue before this Court lies in narrow compass. The question before this Court is whether the rejection of application filed under Order 21 Rules 97 and 99 of the Code is correct and whether the petitioners have a right to maintain an application under Order 21 Rules 97 and 99 of the Code?

07. The facts are not in dispute that property in question is claimed by both petitioners and respondent no. 1. Respondent no. 1 filed the eviction suit against the then tenant of the property after getting decree in title suit in her favour. The title of the petitioners was disbelieved by the learned trial court



as well as the learned first appellate court although, the basis of the title of the respondent no. 1 was also disbelieved by the learned first appellate court. Second Appeal between the parties is pending. Submission on behalf of the petitioners is two-fold that during pendency of the second appeal *status quo* over the property in execution should be maintained and that the learned executing court has not passed a proper order in terms of Order 21 Rule 101 of the Code. On the other hand, it has been contended on behalf of the respondent no. 1 that in execution eviction decree, the petitioners could not object as they have no *locus standi* and are not in possession as possession follows title. The eviction suit was decreed in favour of the respondent no. 1, who brought the eviction suit against the tenant after declaration of title in his favour.

08. So far as first contention of the learned senior counsel for the petitioners is concerned, the authorities cited on behalf of the petitioners on this point are more or less with regard to same proceedings, i.e., second appeal was pending in which the execution case has also been proceeding. For this reason, the facts are different and could not be made applicable in the present case since the execution in the present case is against an eviction decree and petitioners based their claim on a



document which stood rejected by two courts in a concurrent finding. So, not much significance could be attached to the claim of the petitioners about pendency of their second appeal.

09. Now, Order 21 Rules, 97, 99 and 101 read as under:

“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.

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.

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.”

10. No doubt, Rule 101 of Order 21 of the Code provides for adjudication in manner of a suit if any objection is raised with regard to right, title or interest arising between the parties or their representatives, as the conjoint reading of Order 21 Rules 97 and 101 of the Code goes on to show. Thus, the proceeding under the aforesaid provisions of Order 21 Rules 97 and 99 are for adjudication of right, title and interest of the applicant in the suit property. But in the light of the admitted position of the parties, claim of the petitioners is without any title. If the admitted position does not leave any doubt regarding the title, in each and every case, a detailed inquiry is not required under Order 21 Rule 97/99 of the Code.

11. Admittedly, the respondent-Naseema Khatoon filed the title suit against the ancestor of the petitioners, Makdum Khan, and his tenant Hussaini Bhai seeking relief of declaration against gift deed in favour of Makdum Khan which was executed by Khadim Khan on 18.04.1981. The claim of the



petitioners is that the gift deed dated 18.04.1981 executed by Khadim Khan was on the basis oral gift deed executed by Ashma Khatoon in favour of Khadim Khan. The story of the petitioners was disbelieved by the learned trial trial court which held that Khadim Khan had no title or possession over the disputed house and further held the gift deed dated 18.04.1981 executed in favour of Khadim Khan to be a nullity. Thus, title and possession of respondent-Naseema Khatoon was declared over the suit property. The title appeal filed by Makdum Khan was dismissed on contest. However, since the oral gift in favour of Naseema Khatoon by her mother was not an issue either before the learned trial court or learned first appellate court, which did not frame any point of consideration on this issue, whatever observation has been made by the learned first appellate court about the claim of the respondent-Naseema Khatoon regarding oral gift deed executed by her mother in her favour is simply unwarranted. In any case, it will not confer any right, title or interest on the petitioners.

12. It is further pertinent to take note here that after the decree of title and possession of the suit premises in her favour, the respondent-Naseema Khatoon filed the eviction suit against her tenant-Hussaini Bhai and her contention was upheld



by the learned trial court, which decreed the eviction suit against the tenant. The respondent-Naseema Khatoon was held to be the landlord. The appeal against the decree of eviction suit was also dismissed.

13. Thus, in the aforesaid facts and circumstances when title and possession have already been decided, the claim of the petitioners is without any substantive basis. Merely because their second appeal is pending, the same cannot be a ground to obstruct the execution of decree of the respondent no. 1. Since the title and possession have already been decided, nothing remains to be decided in terms of Order 21 Rule 97 of the Code. If there is no material to show the right and title, mere interest of the petitioners would not suffice to maintain their objection under Order 21 Rule 97 of the Code. The petitioners are not even strangers. Rather they are trespassers, illegally claiming possession without any right and title. For this reason, I am of the considered opinion that even if no detailed enquiry in terms of Rule 101 of Order 21 of the Code was held, such technicality would not come in the way of execution proceeding of the respondent no.1, as it has already been observed that in the light of declaration of title and possession of respondent no.1, nothing remains to be decided in the petition filed under



Order 21 Rule 97 of the Code. For the reasons discussed hereinbefore, the authorities cited by Mr. Shrivastava are of no help considering the dissimilarity of the facts and circumstances of this case *vis-a-vis* the authorities cited by Mr. Shrivastava.

14. So far as pendency of second appeal between the parties is concerned, if the petitioners get any relief in the second appeal, they can certainly claim restitution under Section 144 of the Code.

15. In the light of aforesaid discussion, I am of the considered opinion that there is no infirmity in the impugned order dated 20.02.2024 passed by the learned Munsif, Dehri-on-Sone, Rohtas in Execution Case No. 01 of 2013 and hence, the same is hereby affirmed.

16. As a result, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	19.09.2024
Uploading Date	23.10.2024
Transmission Date	NA

