IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ESA-42-2022 (O&M)
Reserved on: -26.11.2024
Pronounced on:- 16.12.2024

CHARANJEET KAUR

. . . .APPELLANT

Vs.

SHALINI CHAUDHARY AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. Parminder Singh, Advocate for the appellant.

Mr. Ashwarya Bajaj, Advocate, for respondent No.1 (through video conferencing)

Mr. Ketan Chopra, Advocate, for respondent No.3.

DEEPAK GUPTA, J.

This Execution Second Appeal has been filed by third party objector, whose objections have been dismissed by ld. Civil Judge (Jr. Div.) Sonipat vide order dated 08.09.2022; and the appeal filed by her has been dismissed by ld. Additional District Judge vide order dated 25.11.2022.

2. To take stock of the controversy involved in the matter, following dates are important to be noticed:

• Ashok was owner of the suit property.	
30.06.2008	• Gift deed by Ashok in favour of his wife Baldev Kaur • Baldev Kaur, thus, becomes owner of suit property
25.06.2010	• Agreement to sell by Ashok *(no longer the owner)* in favour of Shalini • Baldev Kaur *(real owner)* & her son Vishal are attesting witnesses to ATS
11.05.2012	• Suit for specific performance filed by Shalini against defendants Ashok, Baldev Kaur & Vishal • All defendants proceeded ex-parte
17.10.2012	• Baldev Kaur *(real owner)* sold suit property to Charanjit Kaur
17.09.2016	• Suit filed by Shalini for Spec. Perf. • Decreed ex-parte

	• Execution by DH Shalini for possession
08.09.2022	Objections filed by Objector Charanjit Kaur dismissed by Executing Court
25.11.2022	Appeal of objector dismissed by Appellate court

2.1 As evident from above table, Ashok Kumar son of Dhara Singh *(respondent N: 2 herein)* was the owner of the suit property, who executed a registered gift deed No.2078 dated 30.06.2008 regarding the said property in favour of his wife Smt. Baldev Kaur *(respondent N:3 herein).* Smt. Baldev Kaur, thus, became owner of the suit property. However, vide an agreement to sell dated 25.06.2010, Ashok Kumar agreed to sell the suit property in favour of Smt. Shalini Chaudhary *(respondent N:1 herein)* for consideration of ₹6,15,000/-. He received an amount of ₹4,15,000/- as earnest money on the same date. Sale deed was agreed to be executed on receipt of balance sale consideration. On 24.06.2011, said Ashok Kumar received another amount of ₹35,000/- towards earnest money and executed another agreement dated 24.06.2011. Thus, out of total amount of ₹6,15,000/-, he received ₹4,50,000/-. Sale deed was agreed to be executed on or before 23.06.2012. It is relevant to mention here itself that agreement to sell was witnessed by Baldev Kaur (who had become real owner of the property by virtue of gift deed dated 30.06.2008); and also by Vishal *(respondent No.4 herein)*, who is the son of Ashok and Baldev Kaur.

2.2 Smt. Shalini brought suit for specific performance on 11.05.2012 based on the agreement to sell in her favour against Ashok, his wife Baldev Kaur and son Vishal. All these defendants were proceeded ex party. During the pendency of the suit, Baldev Kaur i.e. real owner, sold the suit property to Smt. Charanjeet Kaur-3rd party objector *(appellant herein)* vide sale deed date 17.10.2012. The suit filed by Shalini Chaudhary for specific performance was decreed on 17.09.2016. Thereafter, said decree holder-Shalini filed execution seeking possession of the suit property.

2.3 Objections were filed by Charanjeet Kaur claiming to be *bona fide* purchaser of the suit property. It was the contention of the appellant-objector that she had purchased the suit property from the real owner Smt. Baldev Kaur and that decree in favour of decree holder-Shalini Chaudhary was null and void, as agreement to sell in her favour was executed by Ashok Kumar, who was no longer the owner of the property at the time of execution of the agreement to sell.

2.4 However, the objections as filed by the petitioner were dismissed by the trial Court vide impugned order dated 08.09.2022 by observing that objector was purchaser *pendente lite* and as such, the objections were not maintainable in view of Order XXI Rule 102 CPC. It was further observed that executing Court cannot go behind decree in order to see, as to whether the decree was nullity or not.

2.5 The above order dated 08.09.2022 of the executing Court has been upheld by the Appellate Court vide order dated 25.11.2022.

3.1 Assailing the aforesaid orders by way of the present Execution Second Appeal, it is contended by ld. counsel for the petitioner that petitioner is the owner of the suit property having purchased it from the real owner Baldev Kaur and that the decree in favour of decree holder-Shalini Chaudhary is a nullity, as Ashok Kumar was not the owner of the property, when he executed the agreement to sell.

3.2 It is pointed out further that none of the three defendants contested the suit and were proceeded ex-parte, clearly demonstrating their collusion with the plaintiff-decree holder. Specific attention is drawn towards the fact that alleged agreement to sell dated 25.6.2010 and extended on 24.6.2011 in favour of plaintiff was only for ₹6,15,000/-; whereas, sale deed dated 17.10.2012 in favour of appellant was executed by real owner for consideration of ₹ 27,50,000/-. Not only this, appellant also deposited an amount of ₹ 7 Lacs with Fulltorn India Credit Company for obtaining NOC, as suit property was mortgaged with the said company. It is urged that this huge difference in price within a short duration indicates that agreement to sell was just a sham transaction and based thereon, collusive decree was passed in favour of plaintiff – decree holder.

3.3 Ld. counsel draws attention towards Section 41 of the Transfer of Property Act to contend that protection of this provision is not available to decree holder, as only agreement to sell was executed in her favour by the ostensible owner i.e. Ashok Kumar prior to the sale by real owner in favour of appellant. On the other hand, appellant is in possession of the suit property on the basis of a valid title and so, entitled to protection under Section 41 of Transfer of Property Act being a bonafide purchaser.

3.4 It is urged further that decree holder may enforce her rights under Section 13 of the Specific Relief Act against her proposed vendor Ashok Kumar – Judgment debtor, who executed the agreement to sell in her favour without having valid title to the suit property at that time.

3.5 Ld. counsel contends further that her objections have been summarily dismissed by the Courts below without even framing the issues and without providing opportunity to the parties to lead evidence, which is contrary to the procedure set down in Order XXI Rule 97 CPC. Ld. counsel contends that petitioner is in possession of the suit property on the basis of valid title and so, entitled to the protection being a bona fide purchaser. It is also contended that objections as filed by the petitioner were maintainable under Order XXI Rule 97 CPC and so, they were liable to be adjudicated accordingly and could not have been dismissed summarily.

3.6 With these submissions, prayer is made to set aside the impugned orders passed by the Courts below and to stay the dispossession of the petitioner from the suit property.

4. Refuting the aforesaid contentions, ld. counsel for the decree-holder has defended the orders passed by the Courts below. It is contended that since Smt. Baldev Kaur, the real owner on account of the gift deed in her favour, was signatory to the agreement to sell executed by Ashok in favour of

decree-holder, therefore, Ashok was the ostensible owner of the property and therefore, the judgment debtor Baldev Kaur or her vendee i.e., objector-appellant, are estopped from disputing the title of the judgment-debtor Ashok. It is further contended by ld. counsel that objections as filed by the appellant have been rightly held to be not maintainable in view of the clear provisions contained in Order XXI Rule 102 CPC. Prayer is made for dismissal of the appeal.

5. I have considered submissions of both the sides and have appraised the record.

6. Facts are not in dispute to the effect that at the time, when agreement to sell dated 25.06.2010 was executed by Ashok in favour of decree holder Shalini, said Ashok was no longer the owner of the suit property, inasmuch as he had already executed the gift deed dated 20.06.2008 in favour of his wife Smt. Baldev Kaur, who had thus become the real owner of the property.

7. At the same time, it is very important to notice that agreement to sell dated 25.06.2010 was witnessed by Baldev Kaur (the real owner) as well as her son Vishal. The mere fact that Baldev Kaur witnessed the agreement to sell executed by Ashok Kumar clearly indicates her consent to the transaction so as to sell the suit property to the decree holder Shalini by her husband Ashok Kumar, who apparently was the ostensible owner of the suit property.

Applicability of Section 41 of the Transfer of Property Act :

8. Section 41 of the Transfer of Property Act, reads as under: -

> **"41. Transfer by ostensible owner.**— Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

9. Necessary ingredients to attract the above provision of Section 41 of the Act are:

- The transferor must be the ostensible owner of the property *(with the consent, express or implied, of the persons interested in the property),*
- The transfer must be for consideration,
- The transferee must take reasonable care to ascertain that the transferor has power to make the transfer and must act in good faith.

10. The aforesaid section is to be read in the light of Section 115 of the Indian Evidence Act, which reads as under: -

> **"115 Estoppel-** When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

11. The Rule enunciated in Section 41 of the Transfer of Property Act is an exception to the General Rule that a person cannot convey a better title than he himself has in the property. In fact, one of the General Principle of the 'law of transfer of property' is enunciated by the maxim that *'no man can transfer to another a right or title greater than what he himself possesses'* and *'he gives not who hath not'*. To this general principle, there is a well-recognized exception that if the true owner of the property permits another to hold himself out as the real owner, as by entrusting him with the documents of title or in some other way, a third person, who after due enquiry, bo*na fide* deals with that other, may acquire a good title to the property as against the true owner. The equitable doctrine of estoppel contained in Section 115 of the Indian Evidence Act is the basis of the Section 41 of the Transfer of Property Act, which has been enacted in accordance

with the privy council case of ***Ram Coomar Kundoo Vs McQueen, (1872) 11 BLR 46 PC.*** The Judicial Committee observed in that case as under: -

> "It is a principle of natural equity, which must be reversibly applicable that where one man allows another to hold himself out as the owner of an estate and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by showing either that he had direct notice of the title or something which amounts to constructive notice of the real title or that there existed circumstances which ought to have put him on an enquiry that if prosecuted, would have led to discovery of it."

12. Thus, Section 41 of the Transfer of Property Act enacts a Rule, which is a doctrine of estoppel but falling short of the requirement of Section 115 of the Indian Evidence Act. If it is proved that transfer was made with the consent of the rightful owner, the case would fall within the purview of Section 115 of the Indian Evidence Act and the other conditions of Section 41 of the Transfer of Property Act need not be satisfied. Such consent will estop the owner, even though the transferee made no enquiries as to ascertain that the transferor had power to make the transfer, a condition which is essential for the application of Section 41 of the Transfer of Property Act. Under Section 41 of the Transfer of Property Act, the transferor must be shown to be the ostensible owner, with the consent, express or implied of the true owner, but the transfer itself need not be with the consent of the true owner.

13. Although Section 41 of the Transfer of Property Act saves the sale made in favour of a bonafide purchaser by an ostensible owner, with the consent, express or implied of the real owner but in the facts of the present case, said provision is not helpful to advance the case of the appellant – third party objector. It is for the reason that Section 41 of the Transfer of the Property Act speaks of a sale made by an ostensible owner and not a sale made by the real owner. Since the case of the appellant – third party objector

is to have purchased the suit property from the real owner Baldev Kaur, so Section 41 of the Act is not applicable to help her.

14. At the same time, Section 41 of the Transfer of the Property Act is not applicable even to support the case of plaintiff – decree holder. It is for the reason that said Section 41 of the Act speaks of a complete sale made by an ostensible owner with the express or implied consent of the real owner. This provision is not applicable, when the ostensible owner has only proposed/ agreed to sell a property, may be with the express or implied consent of the real owner, which are the facts of this case, inasmuch as by way of agreement dated 25.06.2010, ostensible owner – Ashok Kumar, had only agreed to sell the suit property to the respondent-decree holder – Shalini Chaudhary, though the said agreement was with the consent of real owner Baldev Kaur, who had witnessed this agreement. By the time, sale deed dated 17.10.2012 was executed by real owner - Baldev Kaur in favour of appellant – Charanjit Kaur, no sale deed had been executed in favour of Shalini Chaudhary on the basis of agreement dated 25.06.2010. It is only pursuant to the decree dated 17.09.2016 for specific performance that sale deed was subsequently executed in favour of Shalini Chaudhary.

Applicability of Section 13 of the Specific Relief Act :

15. In the facts and circumstances of the present case, it is Section 13 of the Specific Relief Act, which is applicable. Said Section provides about the rights of purchaser or lessee against person with no title or imperfect title. It reads as under:-

> "**13. Rights of purchaser or lessee against person with no title or imperfect title.**—(1) Where a person <u>contracts to sell</u> or let certain immovable property <u>having no title or only an imperfect title</u>, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—
>
> (a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property."

16. Sub Clause (a) of Section 13(1) is not applicable to this case, as the vendor – Ashok Kumar did not acquire any interest in the suit property subsequent to the contract made by him with Shalini Chaudhary. Sub Clause (c) is not applicable, as the suit property was not under any encumbrance. Sub Clause (d) could be applicable in case the suit for specific performance was brought by vendor Ashok Kumar and was dismissed for want of his title and in that eventuality, the purchaser – Shalini Chaudhary had the right to return of deposit of the amount etc.

17. As far as Clause (b) of Section 13(1) is concerned, it is applicable, when the concurrence of the other persons is necessary for validating the title and they are bound to concur at the request of the vendor. In this case, the real owner – Baldev Kaur was bound to concur at the request of vendor,

i.e. Ashok Kumar for execution of the conveyance deed because said Baldev Kaur had consented to sell the suit property by becoming an attesting witness/signatory to the agreement to sell in favour of decree-holder Shalini Chaudhary.

18. Not only above, the real owner Baldev Kaur was also a party to the suit for specific performance, but she did not contest the matter so as to contend that agreement to sell was not executed with her active consent or that she was not a signatory to the said agreement to sell as a witness. So much so, no appeal was filed by said Baldev Kaur, the vendor of the appellant – third party objector, against the judgment and decree dated 17.09.2016 for specific performance passed against her.

19. Even the appellant herein i.e., Charanjit Kaur, in whose favour, sale deed dated 17.10.2012 was executed by real owner Baldev Kaur - one of the defendant to the suit during pendency of the suit, did not file any appeal against the ex-parte judgment and decree dated 17.09.2016 for specific performance passed against her vendor Baldev Kaur, because she *(appellant Charanjit Kaur)* was the only affected party against the said ex-parte judgement, in as much as the defendants of the suit had lost interest in the litigation after execution of sale deed dated 17.10.2012 in favour of said Charanjit Kaur – third party objector. As an affected party against the ex-parte judgment and decree dated 17.09.2016, she could have filed the appeal, but she did not do so. In such circumstances, appellant is bound by the result of litigation on account of the principle of *lis pendens* contained in Section 52 of the Transfer of Property Act.

Objection under Order XXI Rule 97 CPC:

20. Proceeding further, as far the objections filed by the appellant are concerned, the main question is whether her objections are maintainable, considering the fact that she purchased the suit property from Smt. Baldev Kaur – one of the judgment debtor on 17.10.2012 during

pendency of the suit for specific performance filed by decree-holder Shalini Chaudhary, which had been filed way back in May 2012.

21. Order XXI Rule 97 CPC reads 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.
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> (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.

22. The aforesaid provision entitles the decree-holder to approach the Executing Court, when obstruction is caused by any person in obtaining possession. Said application is to be adjudicated upon by the Executing Court in accordance with law.

23. Order XXI Rule 99 CPC reads as under: -

> **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.

24. The aforesaid provision is to be availed of by any person, other than the judgment-debtor *[third party objector],* when he is dispossessed of the immoveable property by the holder of the decree. The provision entitles such a person to approach the Court and complain of his dispossession. Under this provision, any person can claim an independent right in case he is being dispossessed and in such an event, the person can complain of

dispossession to the executing Court and it is to be adjudicated upon by the Executing Court.

25. Rule 101 CPC provides as to what questions are to be determined by the Courts, while considering the applications filed under Rule 97 or 99 CPC. The rule reads as under: -

> **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.

26. The aforesaid Rule makes it clear that:

(i) The questions to be determined may even relate to right, title or interest in the property.

(ii) The question should be between parties to the proceedings on an application under Rule 97 or 99 CPC or their representatives.

(iii) No separate suit shall lie so as to adjudicate upon those questions.

(iv) Questions should be relevant to the adjudication of the application.

(v) Court will have jurisdiction to determine all the questions, notwithstanding anything to the contrary contained in any other law for the time being in force.

27. Rule 98 of the CPC reads as under: -

> **98. Orders after adjudication.—**(*1*) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (*2*),—

(*a*) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(*2*) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

28. The aforesaid Rule 98 CPC is to be read in the context of Rule 97 and 101 of the CPC. Under the said Rule, after determination of the questions as referred in Section 101 CPC in accordance with law, on the application which had been moved by the decree-holder under Rule 97, the Court may allow the application by directing the decree-holder/applicant to be put in possession of the property; or dismiss his application or pass such order as in the circumstances of the case, it may deem fit.

29. Rule 100 CPC reads as under: -

100. Order to be passed upon application complaining of dispossession.— Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

30. Aforesaid Rule 100 CPC is to be read in the context of Rules 99 and 101 CPC. Under the said rule, upon determination of the questions, as referred to in Rule 101 CPC in accordance with law, on the application which had been moved by any person other than the judgment-debtor *[third party objector]* under Rule 99, the Court may allow the application by directing the said third party to be put in possession of the property; or dismiss the application or pass such order in the circumstances, as it may deem fit.

31. As will be apparent upon perusal of all the scheme of aforesaid provisions, Rule 101 CPC simply provides as to what questions are to be determined by the Court. Under Rule 98 CPC, the Court is required to determine the questions, which are raised by the decree-holder; whereas, under Rule 100 CPC, the Court is required to determine the questions, which are raised by any third party.

32. Now Rule 102 CPC, is very important being relevant to the present case. It reads as under: -

> **102. Rules not applicable to transferee lite pendente**—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 <u>to whom the judgement-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</u>.
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> Explanation.—In this rule, "transfer" includes a transfer by operation of law.

33. The bare perusal of the aforesaid Rule 102 would clearly indicate that Rule of 98 to be read with Rule 100 are not applicable to the case of transferee *pendente lite*. In other words, although the questions raised by the decree-holder under Rule 97 CPC or the questions as raised by the third party under Rule 99 CPC are to be adjudicated upon under Rule 98 or 100 CPC, as the case may be, but no such questions are to be determined as per Rule 102 CPC, in case the resistance or obstruction in execution of the decree for possession of the property is made by a person, to whom the judgment debtor has transferred the property after execution of the suit, in which the decree was passed or to the dispossession of any such person.

34. Explaining the scope of Rule 102 in ***Usha Sinha Vs. Dina Ram, 2008 (3) RCR (Civil) 145***, it has been observed by Hon'ble Supreme Court: -

> "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 of Order XXI 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.
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> 18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.
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> 19. In ***Silverline Forum Pvt. Ltd. v. Rajiv Trust, (1998) 3 SCC 723***, this Court held that where the resistance is caused or obstruction is offered by a transferee pendente lite, the scope of adjudication is confined to a question whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the affirmative, the Executing Court must hold that he had no right to resist or obstruct and such person cannot seek protection from the Executing Court.

20. The Court stated;

> *"It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in* Section 52 *of the Transfer of Property Act." (emphasis supplied) [See also* ***Sarvinder Singh v. Dalip Singh, (1996) 5 SCC 539****]*

21. We are in respectful agreement with the proposition of law laid down by this Court in Silverline Forum. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.

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 of Order XXI."

35. In the present case, as has already been noticed that the appellant/third party objector Charanjeet Kaur had purchased the suit property after institution of the suit by the decree holder-Shalini Chaudhary. As such, Rule 102 CPC of Order XXI CPC debars the Executing Court from entertaining the objections as filed by such an objector. The Court is not required to determine any questions as raised by such third party objector, who is a transferee *pendente lite*. Once it is found that appellant is a transferee *pendente lite,* Rule 102 CPC debars the Executing Court to determine any question raised by her as untenable under Order XXI Rule 98 and 101 CPC, as these Rules will not be applicable in such a case and as such, there was no question of adjudication on merits of the objections to the execution filed by the appellant.

36. On account of the entire discussion as above, this Court does not find any merit in the present appeal. The orders passed by the Courts below are well reasoned and based upon proper appreciation of record and the factual position of the case. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

37. However, it is made clear that the appellant, being an affected party by the ex-parte judgment dated 17.09.2016, if so advised, may file appeal against the same and in case, any such appeal is filed, the court concerned will consider to grant the benefit of Section 14 of the Limitation Act to the appellant while considering the issue of limitation so to entertain the appeal. It is also made clear that if any such appeal is filed, the appellate court, while deciding the appeal on merits, is not to be influenced by any observations made by this court in this order.

16.12.2024 **(DEEPAK GUPTA)**
Vivek **JUDGE**

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*