

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1638 of 2018

1. Kamini Devi Wife of Dinesh Singh
2. Dinesh Singh Son of Late Ramchandra Singh Both resident of Village Athari Rampur, P.S. Runni Saidpur, Dist-Sitamarhi, presently residing at Village-Sahbajpur, P.S. Ahiyapur, Dist-Muzaffarpur
3. Ram Kali Devi Wife of Shyamnandan Singh R/o Village-Narma, P.S.Hathauri, Dist-Muzaffarpur presently residing at Village Sahbajpur, P.S. Ahiyapur, Dist-Muzaffarpur

... .. Petitioners

Versus

1. Raghvendra Shahi Alias Raghvendra Prasad Shahi Son of Late Dhanusha Lal Shahi R/o Village Sahbajpur Salem, P.O. Bhikhanpur Kothi, P.S. Ahiyapur, Dist-Muzaffarpur
2. Most Bachchi Devi Wife of Late Ratneshwar Chaudhary R/o Villag Sahbajpur, P.O. Bhikhanpur Kothi, P.S. Ahiyapur, Dist-Muzaffarpur
3. Raj Kishor Singh Son of Late Kashi Singh
4. Dr Awadhesh Singh Son of Late Kashi Singh Respondent no 3 and 4 resident of Village and P.O.-Narma, P.S. Hathauri, Dist-Muzaffarpur
5. Janki Devi Wife of Ramsanjivan Singh R/o Village Morsand, P.O. Mananpur, P.S. Runnisaidpur, Dist-Sitamarhi
6. Lalita Devi Wife of Sitaram Singh
- 7.1. Aash Narayan Singh Son of Shatrughan Singh, Resident of Village and PO Chahutan, PS Aurai, Dist. - Muzaffarpur.
- 7.2. Bimal Kumar Singh Son of Shatrughan Singh Resident of Village and PO Chahutan, PS Aurai, Dist. - Muzaffarpur.
8. Prabhu Singh Son of Late Tapeswar Singh
- 9.1. Pinkey Devi Wife of Late Ram Kishore Singh, Resident of Village and Po Narma, PS Hathauri, Dist. - Muzaffarpur.
- 9.2. Dipak Kumar Singh Son of Late Ram Kishore Singh, Resident of Village and Po Narma, PS Hathauri, Dist. - Muzaffarpur.
10. Tuntun Kumar Singh Son of Late Chandra Kishore Singh, Resident of 1. Village Morsand, PS - Runni Saidpur, Dist. - Sitamarhi.
10. Manoj Kumar Singh Son of Late Chandra Kishore Singh, Resident of 2. Village Morsand, PS - Runni Saidpur, Dist. - Sitamarhi.
10. Saroj Kumar Singh Resident of Village Morsand, PS - Runni Saidpur, Dist. - 3. Sitamarhi.
11. Ram Vinay Singh Son of Late Ramashish Singh Respondents 10 and 11 resident of village Morsand, P.O. Mananpur, P.S. Runnisaidpur, Dist-Sitamarhi
12. Dharmshila Devi Wife of Bhogendra Shahi R/o Village Shahi Minapur, P.S. Aurai, Dist-Muzaffarpur



13. Usha Devi Wife of Raghvendra Singh R/o Village and P.O.-Athari, P.S. Runni Saidpur, Dist-Sitamarhi

... .. Respondents

Appearance :

For the Petitioner/s :	Mr. Vaidehi Raman Prasad Singh, Advocate
For the Respondent No.1:	Mr. K. N. Chaubey, Sr. Advocate
	Mr. Dineshwar Pandey, Advocate
	Mr. Ashok Kumar Garg, Advocate
	Mr. Kumar Kartikeya, Advocate
For the Respondent No.2:	Mr. Sunil Kumar Verma, Advocate
	Mr. Suman Kumar, Advocate
	Mr. Anish Kumar, Advocate
	Ms. Anjali Singh, Advocate
	Mr. Amresh Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date: 07-01-2025

The instant petition has been filed under Article 227 of the Constitution of India for quashing the order dated 16.08.2018 passed by the learned Sub Judge-I, East Muzaffarpur in Execution Case No. 01 of 2007, whereby and whereunder the learned executing court rejected the application filed by the petitioners under Order 21 Rule 97 r/w Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') for impleading them as intervenors/judgment debtors in the execution case.

02. Briefly stated, the facts leading to the present petition, are that one Newazi Lal Shahi filed Partition Suit No. 75 of 1964 in the court of learned Sub Judge-I, Muzaffarpur for partition of the half share in the suit land impleading Dhanukha Lal Shahi, wife of Dhanukha Lal Shahi and Raghvendra Shahi (son of Dhanukha Lal Shahi) as defendants. Raghvendra Shahi



is respondent no. 1 in the present petition. The portion of suit land was transferred by both parties to different persons and they were impleaded as party in the suit. Partition Suit No. 75 of 1964 was decreed *ex parte* on 16.09.1965. The Pleader Commissioner submitted its report in the year 1967 in the suit to effect partition of the suit land. The report was objected to by the judgment debtors but the objection was rejected. Title Appeal No. 85 of 1975 was filed against the final decree and by the judgment and order dated 26.11.1975, the matter was remanded to trial court with a direction that the Pleader Commission be again directed to invite objections from the judgment debtors on 'Raibandi' and 'Pattibandi'. The decree-holder filed Second Appeal No. 63 of 1976 against the judgment and decree of the learned first appellate court. In the meantime, Bachchi Devi, who was the daughter of Newazi Lal Shahi and one of the parties in the partition suit, transferred one *Kattha* land of *Khesra* No. 764 to her daughter, Urmila Devi, on 02.03.1983 and put her in possession of the same. In Second Appeal No. 63 of 1976, this Court directed the learned trial court to appoint a Pleader Commissioner afresh with direction that Pleader Commissioner would ensure that the property already sold to third party by the plaintiff/defendants is retained



in their respective shares. Second Appeal No. 63 of 1976 was finally decided by the order dated 22.04.1985 with modification in the report of Pleader Commissioner that a fresh division of plot nos. 1, 24, 26, 54 and 56 should be made from South to North maintaining the area and compactness allotted to the parties. Bachchi Devi made further gift of 03 *kattha* land of plot no. 764 to her another daughter, Anita Devi, and put her in possession of the same. On 07.06.1994, Bachchi Devi transferred one *kattha* land of *Khesra* No. 268 situated at Village-Sahbajpur to Ram Kali Devi, petitioner no. 3 herein, and put her in possession of the same. Ram Kali Devi constructed a pucca house over the land purchased by her and she has been residing therein with her family. The Pleader Commissioner submitted its further report, which was objected by the judgment debtor and vide order dated 29.04.1999 passed by the learned trial court, the objection was rejected and the report dated 03.09.1996 of the Pleader Commissioner was accepted. Meanwhile, Anita Devi transferred 06 decimals (1760 sq. ft.) land of plot no. 764 to Dinesh Singh, petitioner no. 2 herein, through a sale deed dated 28.12.1996. Urmila Devi transferred 686 sq. ft. (1.56 decimals) land of *Khesra* No. 764 to Kamini Devi, petitioner no. 1 herein, 19.06.1998 through a sale deed



and put her in possession of the same. Dinesh Singh executed a deed of surrender to his wife, Kamini Devi, on 15.06.1999 for 06 decimals of land purchased in his name on 28.12.1996. Kamini Devi and Dinesh Singh also constructed a *pucca* residential house over the land purchased by them and they have been residing therein with their family. Final decree was prepared in the suit on 22.06.1999, which was challenged by the Judgment debtor before this Court in Civil Revision No. 930 of 1999. The civil revision case came to be dismissed vide order dated 01.09.1999. Thereafter, the judgment debtor filed SLP No. 15756 of 1999 before the Hon'ble Supreme Court challenging the order passed in C.R. No. 930 of 1999, which was dismissed on 01.03.2000. Execution Case No. 1 of 2007 was filed by the respondent no. 1 for execution of the final decree. Petitioner nos. 1 and 2, on 20.01.2018, filed an application in execution case for impleading them as intervenors/judgment debtors in the case. Similarly, petitioner no. 3 also filed an application in the execution case for impleading her as an intervenor/judgment debtor on 20.01.2018. The learned Sub Judge-I, East Muzaffarpur, vide order dated 16.08.2018, rejected the petitions filed by the petitioners, which is under challenge before this Court.



03. Learned counsel for the petitioner, Mr. Vaidehi Raman Prasad Singh, submitted that the impugned order is not sustainable and the same requires interference by this Court. The petitioners were not made parties in the execution case despite full knowledge of the decree-holder about the sale-deeds executed by the owner and the co-sharer. The petitioners have constructed buildings on their purchased land 20 years back and mutation of the land has also been made in their favour but the Advocate Commissioner, without visiting the spot prepared *Pattibandi* and carved out separate *Patti* for respondent no. 1 and the same has been accepted by the executing court and order for delivery of possession has been passed. The petitioners were neither made parties in the partition suit or in the execution proceeding though the decree-holder was all along having the knowledge of transfer of properties to the petitioners by his co-sharer. Mr. Singh further submitted that vendors of petitioner nos. 1 and 2 were the ostensible owners of the land purchased by the petitioner nos. 1 and 2 under Section 41 of the Transfer of Property Act, 1882 (for short 'the Act'). Petitioners had purchased the land in good faith from their vendors, who transferred the land for valid consideration. The petitioners had taken reasonable care to ascertain that their vendors had power



to make the alienation and they have purchased the land in good faith. Mr. Singh reiterated that the petitioners have constructed their *pucca* residential houses over the land purchased by them and they have been residing in it for the last 25-30 years and could not be dispossessed in casual manner. The learned executing court was duty bound to decide the objection of the judgment debtors in judicious manner and could not have brushed aside their objection merely on the ground of the petitioners being the purchasers *lis pendens*. Moreover, in the light of the order dated 18.05.1984 passed in Second Appeal No. 63 of 1976, the land transferred by the parties in the title suit to the third party ought to have been given in the share of the transferors, but the Pleader Commissioner prepared *pattibandi* against the orders of this Court, which would cause great hardship to the petitioners, who are bonafide transferors from the parties in the suit. Even the respondent no. 1 has transferred the share of respondent no. 2 to the third parties through four sale deeds dated 04.03.2020, 07.08.2020, 08.12.2020 and 04.07.2021, respectively, which have been executed by the respondent no. 1. This buttresses the fact that the land purchased by the petitioners ought to have been given in the share of their transferors and the other-side could have been compensated by



allotting the land from the share of the vendors of the petitioners. In these facts and circumstances, the sale deeds of the petitioners are neither void nor voidable and the petitioners ought to have been given a chance of hearing in the execution case. Mr. Singh further submitted that towards compliance of orders of this Court passed in second appeal, the report was submitted by the Pleader Commissioner on 03.09.1996 and the same was confirmed on 29.04.1999 and the sale deeds have been executed on 07.06.1994, 28.12.1996 and 19.06.1998 and these three sale deeds would be safe by orders of this Court passed in Second Appeal No. 63 of 1976.

04. Mr. Singh relied on a number of decisions in support of his submission. Mr. Singh first relied on the decision of a Single Judge Bench of this Court in the case of ***Ramjanam Ahir & Ors. Vs. Beyas Singh & Ors.***, reported in ***AIR 1958 Pat 537*** wherein it has been held that the true meaning and interpretation of Section 41 is that the person who is the ostensible owner of the property must be such ostensible owner of the property with the consent, express or implied, of the person interested in such property, and, for a transfer by such an ostensible owner the consent of the real owner is not needed; and if the transferee takes the transfer from such an ostensible



owner then he is protected under the Proviso to Section 41 of the Act, only if it is proved by him that he, after taking requisite care to ascertain that the transferor had power to make transfer, had acted in good faith. Mr. Singh further relied on the decision of Full Bench of Lahore High Court in the case of ***Shamsher Chand v. Bakhshi Mehr Chand and others***, reported in ***AIR (34) 1947 Lahore 147***, wherein it has been held that in order to deprive under Section 41 of the Act, a real owner of his rights in immovable property, it must be established that he had given his consent, express or implied, to another person to represent himself as the owner of the said property. This consent may be by word or by conduct. Mr. Singh submitted that the decree-holder/respondent no.1 has all along in knowing about the transfer and has, in fact, acquiesced it. Moreover, it was a joint family property and both the parties have transferred the land of joint stock and there has been implied consent of the decree holder to the transfer of the suit property to the petitioners. Mr. Singh next referred to a Division Bench decision of Madras High Court in the case of ***Sethumadhava Aiyar v. Bacha Bibi & Ors***, reported in ***AIR 1928 Mad 778*** on the proposition that the petitioners were required only to take reasonable care in ascertaining whether the transferor had power to transfer the suit



land and acting in that belief and finding that his vendor had been in uninterrupted possession of the property for many years obtain a transfer, such a case may also be covered by the terms of Section 41 as the Hon'ble Division Bench held that the reasonable care prescribed by Section 41 should have reference only to the reasonable care to see whether by the terms under which the ostensible ownership itself is constituted the power to transfer is given or possessed. Being joint owner, there was no doubt over the title of the vendors of the petitioners and by such transfer right have accrued in favour of the petitioners and their purchase and possession must be protected since they have been coming into possession for more than 20 years. Mr. Singh, thereafter, referred to the decision of Hon'ble Supreme Court in the case of ***Bangalore Development Authority Vs. N. Nanjappa & Anr.***, reported in ***(2022) 18 SCC 156*** on the scope of Order 21 Rule 97, 99 and 101 of the Code, wherein the Hon'ble Supreme Court has held that objection is required to be adjudicated upon by the executing court while considering the application/obstruction under Order 21 Rule 97 or Rule 99 of the Code and held the order of the executing court dismissing application filed by the objector for impleadment in execution proceeding and/or dismissing obstruction application as



erroneous. Thus, Mr. Singh submitted that the impugned order is not justifiable in the eyes of law as the petitioners have purchased the land from the rightful owner and the share of the petitioners in suit land ought to have been carved out from the share of their transferor and for this reason, the impugned order needs to be set aside.

05. Learned Senior counsel, Mr. K. N. Chaubey, appearing on behalf of respondent no. 1 vehemently contended that there is no merit in the present petition and the same needs to be dismissed *in limine*. Mr. Chaubey, at the outset, submitted that Section 41 of the Act has no application in the present case as it was not a transfer by the ostensible owner. Admittedly, the transfer was made by co-sharers in a joint family property during pendency of the partition suit and the same is hit by Section 52 of the Act. A transferee *pendente lite* cannot put any objection to execution of decree. Resistance to execution of decree of third party could be allowed under Order 21 Rule 97 to 106 of the Code. Those rules are intended to deal with every sort of resistance or obstructions offered by any person. However, 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 executing court has to hold that he has no right to resist in view of the clear language contained in Rule 102 of Order 21 of the Code.

06. In support of his submission, Mr. Chaubey referred to a decision of Hon'ble Supreme Court in the case of *Silverline Forum Pvt. Ltd v. Rajiv Trust & Anr.*, reported in *AIR 1998 SC 1754*, wherein the Hon'ble Supreme Court in Para-10 held as under:

“10. It is true that R. 99 of O. 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.

When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the Court is not obliged to determine a question merely because the resistor raised it. The questions which executing Court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g. if the obstructor admits that he is a



transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. in the adjudication process envisaged in Order 21 Rule 97(2) of the Code, execution court can decide whether the question raised by a resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.”

07. Mr. Chaubey referring to the aforesaid decision of Hon’ble Supreme Court submitted that scope of proceeding under Order 21 Rule 97 to 106 of the Code cannot be enlarged and a transferee *pendente lite* cannot obstruct the execution proceeding or resist delivery of possession to decree holder. Mr. Chaubey pointed out that the litigation in this matter started in 1964 and for about 60 years the matter has been pending depriving the decree holder of the suit after decree. Mr. Chaubey



next referred to the decision of this Court in the case of ***Dhira Mishra @ Dhira Devi & Ors. vs Md. Laique Ahmad & Ors. (Civil Misc. No. 26 of 2019) decided on 06.02.2024*** wherein this Court quoted the observation of the Privy Council in the case of ***Court of Wards vs. Maharajah Coomar Ramaput Sing), (1871-72)14 MIA 605***, also reported in ***(1872) SCC OnLine PC 16*** wherein it has been held “that the difficulties of a litigant in India begin when he has obtained a decree” still holds true and the situation has not improved even after a century and half.

08. Mr. Chaubey further submitted that there has been never any acquiescence on part of the respondent no. 1 to the sale effected by the co-sharers and the petitioners could not claim any right on the basis of such claim. Mr. Chaubey further submitted that the petitioners were all along knowing about the proceedings pending before the learned trial court and still, they purchased the litigation and now they seek condonation of their wrongful act by this Court, which is simply not permissible. Mr. Chaubey, thereafter, pointed out that powers under Article 227 of the Constitution of India is not to be exercised in such matter when there is no infirmity in the impugned order. The impugned order is a well reasoned and speaking order and could not be be



faulted. In such circumstances, there is very little scope for this Court to intervene in the matter. Mr. Chaubey referred to the decision of the Hon'ble Supreme Court in the case of ***Jai Singh and Ors. vs. Municipal Corporation of Delhi and another*** reported in ***(2010) 9 SCC 385*** wherein it has been held that the powers under Article 227 should not be exercised like "a bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. It has further been held that the High Court has the power to reach injustice whenever, wherever found within the scope and ambit of its powers under Article 227 of the Constitution of India. Mr. Chaubey further submitted that though the petitioners have been seeking sympathy of this Court on the ground that they have purchased the property 20-25 years back and have been coming into its possession and have constructed pucca houses, but any sympathy in their favour would be misplaced as the same would be against the law. Mr. Chaubey further submitted that the legal maxim "*dura lex sed lex*" which means "the law is hard but it is the law", stands attracted in such a situation. Thus, Mr. Chaubey



submitted that there is no infirmity in the impugned order and the same needs to be sustained.

09. Joining the issue with learned senior counsel, Mr. Chaubey, learned counsel, Mr. Sunil Kumar Verma, appearing on behalf of respondent no. 2, vehemently contended that the impugned order is not sustainable and the same ought to be set aside. Mr. Verma further submitted that the learned executing court did not consider the pertinent and relevant questions of law, propriety and equity arising in this case in the factual background. The case relates to protection and saving of the interest of the plaintiff as well as defendants qua the transfer of the lands in favour of the third parties and the interest of the third parties has been sacrificed and negated by the learned executing court by passing the impugned order. Mr. Verma further submitted that the learned executing court lost sight of the relevant and overriding nature of order dated 18th of May, 1984 passed in Second Appeal No. 63 of 1976 as the same cannot be construed to mean that only those transferee would be protected till the date of passing of the order. It was the order of general effect that any property already sold to a third party by either the plaintiff or the defendants was to be retained in the share of his transferors. The said order was in legal force even



on the date of rejection of the petition of the petitioners. Further, the learned executing did not take into consideration subsequent order dated 22.04.1985 passed in S.A. No. 63 of 1976 wherein it was directed that the allotments of latter group of plot to the plaintiff/respondents was justified for the reason that they have sold the substantial portions of the suit land and the lands transferred by them have to be allotted to them. It was further ordered that once the plots have been allotted to them, the appellants would become entitled to allotment to the extent of their shares over the lands available in the joint stock. Mr. Verma reiterated the contention taken by the learned counsel for the petitioner that the respondent no. 1 executed sale deeds in favour of certain vendees on 04.03.2020, 07.08.2020, 08.12.2020 and 04.07.2021 with respect to the suit property covered under Plot No. 636 (new), which has been carved out from Plot No. 481(old) and Plot No. 668 (old). Three plots 636, 637 and 638 emerged out of old Plot No. 481 and 668. Now, plot no. 481(old) and plot no. 668 (old) were allotted to the share of mother of respondent no. 1 and notwithstanding preparation of final decree and allotment of share in favour of mother of respondent no.1, he chose to alienate and execute sale deeds relating to plot no. 636(new) which stands carved out of



old Plot Nos. 481 and 668. Mr. Verma further submitted that the vendees/transferees of both co-sharers, respondent nos. 1 and 2 have come into possession over the subject land and this shows the parties have been transferred the land of their co-sharer without any reservation. Mr. Verma further submitted that the learned Pleader Commissioner did not comply the directions of this Court passed in Second Appeal No. 63 of 1976 under its order dated 22.04.1985 as the Pleader Commissioner did not embark upon dividing plot nos. 1, 24, 51, 54 and 56 in equal measure between the parties from South to North protecting the vital property interest of both the parties. Only Plot No. 26 has been divided between the parties. Plot Nos. 54, 56 and 24 in its entirety were allotted to the share of respondent no.1 whereas plot nos. 1 and 51 were allotted to the share of respondent no.2 herein. Thus, Mr. Verma submitted that there is complete non compliance of order dated 22.04.1985 passed by this Court in Second Appeal No. 63 of 1976 to the extent of exclusion of Plot Nos. 1, 24, 51, 54 and 56 from south to north afresh, causing serious prejudice to the vital interest of respondent no.2 and the learned Sub Judge-I, East Muzaffarpur has lost sight of the objection of the plaintiff/respondent no.2 herein and affirmed the report of learned Advocate Commissioner dated 03.09.1996



order dated 29.04.1999/01.05.1999 rejecting the objection of the plaintiff/respondent no. 2 in respect of said report. This fact has also not been taken into consideration by the learned executing court while passing the order dated 16.08.2018 in Execution Case No. 01 of 2007. Thus, Mr. Verma submitted that the order of the learned executing court could not be sustained and the same be set aside.

10. I have given my thoughtful consideration to the rival submission of the parties and perused the record. It would be advantageous to quote the relevant legal provisions, which are Sections 41 and 52 of the Transfer of Property Act and Order 21 Rule 97 to 106 of the Code. Sections 41 and 52 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 violable 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.*

***52. Transfer of property pending suit relating thereto.—**During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government ***], of [any] suit or proceeding*



[which is not collusive and] in. which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]”

Order 21 Rules 97 to 106 of the Code 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.*

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after adjudication.—*(1) Upon the*



determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

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

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

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

99. Dispossession by decree-holder or purchaser.—*(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.*

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application



complaining of dispossession.—Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

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

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

101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102. Rules not applicable to transferee pendente lite.—Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the 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.

Explanation.—In this rule, “transfer” includes a transfer by operation of law.

103. Orders to be treated as decrees.—Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be



subject to the same conditions as to an appeal or otherwise as if it were a decree.

104. Orders under rule 101 or rule 103 to be subject to the result or pending suit.—Every order made under rule 101 or rule 103 shall subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order, is made if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

105. Hearing of application.—(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application *ex parte* and pass such order as it thinks fit.

Explanation.—An application referred to in sub-rule (1) includes a claim or objection made under rule 58.

106. Setting aside orders passed *ex parte*, etc.

—(1) The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed *ex parte* under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the



Court shall set aside the order or such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order; or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order.”

11. Now, plain reading of Section 41 of the Act makes it clear that the claim of the petitioners being transferees of ostensible owner is completely misplaced in the given facts and circumstances. It is not the case of the decree-holder or for that matter of any of the parties that the transfer of property in favour of the petitioner is void for the reason that transferor had got no power. The claim of the petitioners has been assailed on the ground that they purchased the property while the litigation has been pending and thus, it is hit by Section 52 of the Act. Therefore, all the decisions cited by the learned counsel for the petitioners regarding claim of purchasers from ostensible owner are misplaced. The orders of this Court passed in Second Appeal No. 63 of 1976 would not come to the help of the petitioners as



the orders protected the transferees who were in existence on the date of passing of the orders and not the subsequent transferees as claimed by the learned counsel for the respondent no.2. This fact becomes clear by the subsequent events. In Second Appeal, the partition effected between the parties has not been interfered with. This Court rather observed that interest of both the parties would be satisfied by maintaining the *pattibandi* in the report of the Pleader Commissioner submitted before learned District Judge, Muzaffarpur with the modification that a fresh division of plot nos. 1, 24, 26, 54 and 56 was to be made from South to North maintaining the area and compactness allotted to the parties, respectively. Therefore, the share of the parties and its demarcation had already been fixed with passing of final decree in the second appeal, which was only a modified decree of the first appellate court with fresh division of plot nos. 1, 24, 26, 54 and 56 to be made from South to North. This fact is important as the parties have all along been knowing about their respective shares and despite knowing this fact, respondent no. 2 kept on alienating the property falling in share of the respondent no. 1 with impunity. It is pertinent to mention here that the final orders in second appeal were passed on 22.04.1985. So, respondent no. 2 cannot take plea that shares of the parties were



not fixed when the judgment of this Court in second appeal made it very much clear that the *pattibandi* report of Pleader Commissioner would be maintained except for fresh division of plot nos. 1, 24, 26, 54 and 56 to be made from South to North maintaining the area and compactness allotted to the parties, respectively. It is also pertinent to mention here that earlier *pattibandi* in dividing the plot nos. 1, 24, 26, 54 and 56 was from East to West and equal area of that partition was to be allotted to the parties while making the division from South to North. Thus, it appears that it is the act of respondent no. 2, which has put the petitioners in a pitiable condition. For the aforesaid reason, neither respondent no. 2 nor the petitioners could claim that the land sold by respondent no. 2 in favour of the petitioners be allotted in the share of respondent no.2.

12. I also do not find any merit in the submission of learned counsel for the petitioners about the petitioners not getting proper opportunity of hearing under Order 21 Rule 97 of the Code, as Rules 97 to 101 of Order 21 of the Code are not at all applicable to the transferee *pendente lite*. For this reason, the reliance placed on ***Bangalore Development Authority*** (supra) is not relevant to the facts and circumstances of the present case. Therefore, the petitioners being the transferees *pendente lite* has



no right to resist or object the execution proceeding. Once it is admitted that objector to the execution proceeding is a transferee *pendente lite*, it is not necessary to determine the question raised by the objector that he was unaware of the litigation when he purchased the property.

13. I also find merit in submission of Mr. Chaubey that the scope and jurisdiction of this Court under Article 227 of the Constitution of India is limited and is to be exercised sparingly and could not be used to correct all errors of the court or tribunal acting within the limits of its jurisdiction. In the instant case, there does not appear to be any error of jurisdiction in the impugned order passed by the learned Sub Judge. It is a well discussed and reasoned order and each contention of the petitioners have been recorded and negated by the learned executing court. Unless, there is any infirmity or excess or want of jurisdiction, there is no occasion for this Court to intervene in such orders to give credence to saying that the Court has been acting like ‘a bull in a china shop’.

14. In the light of discussion made here-in-before, I do not find any error of jurisdiction in the impugned order dated 16.08.2018 passed by the learned Sub Judge-I, East Muzaffarpur in Execution Case No. 01 of 2007 and therefore, the impugned



order does not suffer from any infirmity and hence, the same is hereby affirmed.

15. As a result, the present civil miscellaneous petition stands dismissed.

16. However, it is made clear that the petitioners can always have recourse of law for their claim against their vendor.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	10.12.2024
Uploading Date	08.01.2025
Transmission Date	NA

