



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 394 OF 2025
WITH
CIVIL APPLICATION NO. 11376 OF 2025

Kamal W/o Vishwanath Jadhav,
Aged : 70 yrs., Occu. Business,
R/o. 11, Shriniketan Colony, Jalna
Road, Chhatrapati Sambhajinagar.

...APPELLANT
(ORIGINAL OBJECTOR)

VERSUS

Challani Ginning and Pressing Factory,
A registered Partnership Firm, having
it's registered office at 207,
Atul Market, Laxmi Chawadi,
Chhatrapati Sambhajinagar
Through its Partner

...RESPONDENT
(ORI. DECREE HOLDER)

...
Mr. N.B. Khandare, Sr. Advocate I/b. Prashant Nikam, Advocate for
appellant.
Mr. P.F. Patni, Advocate for respondent.
...

CORAM : ARUN R. PEDNEKER, J.
RESERVED ON : 12.11.2025.
PRONOUNCED ON : 17.11.2025.

JUDGMENT :-

1) By the present second appeal, the appellant/original objector challenges the judgment and decree dated 11.09.2025 passed by the first appellate Court in R.C.A. No. 116/2025, confirming the judgment and order dated 9.5.2025 passed by the Executing Court in Special Darkhast No. 32/2017. The appellant/objection petitioner's objection petition at Exh. 210 and an interim application for framing issues at Exh. 233 in Special Darkhast No. 32/2017 are dismissed by the Executing Court vide common judgment and order dated 9.5.2025.

2) The learned counsel for the appellant submits that following

substantial questions of law arise in the present second appeal.

(1) Whether both the Courts below failed to appreciate the true intent, import and scope of Rule 97 of Order 21 of CPC, while rejecting Objection Petition/Application of the Appellant :

i) Holding that it is filed in collusion with JD-1 Narendra to frustrate and defeat the decree being frivolous, not bona fide and with intent to prolong the execution proceedings.

ii) Without going into the issue of right, title and interest of the Appellant more particularly when the Appellant claims proprietary right and share in the property in her possession.

(2) Whether the provisions of Rule 97-101 of Order 21 CPC permit the Executing Court to decide Objection in a summary manner without adjudicating right, title and interest in the property of the Appellant by denying opportunity to lead evidence to prove right title and interest, which only to prove by adducing evidence.

(3) Indisputably, the Appellant is in possession of the property in question and her right to remain in possession is independent of decree hence cannot be dispossessed until her right title and interest is adjudicated upon by following the due process of law.

(4) As to whether finding recorded by the executing court only on the basis of oral arguments without allowing evidence and without framing issue that property in question is self-acquired property of JD is directly militate to the basic principle of Evidence Act, more particularly provisions of Chapter VII of the Indian Evidence Act.

3) Before advertng the above raised substantial questions of law, brief facts leading to the institution of the present appeal can be summarized as

under :-

The plaintiff filed suit for specific performance of an agreement of sale of plot No. 11, CTS No. 13159/17 situated at Shriniketan colony, Aurangabad in Special Civil Suit No. 201/2013. In the said suit, specific performance was not granted, however, direction was issued to refund the earnest money of Rs. 1,45,00,000/- (Rupees one crore and forty five lakhs) along with 8% interest. First appeal against the judgment of trial Court was dismissed. As the earnest amount was not refunded with interest, the Decree Holder (DH) filed execution petition on 8.8.2017 bearing Special Darkhast No. 32/2017. In the execution proceeding plot No. 11 was attached on 21.9.2017 by the executing Court.

4) During the pendency of the execution petition, after attachment, the Judgment Debtor (JD) sold the said plot No. 11 by a registered sale deed to one Vienna Multiventure. Meanwhile, the executing court issued proclamation for public auction of the said plot No. 11. Vienna Multiventure filed objection petition in the said execution proceeding on the ground that they are bonafide purchasers of the said plot No. 11. The objection of Vienna Multiventure was rejected by the trial Court, first appellant court and it was confirmed up to the Supreme Court. Vienna Multiventure has further mortgaged the said property i.e. plot No. 11 with HDFC Bank and has obtained loan of Rs.3,00,00,000/- (Rupees three crores). After rejection of objection of Vienna Multiventure, the property attached was put to auction. The auction was then challenged by JD No. 1 on 28.7.2022 and said objection application was allowed by the executing court and the auction was set aside. On 3.5.2023 after fixing the base price of Rs. 2,85,34,000/- fresh sale proclamation was ordered to be issued. Sale proclamation was

affixed at the gate of said property by beat of drums on 3.7.2023 and accordingly panchanama was also prepared. On 4.1.2025 the auction sale was confirmed by the executing Court. This confirmation of sale was objected by JD by filing Writ Petition Nos. 1552/2025 and 1577/2025, which were dismissed by this Court by imposing cost of RS. 75,000/-. Thereafter, on 20.2.2025 present appellant filed objection petition and objected to the possession warrant and for setting aside the auction sale. The said objection petition filed by the appellant was rejected by the executing court by imposing compensatory cost of Rs.10,000/-. On 8.7.2025 the executing court issued warrant of possession which was returned as the house was locked. Thereafter, on 2.7.2025 the appellant had filed appeal before the first appellate court bearing No. RCA No. 116/2025. On 11.9.2025 the said appeal was dismissed by the first appellate court. However, stay to the warrant was continued for some time. Thereafter, the appellant filed the present second appeal.

5) **Mr. N.B. Khandare**, learned Senior Counsel for the appellant submits that petitioner is an independent third party and she does not derive her title of the auctioned property i.e. plot No. 11 from the JD and the auctioned property is also not the decreetal property. The learned Senior counsel submits that money decree is sought to be executed against the joint family property of the appellant and JD. The learned Senior Counsel submits that JD is the son of the appellant and the property put in auction i.e. plot No. 11 is joint family property and Courts below ought not to have brushed aside the objection raised under Order 21 Rule 97 of Civil Procedure Code (CPC), as frivolous. The appellant being the third party and the property put in auction is not the decreetal property, the courts below ought to have

given opportunity to the appellant to lead the evidence to demonstrate the right of the appellant in the auctioned property. He also submits that the courts below having brushed aside the objection raised, without framing issues and permitting the appellant to lead evidence and having rendered a finding that the suit property is owned by JD No. 1, great prejudice is caused to the appellant as the finding would operate as res-judicata in any suit that may be filed to demonstrate her right qua the auctioned property. He submits that a judgment passed under Order 21 Rule 97 of CPC is a decree unless the objection is rejected on the ground of jurisdiction. He submits that in the facts of the case, the above substantial questions of law arise for consideration in the present second appeal. During the course of arguments, the learned counsel for the appellant submits that if the opportunity to lead the evidence is given to the appellant, the appellant would conclude the proceedings in the objection application within a period of six months.

6) In support of above submissions, the learned counsel for the appellant has placed reliance on the following judgments :-

- i. **Parsanbai Dhanraj Jain and Ors. Vs. Sunanda Madhukar Jadhav, 2017 (6) AIL MR 877.**
- ii. **Maya Devi Vs. Lalta Prasad, 2015 ALL SCR 487**
- iii. **Shreenath and Anr. Vs. Rajesh and Ors., AIR 1998 SC 1827**
- iv. **Kuber Hou. Society Investment & Finance Pvt. Ltd. Vs. TCL Finance Ltd. & Ors., 2013 (6) ALL MR 342**
- v. **Jogindarsingh Ravail Singh Vs. Sitavanti Avtarsingh Bhasin, 1982 ALL MR Online 274**
- vi. **Sardar Hasnbhai Attar Vs. Usman Papamiya Attar Shaikh and Ors., 2008 (2) ALL MR 186**
- vii. **Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal, 1997**

(1) Mh.L.J. (SC) 817

viii. Umadevi Nambiar Vs. Thamarsseri Roman Catholic Dioces, 2022 (6) Mh.L.J. 1

ix. Shripati Ganpati Jadhav and ors. Vs. Chandrakant Ganpati Jadhav and Ors., 2010 0 Supreme (Bom) 1635

x. Rajendra Laxminarayan Jaiswal and ors. Vs. Nandranibai Harinarayan Jaiswal and ors., decided by this Court in Writ Petition No. 11521/2021 with WP No. 11529/2021 decided on 27.7.2022

xi. Udyavara R. Acharya Vs. Mr. Jugal Kishor Jagannath Sharda Zenith Co-operative Housing Society Ltd., 2020 0 Supreme (Bom) 451

xii. Nooruddin Vs. K.L. Anand, 1994 0 Supreme (SC) 1230

xiii. Ram chandra Verma Vs. Shri Jagat Singh Singhi & Ors., 1996 (2) SUPREME 429

xiv. Haribhai @ Harilal Maujibhai Patel & Ors. Vs. Neera Madanlal Lodha & Ors., decided by this Court in SA No. 877/2018 with Civil Application No. 13907/2018 decided on 7.2.2023

xv. Canara Bank Vs. Gurmukh Singh & Ors., AIR 2000 DELHI 48

xvi. Punjab Financial Corporation, Chandigarh Vs. M/s. Garg Rice and General Mills Samana and Ors., AIR 1984 PUNJAB AND HARYANA 319

xvii. Tanzeem-e-sufia Vs. Bibi Haliman and Ors., 2002 (6) Supreme 109

xviii. Babulal Vs. Raj Kumar & Ors., 1996 (2) Supreme 601

xix. Sardar Hasanbhai Attar Vs. Usman Papamiya Attar Shaikh & ors., 2007 Supreme (Bom) 1416

xx. Bangalore Development Authority Vs. N. Nanjappa, AIR 2022 SUPREME COURT 81

xxi. Jini Dhanrajgir and Anr. Vs. Shibu Mathew and Anr., (2023) 20 Supreme Court Cases 76.

7) Having considered the factual background of the case and the submissions made by the learned counsel for the appellant, the substantial

question of law, that arises for consideration in the instant case is as under :-

“Whether the executing court erred in law in not framing the issues and permitting the appellant/objection petitioner in leading evidence and demonstrating her case that the auctioned property is a joint family property and the same is purchased from the funds of the nucleus of joint family property and thus the auction sale of plot No. 11 is not binding upon her to the extent of 1/3rd of her share in plot No. 11 ?”

8) The present second appeal arises out of the execution proceeding. I have proceeded to decide the substantial questions of law raised by the appellant in this appeal. I have heard both the parties extensively on the substantial question of law as noted above in para 7. Keeping the matter admitted by framing of above substantial questions of law would cause prejudice to the respondent/auction purchaser and as such, I have proceeded to determine the substantial question of law.

9) Responding to the above question of law, **Mr. P.F. Patni**, learned counsel appearing for respondent/DH/auction purchaser submits that DH has purchased the property in auction with the permission of the Court and has deposited entire auction amount in the Court and the appellant herein had failed to raise objection from the year 2017 when the property was put under attachment. Thereafter sale was conducted through auction which was set aside and again another sale was conducted by auction which was confirmed up to Supreme Court. The objections raised at the stage of delivery of possession, claiming 1/3 right in the suit property is a frivolous

one and cannot be adjudicated and therefore, the courts below have summarily dismissed the objection application. The objection is raised only to delay the handing over the possession of plot No. 11 to the auction purchaser.

10) The learned counsel for the respondent submits that the objection application filed by appellant would indicate that she was also the owner of Plot No. 10 which she has sold in her individual capacity without the consent of other family members, although she has stated in the application that it is with consent of her sons. But the consent is not mentioned in the sale deed. Younger brother of JD No. 1 was also the owner of the plot No. 49 in the same vicinity and he had also entered into agreement to sale against which specific performance was granted by the Court and said plot was also sold in execution of the decree and no objection was raised by any of the parties/family members of the objection petitioner that plot No. 49 was jointly owned by the family.

11) It is also submitted that the sale deed of plot No. 11 in favour of JD No. 1 would indicate that JD has purchased the property himself and at the relevant time, he was of 27 years of age and a businessman as can be seen from the recitals of the sale deed. The sale deed does not mention that consideration is from joint family property or that the account from which the amount is paid towards sale consideration is from joint family account. He further submits that objection petition is bereft of any document in support of claim of the appellant. Her objection is only accompanied with the execution warrant filed for the purpose of claiming cause of auction. He submits that there is no document filed along with the objection application whereby atleast prima facie view can be taken that the appellant has right

over the property of JD No. 1. He also submits that JD No. 1 in the suit filed for specific performance had not taken any defence that the suit property i.e. plot No. 11 is joint family property nor did the present appellant or younger brother of the JD No. 1 had filed any intervention application in the suit claiming that the suit property is a joint family property. He submits that the substantial questions of law raised in the present appeal do not arise and the Courts below have rightly dismissed the objection of the appellant.

12) The learned counsel for the auction purchaser has taken me through para No. 5 of the objection petition and submits that appellant has admitted that she has alienated plot No. 10, however, she has stated that it was with the express consent of JD and other son, but the sale deed produced did not indicate that there was consent by the JD as well as other son. At para 6 of the objection, she has stated that JD No. 1 and other son are permanently residing at Mumbai along with family in the year 2004 and objection petitioner resides in the suit property. He also submits that primary relief claimed is the objection petition is to set aside the auction sale. He points out that the appellant court has observed that entire sale consideration for plot No. 11 is paid by JD No. 1 and thus JD No. 1 is the sole owner of the property put in execution. The learned counsel has relied upon the judgment in the case of **Periyamma (Dead) through Lrs. and Ors. Vs. V Rajmani and Anr.**, reported in **2025 SCC OnLine SC 507** and submits that the executing court can decide whether the the resistor or obstructor is a person bound by the decree and he refused to vacate the property. That question is also squarely falls within the adjudicatory process contemplated in order 21, Rule 97(2) of CPC. The adjudication mentioned therein need

not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. However, the court can direct the parties to adduce evidence for such determination, if the court deems it necessary. He submits that Courts below have rightly come to the conclusion relying upon the judgment of Periyamma cited supra that the objection petition is not tenable and liable to be dismissed with compensatory cost and that the Courts below have rightly come to the conclusion that the objection petition is not tenable and framing issues for adjudication of the objection petition is not necessary.

13) The learned counsel for respondent has also relied upon para No. 46 of the judgment in the case of **Periyammal (Dead) through Lrs. And Ors. Vs. V Rajamani and Anr.** (supra) and submits that technical objections to any application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable property under execution, the executing court is vested with the power to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. It is also observed that any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order.

14) The learned counsel for the respondent relied upon the judgment in the case of **Kadiyala Rama Rao Vs. Gutala Kahna Rao (Dead) by Lrs. And ors.,** reported in **(2000) 3 SCC 87** and submits that the provisions of Order 21 Rule 90, categorically envisage that material irregularity and fraud alone

would confer jurisdiction on the executing court to set aside the sale. The question of saleable interest does not come within the ambit of Order 21 Rule 90 and as such the judgment-debtor had no locus standing to apply to the court for setting aside the sale. It is only in the case of material irregularity or fraud statute recognises such a locus standi only and not otherwise. Apart therefrom, saleable interest can only be challenged by the purchaser and not by the judgment-debtor since the purchaser's right would otherwise be clouded therewith by reason of there being no saleable interest in the property so far as the judgment-debtor is concerned. The learned counsel submits that in the instant case the objector has fairly submitted before this Court that they are not seeking quashing and setting aside the sale on the ground of fraud or material irregularities and as such, further prayer made in the application to set aside the sale cannot be granted unless there is fraud or material irregularity in conducting sale. He submits that the objection to sale ought to have been taken at earlier point of time and not doing so, would amount to intentional relinquishment of a known right.

15) The learned counsel for the respondent has also placed reliance on the judgment of this Court in the case of **Dhanaraji Baburam Yadav and Anr. Vs. Ramakant K. Dhanawade and Ors.** reported in **2003 (2) Mh.L.J. 58** to contend that the objection has to be taken at earliest point of time and the executing court is expected to be on guard and is expected to wipe out the flimsy, false and vexatious pleas raised by obstructionist.

16) The learned counsel for the respondent has also placed reliance on the case of **Kailashchandra Kedarmalji @ Kedarnath Agrawal Vs. Kocha Veedu Varghese Joseph and Anr**, reported in **1019 (1) Mh.L.J. 662** and

submits that the right accrued to the decree holder cannot be scuttled or obstructed by anybody who is stranger to the decree. Of course, a limited right to protect possession of the suit property has also been given under Order 21, Rule 97 of CPC to any person who claims to be in possession and till such right is decided. In order to assert such a right the obstructor is required to demonstrate his prima facie case in the matter. He is required to place before the executing court some material on the basis of which the executing court could record its satisfaction that a dispute as contemplated under Order 21, Rule 97 CPC has been raised and such dispute would require an adjudication as mandated by Rule 101.

CONSIDERATION

17) In order to decide the above substantial question of law, the relevant provisions of Order 21 of the CPC are noted below for ready reference.

"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 the upon the application in accordance with the provisions herein contained."

Order XXI, Rule 98 reads as follows:

"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."

Order XXI, Rule 99 reads as follows:

"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."

Order XXI, Rule 100 reads as follows:

"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."

Order XXI, Rule 101 reads as follows:

"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."

Order XXI, Rule 103 reads as follows:

"103. Orders to be treated as decrees.

Where any application has been adjudicated upon under rule 98 or rule 100 the other 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."

Relevant judgments of the Supreme Court dealing with the above provisions relating to obstruction of the execution of decree are noted below.

18) In the case of **Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal** reported in **(1997) 3 SCC 694**, it is observed by the Hon'ble Supreme Court that conjoint reading of Order 21, Rule 97, 98, 99 and 101 lays down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree holder and whose attempts at executing the said decree is met with objection.

19) The Supreme Court in the case of **Brahmdeo Chaudhary** cited supra has observed as under :-

"On the contrary the statutory scheme envisaged by Order 21 Rule 97 CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the

decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the executing court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order 21 Rules 97 to 103 would remain a complete code and the sole remedy for the parties concerned to have their grievance once and for all finally resolved in execution proceedings themselves."

(emphasis supplied)"

20) In **Silverline Forum Pvt. Ltd. Vs. Rajiv Trust** reported in **(1998) 3 SCC 723**, the Hon'ble Supreme Court has observed that a third party to the decree including the transferee pendente lite can offer resistance or obstruction and his right has to be adjudicated under Order 21, Rule 97 of CPC. In **Silverline Forum** cited supra at para No. 9 the Hon'ble Supreme Court has observed that resistance or obstruction made by a third party to the decree of execution has to be decided by the executing Court and it is incumbent upon the executing Court under Order 21 Rule 97 of the CPC to adjudicate upon such complaint as per the procedure laid down. The Hon'ble Supreme Court has observed that the executing Court can decide whether resister or obstructor is a person bound by the decree and he refuses to vacate the property and that question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of CPC. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The Court can make the adjudication on admitted facts or even on the averments made by the resister.

21) In the case of **Sameer Singh Vs. Abdul Rab** reported in **(2015) 1 SCC 379**, the Hon'ble Supreme Court has held that the executing court had the authority to adjudicate all questions pertaining to right, title or interest in

the property arising between the parties. It also includes a claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained Code enjoins the executing court to adjudicate the lis and the purpose of the conferment of the power is to avoid multiplicity of the proceedings.

22) In the case of **Nooruddin Vs. K.L. Anand reported in (1995) 1 SCC 242**, the Honble Supreme Court has observed that it has to be remembered that the preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21 Rule 103 or 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

23) In the case of **Ashan Devi and Anr. Vs. Phulwasi Devi and Ors. reported in (2003) 12 SCC 219** at para No. 16 the Hon'ble Supreme Court has observed as under :-

"16. It is necessary at this stage to take into account the objects of drastic amendments introduced to the Code of Civil Procedure by Act 104 of 1976. This Court in the case of Shreenath [MANU/SC/0286/1998 : (1998) 4 SCC 543] has compared the unamended provisions of the Code in Order 21 and the provisions introduced after amendment. It is noticed that earlier under the Code, the third party "dispossessed" in the execution of the decree was required to institute an independent suit for adjudication of its right and claims. In order to shorten the litigations concerning same properties between same and third parties, claims of third parties to the property in execution are now required to be determined by the executing court itself in accordance with provisions

under Order 21 Rule 101 with right of appeal to the higher court against such adjudication treating it to be a "decree" under Order 21 Rule 103 of the Code. On the amendments introduced to the Code by the Amendment Act of 1976, this Court observed thus:

"3. In interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted. The procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed."

24) In the case of **Tanzeem-E-Sufia reported in (2002) 7 SCC 50**, the Supreme Court has observed that the application of the decree holder required adjudication under Order 21 Rule 97 of the Code and the application of the third party also necessitated adjudication of its rights under Order 21 Rule 97 of the Code irrespective of the fact that for part of the property, the third party had filed an independent suit for declaration of its title to the suit property.

25) Thus, third party who was entitled to file independent suit and seek injunction against his dispossession is now mandated to file objection under Order 21 Rule 97 of CPC and such application filed by the third party who claims right independently to the JD and claims possession of her own right is required to be adjudicated as a suit and in view of the aforementioned judgments of the Hon'ble Supreme Court findings rendered in the application under Order 21 Rule 97 would bar fresh suit by the principle of res-judicata and the order passed under Order 21 Rule 97 of CPC would be a decree subject to further provisions of appeal.

26) Having noted the law on the subject of obstruction to the execution of decree, now I advert to the facts of the instant case. The case put up by the

objection petitioner/appellant in the objection petition is that the JD No. 1 is the son of the objection petitioner. Husband of objection petitioner has expired on 26.4.1993 leaving behind the objection petitioner, JD No. 1 and one other son namely Yogesh Jadhav. During the lifetime, the husband of the objection petitioner had started first company of cement product and that at the relevant point of time, the husband of the objection petitioner was having monopoly in the cement products and accordingly he had earned lot of wealth out of the said business and had acquired couple of properties. After demise of the husband, the objection petitioner alone looked after cement product business left by the deceased. The objection petitioner and JD No. 1 started various subsidiary companies wherein the objection petitioner and JD No. 1 are directors. It is stated that JD No. 1 had no any independent source of income at the time of purchase of property i.e. plot No. 11 having CTS No. 13159/17 (auction property). The family was surviving on the amounts left behind by the husband of the objection petitioner and the auction property was purchased out of the income of the husband of the objection petitioner and also out of the funds of the business looked after by the objection petitioner and thus, the auction property is not the exclusive property of JD No. 1 and the same is joint family property wherein the objection petitioner is having undivided 1/3rd share. It is stated that the decree so passed and the sale so confirmed in favour of DH is not binding on the share of objection petitioner. The objection petitioner has also given explanation of sale of one property by herself i.e. plot No. 10 being sold with the express consent of other owners.

27) The executing court has not framed the issues/points and permitted

the objector to lead evidence and to adjudicate the right, title and interest of the objector in the property/plot No.11 attached and sold in auction. It is to be noted that the suit filed for specific performance of the contract of sale qua the same property was not granted and the earnest amount was directed to be refunded. However, the amount was not refunded back and as such, the execution proceedings were filed and the plot No. 11 was attached. Although belatedly the present appellant has filed objection petitioner under Order 21 Rule 97, claiming 1/3rd share in the auctioned property, she is undisputedly the mother of JD No. 1 and she claims that the suit property is purchased through the corpus of the joint family and that she has 1/3rd share in the property. She does not dispute or challenge the auction sale to the extent of share of other members of joint family, although one of the prayer indicates that she has challenged the sale. Her primary prayer is that she has 1/3rd share in the property and she cannot be dispossessed from the auctioned property. She has also filed independent suit for partition just prior to filing the objection petition and the same is pending for adjudication. In the above noted facts, the question arises whether the courts ought to have framed the issues raised for determination and permit the appellant to prove her case by leading evidence.

28) It is undisputed that the parties to the suit are Hindus and under Hindu Law, the family is presumed to be joint. However, there is no presumption of a property being joint family property only on account existence of a joint Hindu family. On this aspect the Hon'ble Supreme Court in the case of **Angadi Chandranna Vs. Shankar and Ors**, reported in **MANU/SC/0528/2025**, at para Nos. 13 and 15 has observed as under :-

"13. Further, it is a settled principle of law that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. This Court in R. Deivanai Ammal (Died) Vs. G. Meenakshi Ammal 12, dealt with the concept of Hindu Law, ancestral property and the nucleus existing therein. The relevant paragraphs are extracted below for ready reference:

"13. First let us consider the nature of the suit properties, namely, self-acquired properties of late Ganapathy Mooppanar or ancestral properties and whether any nucleus was available to purchase the properties. Under the Hindu Law it is only when a person alleging that the property is ancestral property proves that there was a nucleus by means of which other property may have been acquired, that the burden is shifted on the party alleging self-acquisitions to prove that the property was acquired without any aid from the family estate. In other words the mere existence of a nucleus however small or insignificant is not enough. It should be shown to be of such a character as could reasonably be expected to lead to the acquisition of the property alleged to be part of the joint family property. Where the doctrine of blending is invoked against a person having income at his disposal and acquiring property, the reasonable presumption to make is that he had the income at his absolute disposal unless there is evidence to the contrary. If a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and treated as property acquired from the joint family nucleus, it is

absolutely essential that such a coparcener should not only barely plead the same, but also establish the existence of such a joint family fund or nucleus. Even if the joint family nucleus is so established, the prescription that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus. The proof required is very strict and the burden is on the person who sets up a case that the property in the name of a female member of the family or in the name of the manager or any other coparcener is to be treated as joint family property. There should be proof of the availability of such surplus income or joint family nucleus on the date of such acquisitions or purchases. The same is the principle even in the cases where moneys were advanced on mortgages over immoveable properties. The onus is not on the acquirer to prove that the property standing in his name was purchased from joint family funds. That may be so, in the case of a manager of a joint family, but not so in the case of all coparceners. For a greater reason it is not so in the case of female members.

14.

15. It is a well-established principle of law that where a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. But no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus should be such that with its help the property claimed to be joint could have been acquired. A family house in the occupation of the members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of

considerable value.”

The Supreme Court has held that it is well settled principle of law that the party who claims any property is a joint family property, the burden of proving that it is so rests on the party asserting it. It is well settled principle of law that there is no presumption of property being joint family property only on account of existence of joint Hindu family.

29) Similarly in the case of **Kannammal v. Ramathilakkammal** reported in **AIR 1927 Mad. 38**, the Hon’ble Madras High Court has observed as under :-

“While there is a presumption that a Hindu family is joint until the contrary is proved, there is no presumption that a Hindu family is possessed of property. The party alleging that the property held by an individual member of a joint family is family property must show that the family was possessed of some property with the aid of which the property in question could have been acquired. If this is shown, and only then, the onus shifts to the party alleging self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate.

30) However, the Privy Council has observed that the circumstances may readily cause the onus to be discharged. In the case of **Annamalai Chetti v. Subarmaniam Chetti** reported in **AIR 1929 P.C. 1**, the Hon’ble Privy Council has observed thus :-

“the burden of proving in an action for partition of joint family property that any particular item of property is join, primarily rests upon the plaintiff. **The circumstances may readily cause the onus to be discharged.**

31) At the relevant time, JD No. 1 was of 27 years of age and was a businessman, who after demise of his father was in the expanded family business and had purchased the auctioned property. The sale transaction indicates that one cheque of Rs.1,00,000/- (Rupees one lakh) was issued

from his personal account. As regards balance amount of Rs. 18,00,000/- (Rupees eighteen lakh) it is not known as to from where such amount is paid. So also the amount of Rs.1,00,000/- paid whether such amount was from the funds of joint family account or was personally earned amount or from the business of his father inherited by family, is to be decided by considering evidence and the same will have to be established. The auctioned property put in execution is not the decretal property and after the possession warrant is issued against her, the appellant has raised resistance to the decree/dispossession claiming her independent share in the property. She does not claim her right through JD No. 1. Before amendment of Order 21 Rule 97 of CPC, the affected parties could have filed independent suit for claiming their rights over the auctioned property and could have prayed for injunction in the independent proceedings. However, after amending the Act in 1976, it is provided that on an objection raised under Order 21 Rule 97, the right, title and interest on the property under execution has to be decided under Order 21 Rule 97 and the same is required to be determined by the Executing Court and not by separate suit and the parties cannot file independent suit qua the property pertaining to execution. Obstruction by stranger is also adjudicated by the executing court under Order 21 Rule 97.

32) There is presumption of jointness of family, however, there is no presumption of jointness of property. But from the facts stated and the circumstances noted of the case that the JD was a young person of 27 years at the relevant time and had inherited business from his father, the objection of the appellant is necessarily required to be decided as she claim to have 1/3rd share in the auctioned property. This claim cannot be termed

as frivolous. The claim of 1/3rd share is a natural claim, since the JD has inherited the father's business and properties. The nucleus for purchase of auctioned property is possibly of the joint family subject, to proof in this regard. The circumstance of the case does not make the claim of the appellant improbable that no opportunity can be given to her to prove her claim. The mere fact that she has not objected to the sale of plot No. 49 or that she has herself sold plot No. 10, would not disentitle her to forgo her right in the auctioned property, moreso when she claims that she resides in the same property. Once the basic facts stated in the objection application are established i.e. the husband of the appellant was a successful businessman and the appellant and her sons inherited the business and some properties after the demise of her husband and that JD was only 27 years of age at the time of the purchase of plot No. 11 i.e. auctioned property, the primary burden resting on the objector applicant to prove that the auctioned property is a joint family property would stand discharged. In this regard the above noted judgment of Privy Council in the case of **Annamalai Chetti** cited supra would apply as it has held that the circumstances may readily cause the onus to be discharged.

33) In the instant case, thus, once the appellant/obstructionist, who is the mother of JD No. 1, has claimed her 1/3 independent right over the auctioned property by filing application under Order 21 Rule 97 of CPC by demonstrating her prima facie right over the auctioned property, the said application will have to be decided by permitting the obstructionist/appellant to lead evidence in support of her claim. As held in the case of **Brahmdeo** (supra), the findings recorded in the application under Order 21, Rule 97 would be binding on the parties and separate suit would be barred. Thus,

when there is a semblance of right in the favour of obstructionist the same has to be adjudicated by framing issues.

34) Although it has been noticed by this Court and the courts below that there have been multiple proceedings initiated earlier for sale of the auctioned property and by beating of drum proclamation was made and that no objection was raised till the execution warrant is issued, the same cannot be taken adverse to the cause of the appellant. Occasion to file objection arise when the possession warrant is issued and she is threatened to be dispossessed. Her right over the property cannot be washed away only because she did not raise her objection earlier. She is not a judgment-debtor. She is a stranger to the decree.

35) The reliance placed by the learned counsel for the respondent in the case of **Kadiyala Rama Rao** cited supra relates to the objection to be taken by the JD to the auction sale of the suit property i.e. decretal property. The judgment holds that the JD can apply for setting aside the auction sale only on the ground of fraud and the objection has to be at the earliest time.

36) In view of the observations made above, the substantial question of law is answered as under :-

"The executing court erred in law in not framing the issues and permitting the appellant/objection petitioner to lead evidence to prove her case that the auctioned property is a joint family property purchased from the funds of the nucleus of joint family property and thus the auction sale of plot No.11 is not binding upon her to the extent of 1/3rd of her share in plot No. 11."

37) For the reasons recorded above, the present second appeal is allowed

and the judgment and decree dated 11.09.2025 passed by the first appellate Court in R.C.A. No. 116/2025 and the common judgment and order dated 9.5.2025 passed by the Executing Court in Special Darkhast No. 32/2017 below objection petition at Exh. 210 and below application for framing issues at Exh. 233 are quashed and set aside and the matter is remanded back to the execution court for fresh decision. The executing court to adjudicate objection petition of the appellant filed under Order 21 Rule 97 of CPC by framing issues and permitting the appellant to lead the evidence. The executing court to decide the objection petition of the appellant in accordance with law as expeditiously as possible and in any event within a period of six months from the date of production of the copy of this order. The learned counsel for the appellant undertakes that the objection petition would be concluded within a period of six months and he would conduct the proceeding expeditiously without delay and make every endeavour to complete the same within six months. Civil application, if any, stands disposed of.

[ARUN R. PEDNEKER, J.]

ssc/