



C.R.P.No.694 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.694 of 2013

Karunakaran

... Petitioner

Vs.

1.Malavan

2.K.Ramakrishnan

3.Ganesan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 08.01.2013 in E.A.No. Of 2012 in R.E.A.No.3 of 2012 in E.P.No.244 of 1998 in O.S.No.375 of 1997 on the file of the Principal District Munsif Court, Cheyyar, Tiruvannamalai.

For Petitioner : Mr.R.Rajarajan

For R1 to R3 : No appearance

ORDER

Challenging the order passed by the Execution Court rejecting the application filed by the revision petitioner under Order 21 Rule 97 of CPC



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resisting execution of the decree in O.S.No.375 of 1997 on the file of the Principal District Munsif Court, Cheyyar, Tiruvannamalai, the present revision has been filed.

2.It is the case of the revision petitioner that he has purchased the subject property on 25.03.1991. When the matter stood thus, the 3rd respondent have purchased the property in an auction conducted by the Executing Court in E.P.No.244 of 1998 to enforce the decree in O.S.No.375 of 1997. According to the revision petitioner, the attachment itself is passed after sale in favour of the revision petitioner. Despite the sale in favour of the revision petitioner much prior to the attachment, the property has been sold later to the auction purchaser. Now, an attempt has been made to dispossess the revision petitioner. Therefore, he has filed the present application under Order 21 Rule 97 of CPC resisting delivery of possession in the execution proceedings. The Executing Court rejected the application on the ground that Order 21 Rule 97 of CPC can be invoked only by the decree holder or the auction purchaser in the execution of the decree and a third party cannot maintain such application. Challenging the said order, the present revision is filed.

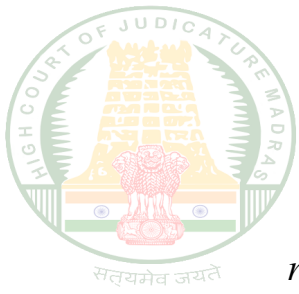


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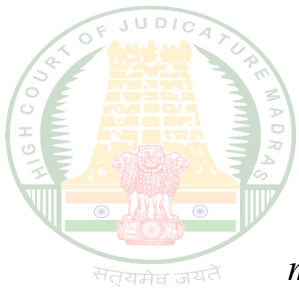
3.Learned counsel for the revision petitioner would submit that the approach of the trial Court is not correct as per law. Order 21 Rule 97 of CPC does not indicate that only the decree holder or the auction purchaser alone is entitled to file such application to resist or make obstruction. According to him, the expression “any person” mentioned in Order 21 Rule 97 of CPC not only relates to the decree holder or the auction purchaser, but also includes any third party who has an independent right over the subject property. It is his contention that, once a third party has an independent right over the property, he need not be made to wait till he is evicted and relegated to file a regular application to get his right adjudicated. The learned counsel submitted that the Hon'ble Supreme Court has already decided the issue in ***Shreenath and another v. Rajesh and others*** reported in ***AIR 1998 SC 1827***, wherein, in Para Nos.10 and 11, it is held as follows :

“10.Under sub-clause 1 order 21, Rule 35, the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by



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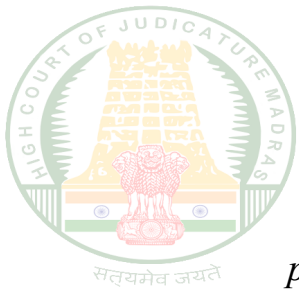
removing any person bound by the decree. Order 21, Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the Court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21, rule 99 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". this may be either by the person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree holder, in such case, may make an application to the Executing Court complaining such resistance, for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the executing Courts when such claim is made to proceed to adjudicate upon the applicants claim in accordance with provisions contained hereinafter. This refers to Order 21, Rule 101 (As amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21, Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit, By the amendment, one has not to go for a fresh suit but all



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matter pertaining to that property even if obstructed by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the Executing court could adjudicate the claim made in any such application under order 21, Rule 97. Thus by the use of the words 'any person' it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.

11. So, under order 21, Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to religate itself to the long drawn out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that order 21, Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21, Rule 36 only symbolic possession is given where tenant is in actual possession. Order 21, rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or



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purchaser is resisted by any person. 'Any person' , as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including stranger.”

4.I have perused the entire materials available on record.

5.After careful perusal of the application filed by the revision petitioner, it is seen that the petitioner has filed the present application on the ground that he has purchased the property much prior to the attachment made in the Execution Petition. In other words, his contention is that, on the date of attachment, the judgment debtor did not have right or interest over the property.

6.Be that as it may, in the Execution Petition, the petitioner has filed an application to resist the delivery sought by the auction purchaser. At this stage, the application is straight away rejected by the Court only on the ground that such application is maintainable only by the decree holder or by the auction purchaser. In view of this Court, such approach of the trial Court is not correct.



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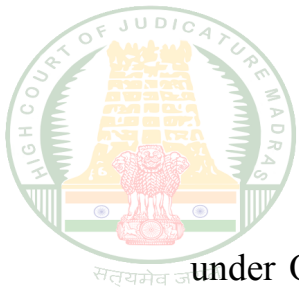
7. Order 21 Rule 97 of CPC reads as follows :

“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.”

8. A careful perusal of the above provision makes it clear that law does not restrict only the decree holder or auction purchaser to file such application. The expression “any person” under Sub-Clause (1) of Rule 97 includes a third party who has an independent right over the property. The Hon'ble Supreme Court, in ***Shreenath and another v. Rajesh and others (supra)*** has clearly held that the expression “any person” under Sub-Clause (1) is used deliberately for widening the scope of power so that the Executing Court could adjudicate the claim made in any such application

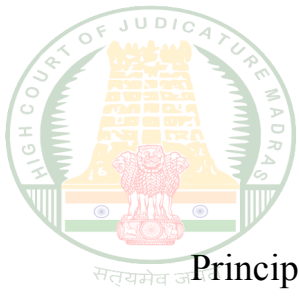


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under Order 21 Rule 97. In the above judgment, the Hon'ble Apex Court has clearly held that the expression “any person” includes all persons resisting the delivery of possession or claiming right in the property and even those who are not bound by the decree. Similar view has been taken by the Hon'ble Apex Court in yet another case in ***Ashan Devi and another v. Phulwasi Devi and others*** reported in ***AIR 2004 SC 511***. Similarly, the Hon'ble Supreme Court, in ***Brahmdeo Choudhary v. Rishikesh Prasad Jaiswal and another*** reported in ***AIR 1997 SC 856***, has clearly held that a stranger to the decree who claims independent right, title and interest in the decree property can offer his resistance before getting actually dispossessed; he can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession. In such view of the matter, the order of the trial Court rejecting the application at the threshold cannot be sustained in the eye of law.

9. Accordingly, this Civil Revision Petition is allowed and the order, dated 08.01.2013, in unnumbered E.A.No.Nil of 2012 in R.E.A.No.3 of 2012 in E.P.No.244 of 1998 in O.S.No.375 of 1997 on the file of the



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Principal District Munsif Court, Cheyyar, Tiruvannamalai, is set aside. The

Executing Court is directed to decide the application filed by the revision petitioner on merits and adjudicate all the questions as contemplated under Order 21 Rule 97 CPC and as per law. No costs.

10.Registry is directed to return the original application and order to the petitioner, forthwith.

04.06.2025

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

Neutral Citation : Yes / No

To

The Principal District Munsif,
Cheyyar, Tiruvannamalai.



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N. SATHISH KUMAR, J.

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