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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **EX.S.A. 1/2023, CM APPL. 12212/2023 and CM APPL. 12213/2023**

NARESH KUMAR JAIN

R/O 48 (OLD) AND NEW NO. 10

OUT OF KHASRA NO. 216 TO 221 AND 223

SITUATED IN THE AREA OF VILLAGE BASAI DARAPUR

IN THE ABADI OF MANOHAR PARK,

ROHTAK ROAD, NEW DELHI

.....APPELLANT/OBJECTOR

*(Through: Mr.Alok Kumar, Sr.Adv with Mr.Piyush Gupta and
Mr.Rachit Batra, Advs.)*

Versus

R.L. KAPOOR SINCE DECEASED

S/O SHRI GURDIT LAI KAPOOR

THROUGH HIS LR

1. SH. RISHABH SHARMA

S/O SH. KRISHAN KUMAR SHARMA

R/O HOUSE NO. 111, OLD ARYA NAGAR

NEAR RAILWAY COLONY

GHAZIABAD (U.P.)-201001

2. DR. J.R. CHAWLA

THROUGH LRS

(a) SMT. LALITA

D/O SHRI J.R. CHAWLA

R/O 9, RO, CHENNAI BROWNE ROAD



LONDON, S.R. 23

(b)SMT. USHA
D/O SH. J.R. CHAWLA
R/O 187, GOLF LINKS
NEW DELHI

3. SHRI RAGHUBIR SINGH
S/O SH. MANOHAR LAI
R/O GALI MAMMAN JAMMADAR
PALIARI DHEERAJ, SADAR BAZAR
DELHI

4. SMT. LALITA
D/O LATE SH. J.R. CHAWLA
W/O SH. RAJINDER SINGH
R/O 9, RO, CHENNAI BROWNE ROAD
LONDON, S.R. 23

5. SMT. USHA
D/O SH. J.R. CHAWLA
R/O 187, GOLF LINKS
NEW DELHI

.....RESPONDENTS

(Through: Mr. Anil K. Airi, Sr. Adv. with Mr. Aman Gupta, Mr. Vishal Tyagi, Mr. Mudit Ruhella and Mr. Akarsh Pandey, Advs.)

+ **EX.S.A. 2/2023, CM APPL. 12424/2023 and CM APPL. 12425/2023**

SATPAL SINGH
THROUGH HIS ATTORNEY HARJEET SINGH
R/O 48 (OLD) AND NEW NO. 10
OUT OF KHASRA NO. 216 TO 221 AND 223
SITUATED IN THE AREA OF VILLAGE BASAL DARAPUR
IN THE ABADI OF MANOHAR PARK,
ROHTAK ROAD, NEW DELHI
.....APPELLANTS/OBJECTORS



(Through: Mr.Alok Kumar, Sr.Adv with Mr.Piyush Gupta and Mr.Rachit Batra, Advs.)

Versus

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NEW DELHI

.....RESPONDENTS

(Through: Mr. Anil K. Airi, Sr. Adv. with Mr. Aman Gupta, Mr. Vishal Tyagi, Mr. Mudit Ruhella and Mr. Akarsh Pandey, Adv. for R-1)

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Reserved on: 25.11.2024
Pronounced on: 28.01.2025

J U D G M E N T

The instant appeals have impugned judgments dated 18.01.2023 passed by the Court of Additional District Judge-05, Central District, Tis Hazari Court, Delhi, dismissing the appeal and affirming the order dated 08.11.2013, passed by the Court of Civil Judge-16 (Central), Tis Hazari Courts, Delhi in Execution Petition No. M-5/2013, whereby, objections preferred by the appellants/objectors under Order XXI Rule 97 of the Code of Civil Procedure, 1908 (CPC) were rejected.

2. Due to the similitude of facts, both the appeals are being decided *vide* a common order.
3. The record would indicate that a Civil Suit bearing no. 1292/1989 was filed by R. L. Kapoor (represented through LRs), respondent No.1/plaintiff, on 15.02.1966 against Dr. J.R. Chawla (respondent No.2/defendant No. 1) and Sh. Raghubir Singh (respondent No.3/defendant No. 2) for recovery of possession of a plot of land measuring 200 square yards, bearing No. 46



(old), corresponding to plot No. 10 (new) in Khasra Nos. 216 to 221 and 223 of village Basai, Dara Pur, Delhi.

4. It was the case of respondent No.1/plaintiff that he had purchased the property from respondent No.3/defendant No.2, through a registered sale deed dated 25.03.1960 and was in exclusive possession of the suit property. However, approximately six months prior to the filing of the suit, respondent No.2/defendant No. 1, in collusion with respondent No.3/defendant No. 2, had illegally taken possession and raised unauthorized constructions. Smt. Lalita Devi and Smt. Usha, respondents No.4 and 5 herein, were later impleaded as defendants No. 3 and No. 4, respectively.

5. The plaint was initially returned by the Trial Court on 14.03.1974 under Order VII Rule 10 CPC, citing lack of jurisdiction due to Section 185 of the Delhi Land Reforms Act, 1954, and the same was also upheld in the first appeal. However, this Court *vide* judgment dated 20.03.1986, in Civil Revision bearing No. 169/1977, set aside the aforesaid orders and remanded the suit back to the Trial Court for fresh adjudication. Eventually, on 20.10.1998, the suit was decreed in favour of respondent No.1/plaintiff.

6. Respondent No.1/plaintiff, subsequently, filed an execution petition for enforcement of the decree dated 20.10.1998. The aforesaid petition was dismissed for non-prosecution on 03.05.2002. Upon filing an application for its restoration, a bailiff was appointed to take possession of the suit property after serving the judgment-debtors. At the said stage, the present appellants/objectors filed objections on 23.07.2010, claiming to be *bonafide* purchasers of portions of the suit property.

7. The objections filed by the appellants/objectors were dismissed by the Trial Court on 08.11.2013. Both objectors impugned the said order through



separate appeals before the Court of Additional District Judge-17, Tis Hazari Courts, Delhi, and the same was disposed of by the first Appellate Court on 25.07.2014, remitting the case back to the Trial Court with a direction to record evidence regarding the appellants/objectors' plea of being a *bonafide* purchaser for value without notice and to adjudicate the matter afresh. It is the aforesaid order that was challenged in FAO 60/2015 by respondent no.1/plaintiff/decreed-holder, and this Court *vide* order dated 18.08.2017 allowed the appeal with the consent of the parties to decide the appeal preferred by the appellants/objectors in accordance with law, without leading any further evidence.

8. Pursuant to the order passed by this Court, the first Appellate Court, *vide* impugned order dated 18.01.2023, rejected the objections filed by the present appellants/objectors and, therefore, the appellants/objectors are before this Court by way of the instant second appeals.

Submissions made on behalf of the parties

9. *In limine*, Mr. Anil K. Airi, learned senior counsel appearing for the respondents, has raised objections with respect to the maintainability of the instant second appeals in light of the provisions under Order XXI Rule 102 of CPC.

10. Learned senior counsel submits that the appellants/objectors are subsequent purchasers of the suit property and by virtue of the provisions of Section 52 of the Transfer of Property Act, 1882 (the Act), the transfer in their favour is hit by the principle of *lis pendens*. Therefore, according to the learned senior counsel, any purported decision on their objections under Order XXI Rule 97 of CPC would not be amenable to be challenged under Section 96 and consequently, even under Section 100 of CPC. According to



him, the instant appeals are not maintainable, and in support of the aforesaid, he places reliance upon a decision of this Court in the cases of ***Gautam Modi v. Pravin Chandra Modi (Deceased) Thr. Lrs***¹ and ***Sumeet Saluja v. A.K. Hab Europe BV and Another***².

11. Moreover, learned senior counsel submitted that the Executing Court cannot go beyond the decree for the purpose of adjudication as has been held by the Supreme Court in the cases of ***Topanmal Chhotamal v. Kundomal Gangaram and Others***³ and ***Haryana Vidyut Prasaran Nigam Limited and Another v. Gulshan Lal and Others***.⁴

12. Furthermore, learned senior counsel submitted that the defence of the appellants/objectors being *bonafide* purchasers without notice is not available when the transaction is *lis pendens*. He also places reliance on a decision of the Supreme Court in the case of ***Shingara Singh v. Daljit Singh and Another***.⁵

13. *Per contra*, Mr. Alok Kumar, learned senior counsel appearing for the appellants/objectors, averred that though the objections were initially filed under Order XXI Rule 58 of CPC, however, *vide* order dated 25.07.2014, it has been rightly conceded by the respondents in RCA 21/2014 that the objections be treated to have been filed under the Order XXI Rule 97 of the CPC. He, therefore, submits that for all practical purposes, the objections shall be treated as having been filed under Order XXI Rule 97 to Rule 101 of the CPC.

¹ 2018 SCC OnLine Del 11197

² 2018 SCC OnLine Del 10072

³ AIR 1960 SC 388

⁴ 2009 13 SCC 354.

⁵ 2024 SCC OnLine SC 2823



14. Learned senior counsel also submitted that orders passed under Order XXI Rule 103 of CPC are to be treated as decrees. Consequently, according to him, if an application has been adjudicated upon pursuant to Rule 98 or Rule 100 of CPC, the order passed thereto is to be regarded with the same force, and is subject to the same conditions concerning appeals or other proceedings, as if it were a decree.

15. Moreover, learned senior counsel contended that in the instant case, the present appellants/objectors are not the judgment debtors and, therefore, if any person claims title to the property in possession of the appellants/objectors and obstructs or attempts to dispossess them, the Executing Court is competent to consider all such objections and pass an appropriate order which, under the provisions of Order XXI Rule 103 of CPC, is to be treated as a decree. Therefore, according to him, the decision on the objections raised by the appellants/objectors is appealable under Section 96 of CPC which consequently attracts the provision of Section 100 of CPC as well, thereby, making the present appeals maintainable.

16. In order to substantiate his submissions, learned senior counsel for the appellants/objectors places reliance on a decision of the Supreme Court in the case of *N.S.S Narayana Sarma v. Goldstone Exports (P) Ltd.*⁶ on a decision of the High Court of Andhra Pradesh in the case of *Gurram Seetharam Reddy vs. Gunti Yashod*⁷, and a decision of the High Court of Jharkhand in the case of *Jogendra Kaur vs. Kali Prasad*⁸.

17. Learned senior counsel, then, contends that the present appellants/objectors are *bonafide* purchasers and they have vigorously

⁶ 2002 (1) SCC 662

⁷ 2005 AIR(AP) 95

⁸ 2003 AIR(Jhar) 67



disputed the description/boundaries of the suit property. He also submitted that in an earlier round of litigation, this Court in a case bearing no. FAO 60/2015, *vide* order dated 18.08.2017, remitted the matter back to the Appellate Court for adjudication, and as such no objection was raised by the respondents herein.

18. He further submits that even during the pendency of two rounds of appeals before the Appellate Court, the respondents did not raise any objection. He, therefore, submits that the objections have been raised in order to obstruct the appellants/objectors from enjoying their claim of possession of the suit property.

19. I have considered the submissions made by the learned counsels for the parties and have also perused the record.

Analysis

20. The objections of the appellants/objectors are premised on the fact that before 22.05.2010, i.e. date of appointment of the bailiff by the Executing Court, the appellants/objectors had no knowledge about the pendency of litigation concerning the suit property. It was also the case of the appellants/objectors that the execution order issued against them constituted a clear miscarriage of justice, being illegal, unwarranted, and devoid of any justification. It was also averred that the appellant/objector in Ex.SA 1/2023, namely, Naresh Kumar Jain has been in lawful possession of the suit property since January 2007. According to his objection filed before the Executing Court, the said portion had been continuously occupied by various *bonafide* purchasers since 1960 and the originally demarcated plot, measuring 200 square yards, was subsequently divided into three portions,



of which the appellant/objector in Ex.SA 1/2023 is the owner and lawful occupant of 66.5 square yards.

21. It was also averred that the appellant/objector in Ex.SA 2/2023, namely, Satpal Singh has been in lawful possession of the suit property since January 2003 and is the owner and lawful occupant of 66.5 square yards of the suit property. The appellants/objectors, therefore, claimed to be *bonafide* purchasers with no prior knowledge of *lis* pending between some parties with respect to the suit property. Essentially, the objections of the appellants/objectors rested on the plea of them being *bonafide* purchasers.

22. The Executing Court, while considering the aforementioned objections, held that the judgment and decree passed on 20.10.1998, are also binding on the appellants/objectors, as they derive their right in suit property through defendants no. 2 and 4. The Executing Court further observed that the pleas raised by the appellants/objectors were identical to those previously raised before the Trial Court by the original defendants and the predecessors-in-interest of the present appellants/objectors. The Executing Court held that since the appellants/objectors derived their title and interest in the suit property from the original defendants, whose rights have already been conclusively adjudicated by the Trial Court, a subsequent purchaser cannot be permitted to raise identical objections or challenge the identification/description of the suit property. Therefore, according to the Executing Court, the objections raised herein were already dealt by the Trial Court and had attained finality. Relevant findings of the Executing Court read as under:

“30. Thus, the defendant no.2, the common predecessor of the parties had admitted that after selling the plot in question to DH, he had sold the same plot to the defendant no. 4 averring that the DH had failed to



pay the consideration amount for the same, but the defendant no. 2 had also failed to substantiate this averment by leading any evidence.

31. *On page no.7 of the judgment, it was observed that the defendant no. 4 had sold plot no. 10 (New) to the DH as well as to the defendant no. 4 and the sale deed in favour of DH is earlier in time than in favour of defendant no. 4, thus, the claim of the plaintiff/DH over rides the claim of defendant no. 4, and once there is a sale deed in existence pertaining to 25 March, 1960, the subsequent purchasers gets no rights, title or interest qua the said property.*

32. *Thus, the right, title and interest of the predecessor in interest of the objectors with respect to the said property were finally adjudicated by the judgment/decreed dated 20.10.1998 in C.S no. 1292/89 and the same is binding on the objectors also, as they are also claiming their rights through defendant no.2 and 4.*

33. *Thus, no evidence is required to prove a fact which has already adjudicated upon and had attained finality.*

34. *The objectors had further raised the plea of fraud, but as already observed above, that the DH had made predecessor in interest of the objectors as party who had raised the same defence as raised by the objectors and it was finally adjudicated, therefore, no interference of fraud is made out.*

35. *With aforesaid observations, the objections filed by the objectors under order XXI Rule 58 r/w section 151 CPC is dismissed."*

23. On appeals being preferred by the appellants/objectors assailing the orders of the Executing Court, the first Appellate Court upheld the order dismissing the objections and held that the plea of the appellants/objectors being *bonafide* purchasers for value without notice cannot be considered as the title/interest of the appellants/objectors and their predecessors-in-interest, who were the transferee of the original defendant No.4, is hit by the doctrine of *lis pendens* and the bar under Order XXI Rule 102 of CPC. The relevant findings by the first Appellate Court reads as follows:-

"32. At this stage, it is significant to refer to the provisions of Order 21 Rule 102 of CPC which renders Rule 98 and 100 of Order 21 not applicable to the resistance or obstruction in execution of a decree for possession of immovable property by a transferee pendente-lite. It is



submitted by Ld. Counsel for the appellant that no Us was pending in respect of the suit property as on the date of purchase of the same by the appellant i.e. on 04.09,2003, I do not find any force in the aforesaid submission made on behalf of the appellant. A bare perusal of the explanation appended to Section 52 of the Transfer of Property Act 1882 shows that pendency of the suit/proceedings within the meaning of Section 52 of the Transfer of Property Act shall be deemed to commence from the date of the presentation of the plaint in the 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.

*33. Thus, in my considered opinion, in view of the aforesaid explanation the proceedings in CS No, 1292/1989 shall be deemed to have commenced on the date of the presentation of the plaint in the aforesaid suit i.e. on 15.02.1966 and the same are still continuing since the final decree dated 20.10.1998 passed therein has not been satisfied till date. The transfer by Smt. Kanta and Sanjay in favour of the predecessors of the present appellant after having purchased the same from the party to the aforesaid suit i.e. from defendant no.4 during pendency of the same and subsequent transfers including transfers in favour of present appellant are thus clearly hit by the Provisions of Section 52 of the Transfer of Property Act and consequentially by the Provisions of Order 21 Rule 102 CPC and hence, the plea of bonafide purchase of the suit property by the appellant for valuable consideration without notice of pending litigation or of any claimor right of respondent no.1 qua the suit property is not available to the appellant. The aforesaid plea of the appellant is thus liable to be rejected. While taking the aforesaid view, I derive support from the following observations of Hon'ble Supreme Court in **Usha Sinha Vs. Dina Ram (2008) 7 SCC 144.....**”*

24. A glance at the provision under Order XXI Rule 102 of CPC explicates that nothing in Rules 98 and 100 of Order XXI of CPC shall apply to resistance or obstruction in the execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the suit property after the institution of the Suit in which the decree was passed or to the dispossession of any such person.

25. The aforementioned provision carves out an exception to the applicability of orders under Rules 98 and 100 of Order XXI of CPC,



specifically in cases where the resistor or obstructor to the execution of the decree is a transferee of the property from the judgment-debtor during the pendency of the suit in which the decree was rendered. This exception is grounded in the well-established principle of *lis pendens*, which dictates that any transfer of immovable property during the pendency of a suit, involving competing rights over the subject property, is legally incapable of affecting the rights arising from the decree subsequently passed in the suit. Thus, such a transfer cannot prejudice the outcome of the suit in any manner.

26. The Supreme Court, while analysing the scope of Order XXI Rule 102 of CPC has held that in order to invoke Rule 102, the decree-holder simply needs to demonstrate that the person resisting possession or causing obstruction is claiming ownership of the property based on a transfer made after the filing of the suit that resulted in the decree under execution against the judgment-debtor. The Supreme Court in *Usha Sinha v. Dina Ram*⁹ has extensively considered the ambit and the scope of Order XXI and Rule 102 of the CPC and has held as under:-

“17. Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee pendente lite. That Rule is relevant and material and may be quoted in extenso:

“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 judgment-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.”

Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-

⁹ (2008) 7 SCC 144



matter of litigation. It recognises the doctrine of lis pendens recognised by Section 52 of the Transfer of Property Act, 1882 [“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 immovable 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.”] . Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will never be able to realise the fruits of his decree. Every time the decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted.”

27. Addressing the contention that the provisions under Rule 98 to 100 would not apply to a chain of transactions, the Court referred to the decision in **Vijayalakshmi Leather Industries (P) Ltd. v. K. Narayanan**¹⁰, wherein, the Court emphasized that statutory provisions must be interpreted in alignment with the legislative intent. Specifically, it noted that the intent of Section 52 of the Act and Rule 102 of Order XXI of CPC was to ensure that

¹⁰ AIR 2003 Mad 203



the rights of one party to a pending litigation are not adversely affected by the actions of the opposing party.

28. The Court observed that, without such statutory restrictions, a party to litigation could act detrimentally by transferring disputed properties or placing third parties in possession to evade judicial scrutiny, thereby creating additional burden for the opposing party. The provisions were designed to prevent such prejudicial actions and to preserve the integrity of the judicial process. Following is the relevant extract of the decision of the Supreme Court in ***Usha Sinha:-***

“19. Keeping in view the avowed object, the expression “transferee from the judgment-debtor” has been interpreted to mean the “transferee from a transferee from the judgment-debtor” (vide Vijayalakshmi Leather Industries (P) Ltd. v. K. Narayanan [AIR 2003 Mad 203]).

20. In Vijayalakshmi Leather Industries [AIR 2003 Mad 203] it was urged that the provisions of Rules 98 and 100 of Order 21 of the Code had limited application to the transferee of the judgment-debtor and could not extend to “a chain of transactions” where the transferee of the judgment-debtor had transferred his interest.

21. Referring to statutory provisions and case-law, the Court negatived the contention, stating: (Vijayalakshmi case [AIR 2003 Mad 203], AIR p. 206, para 13)

“13. If such contention of the learned Senior Counsel for the appellant is to be accepted, then we are closing our eyes regarding the intention of the statute. It is obvious while interpreting the provisions of the statute, the court must give due weight to the intention of the statute in order to give effect to the provisions. If any narrow interpretation is given and thereby the purpose of the statute is being defeated, the courts must be careful to avoid such interpretations. If we look at Section 52 of the Transfer of Property Act and Rule 102 of Order 21 CPC, it is very clear that the intention of Parliament with which the statute had been enacted is that the rights of one of the parties to the proceeding pending before the court cannot be prejudiced or taken away or adversely affected by the action of the other party to the same proceeding. In the absence of such restriction one party to



the proceeding, just to prejudice the other party, may dispose of the properties which is the subject-matter of the litigation or put any third party in possession and keep away from the court. By such actions of the party to the litigation the other party will be put to more hardship and only to avoid such prejudicial acts by a party to the litigation these provisions are in existence. When in spite of such statutory restrictions, for the transfer of the properties, which are the subject-matter of litigation by a party to the proceeding, the courts are duty-bound to give effect to the provisions of the statute.”

22. *The above observations, in our opinion, lay down correct proposition of law.”*

29. Furthermore, the Supreme Court in ***Silverline Forum (P) Ltd. v. Rajiv Trust***¹¹ has held that the view of the High Court therein, that third-party resistance or obstruction to the execution of a decree cannot be adjudicated under Order XXI Rule 97 of CPC is incorrect. It was further noted by the Court that Rules 97 to 106 of Order XXI of CPC are designed to handle all types of resistance or obstruction by any person and Rule 97 allows a decree-holder to file a complaint if they face resistance while taking possession of the immovable property, and the Executing Court is required to resolve the issue as per the rules.

30. However, the Supreme Court clarified that if the resistance is from a transferee *pendente lite* (someone who acquired the property from the judgment-debtor during the ongoing suit), the Court’s powers are limited to confirming whether the person is such a transferee or not. If confirmed, the Court held, Rule 102 makes it clear that the transferee has no right to resist, as transfer of property during a pending suit cannot affect the decree, following the principle in Section 52 of the Act. The findings rendered by the Supreme Court in ***Silverline Forum (P) Ltd***, read as under:-

¹¹ (1998) 3 SCC 723



“9. At the outset, we may observe that it is difficult to agree with the High Court that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption “Resistance to delivery of possession to decree-holder or purchaser”. Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by “any person” in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions “arising between the parties to a proceeding on an application under Rule 97 or Rule 99” shall be determined by the executing court, if such questions are “relevant to the adjudication of the application”. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a 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.

11. 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.

12. 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 resister raised it. The questions which the 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 resister 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, the execution court can decide whether the question raised by a resister 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.

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14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. 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. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary. ”

31. In a recent decision in the case of ***Sriram Housing Finance & Investment (India) Ltd. v. Omesh Mishra Memorial Charitable Trust***¹², the Supreme Court has clarified the law regarding objections raised under Order XXI Rule 97 of CPC. The facts of the case reveal that the respondent-Trust was bequeathed the suit property by the original owner, who had previously instituted a suit against a tenant seeking possession and recovery of arrears of rent in respect of the same property. The respondent-Trust subsequently became a co-plaintiff in the said suit and was awarded a decree in its favour. Thereafter, an execution petition was filed to enforce the decree. During the pendency of the execution proceedings, one of the legal heirs of the respondent-Trust transferred the suit property to the appellant-Company by

¹² (2022) 15 SCC 176



way of a registered sale deed. The appellant-Company, relying on the said sale deed, filed objections under Order XXI Rule 97 of CPC, seeking dismissal of the execution petition and enforcement of its rights under the registered sale deed. By an order dated 13.01.2012, the Executing Court framed issues and directed the parties to adduce evidence in support of their respective claims. Assailing the aforesaid order, the respondent-Trust approached the High Court. The High Court, *vide* order dated 16.04.2014 titled as ***Omesh Mishra Memorial Charitable Trust v. Sriram Housing Finance & Investment India Ltd.***¹³, allowed the petition and set aside the order of the Executing Court and primarily held that the Executing Court, during the execution proceedings, erred in framing issues and directing the parties to lead evidence without considering that the appellant-Company had previously filed objections under Order XXI, Rule 58 of CPC challenging the execution of the decree which were already adjudicated by the Executing Court. Furthermore, it was also held by the High Court that these objections had been dismissed in previous proceedings by both the High Court and the Supreme Court, with the explicit observation that the sole remedy available to the appellant-Company was to initiate an "independent/separate suit" to resolve the dispute regarding the title or ownership of the suit property. Consequently, the High Court held that the objections were not maintainable.

32. In the aforementioned case, the Supreme Court held that under Order XXI Rule 97 of CPC, only the "decree-holder" is entitled to file an application in instances where resistance or obstruction is offered by "any person" during the execution of a decree. Therefore, the Supreme Court

¹³ 2014 SCC OnLine Del 1478



held that under the said circumstances, the Executing Court exceeded its jurisdiction by framing issues and directing the parties to lead evidence on the objections raised by the appellant, thereby, contravening the scope of Order XXI, Rules 97 to 99 of CPC. The Supreme Court also held that the High Court has, therefore, correctly set aside the order of the Executing Court, which had entertained the appellant's objections under Order XXI, Rules 97 of CPC. The relevant paragraphs of the aforementioned decision is as follows:-

“22. From a bare reading of the aforesaid provisions, it is clear that Order 21 Rule 97 deals with the resistance or obstruction to possession of immovable property by “any person” obtaining possession of the property against the decree-holder. It empowers the “decree-holder” to make an application complaining about such resistance or obstruction. On the other hand, Rule 99 of Order 21 deals with the right of “any person” other than the judgment-debtor who is dispossessed by holder of a decree for possession of such property or in case where such property is sold in furtherance of execution of a decree. The said provision vests “any person” with a right to make an application complaining about such dispossession of immovable property in the manner prescribed above. Rule 98 and Rule 100 deal with the power of the Court to pass appropriate orders upon an application preferred under Rule 97 and Rule 99 respectively.

23. Insofar as Rule 101 is concerned, it confers jurisdiction on the Court as well as casts an obligation to determine the questions relating to right, title or interest in the property, if any, arising between parties on an application made by the person concerned under Rule 97 or Rule 99 in the same proceedings for adjudication and not in a separate suit. Lastly, Rule 102 clarifies that Rule 98 and Rule 100 shall not apply in a case where resistance or obstruction in execution of a decree for the possession of immovable property is offered by “transferee pendente lite” i.e. the person to whom the property is transferred by the judgment-debtor after institution of the suit in which the decree sought to be executed was passed.

24. On conjoint reading of the aforesaid provisions, it can be observed that under Rule 97, it is only the “decree-holder” who is entitled to make an application in case where he is offered resistance or obstruction by “any person”. In the present case, as admitted by the appellant itself, it



is a bona fide purchaser of the property and not the “decree-holder”. As available from the material placed on record, it is the respondent Trust along with legal heirs of late N.D. Mishra who are the decree-holders and not the appellant. Therefore, it is obvious that the appellant cannot take shelter of Rule 97 as stated above to raise objections against execution of decree passed in favour of the respondent. Further, Rule 99 pertains to making a complaint to the Court against “dispossession” of the immovable property by the person in “possession” of the property by the holder of a decree or purchaser thereof.

25. It is factually not in dispute that the appellant purchased the said property from Mr Yogesh Mishra vide sale deed dated 12-4-2004 and has been in vacant and physical possession of the property since then. Had it been the case that the appellant was dispossessed by the respondent Trust in execution of decree dated 2-9-2003, the appellant would have been well within the ambit of Rule 99 to make an application seeking appropriate relief to be put back in possession. On the contrary, the appellant in the instant case was never dispossessed from the property in question and till date, as contended and unrefuted, the possession of same rests with the appellant. Considering the aforesaid, the appellant cannot be said to be entitled to make an application under Rule 99 raising objections in execution proceedings since he has never been dispossessed as required under Rule 99.

26. Now, as stated above, applications under Rule 97 and Rule 99 are subject to Rule 101 which provides for determination of questions relating to disputes as to right, title or interest in the property arising between the parties to the proceedings or their representatives on an application made under Rule 97 or Rule 99. Effectively, the said Rule does away with the requirement of filing of fresh suit for adjudication of disputes as mentioned above. Now, in the present case, Order 21 Rule 101 has no applicability as the appellant is neither entitled to make an application under Rule 97 nor Rule 99 for the reasons stated above. Accordingly, we find no substance in the argument raised by the learned counsel for the appellant.

27. In such circumstances, the executing court had no occasion to frame issues and give direction to parties to lead evidence on objections raised by the appellant. By doing so, the executing court transgressed the scope of Order 21 Rule 97 and Rule 99. Therefore, in our considered view, the High Court has rightly set aside the order of the trial court entertaining the objections filed by the appellant under Order 21 Rule 97 to Rule 102. 28. Resultantly, this appeal is dismissed with a direction to the executing court to decide the execution case as expeditiously as possible not later than six months.”



33. Therefore, in light of the provision under Order XXI Rule 102 of CPC, a *pendente lite* transferee is barred from raising objections under Order XXI Rule 97 of CPC. This provision is envisaged keeping in mind the doctrine of *lis pendens* enshrined under Section 52 of the Act, and constructive *res judicata*.

34. For the sake of clarity, Section 52 of the Act envisaging the doctrine of *lis pendens* reads as under:

*“52. Transfer of property pending suit relating thereto.—During the 1 [pendency] in any Court having authority 2 [3 [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by 4 [the Central Government 5 ***], of 6 [any] suit or proceeding 7 [which is not collusive and] in. which any right to immovable 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.”

35. The explanation to the aforementioned Section provides that, for the purposes of this provision, the pendency of a suit or proceeding shall be construed to commence from the date on which the plaint is presented or the proceeding is instituted before a Court of competent jurisdiction. This pendency is deemed to continue until such suit or proceeding is concluded through a final decree or order, and until complete satisfaction or discharge of said decree or order is either achieved or becomes unattainable due to the



expiration of any limitation period prescribed for its execution under the prevailing law.

36. The doctrine of *lis pendens* finds its roots in the Latin maxim *ut lite pendente nihil innovetur*. It is based on the principle that if alienations are allowed to prevail during the pendency of a suit, it will be impossible to bring the cause of action or suit to an end. It is trite law that one who claims a right must establish the same, before he enforces it, thereby, forbidding the transfer of rights to a third party during the pendency of litigation. The intent behind the aforementioned provision, as observed by noted jurist Joseph Story in his work titled *Commentaries on Equity Jurisprudence*, is not to annul any right derived from a conveyance but only to make it subservient to the rights of the parties in *lis*. Section 52 of the Act and Order XXI Rule 102 of CPC are specific manifestations of this principle and the legislative intent behind making Rule 102 a locus-specific provision cannot be curtailed by permitting any person other than a decree-holder to make an application under the provision.

37. This Court, in *Haji Abdul Mateen v. Sheikh Haji Firozuddin*¹⁴, opined that since the appellants therein were transferees *pendente lite*, they claimed through the defendants in the suit, and therefore, claiming through the parties in the suit. It was also held that they were as much bound by the judgment and decree as the original parties, in accordance with the provision of *res judicata* enshrined under Section 11 of the CPC.

38. In the instant case, it is seen that the appellant/objector namely, Naresh Kumar Jain allegedly purchased the suit property in question from Sh. Ramesh Kumar Jain in 2007, who had purportedly acquired it from Sh.

¹⁴ 2014 SCC OnLine Del 1397



Yogesh Kumar in 1999. Sh. Yogesh Kumar, in turn, allegedly purchased the suit property from Sh. Ajay Kumar Goel in 1995, who had acquired it from Mrs. Mridula Mittal in 1993. Further, Mrs. Mridula Mittal had purchased the property from Sh. Prem Chand, acting as the attorney of Sh. Jaswant Singh, who was the attorney for Smt. Kanta and Sh. Sanjay, in 1991. Smt. Kanta and Sh. Sanjay, in turn, had admittedly purchased the property from defendant No. 4, who had allegedly acquired it from defendant No. 2 through a registered sale deed. It is also seen that the appellant/objector namely, Satpal Singh claims to have purchased the property in question directly from Smt. Kanta and Sh. Sanjay.

39. It is, thus, discernable that the appellants/objectors' claim rests upon the registered sale deeds dated 25.06.2007 and 04.09.2003, which were executed during the pendency of the execution and before the judgment and decree dated 20.10.1998 were fully satisfied. Therefore, in the present case, since the appellants/objectors are asserting their claim through one of the defendants, as they are transferees of the transferee of the defendant/judgment-debtor, the presumption of knowledge of the pending litigation applies as laid down by the aforementioned precedents and they shall be precluded from coming in the way of execution on the strength of such transfers.

40. Moreover, a perusal of the judgments relied upon by the appellants/objectors to support their claim of maintainability of the instant appeals would indicate that they have no application in the facts of the instant case as they do not deal with the objections raised by a transferee *pendente lite*. In *N. S. S. Narayana*, the appellants therein were a third party claiming an independent right over the property and had filed objections



under Order XXI Rule 99 of CPC. However, the Supreme Court in the aforementioned case was not dealing with the specific bar under Rule 102 and the objector therein did not receive title from the judgment-debtor. Similarly, even in **Jogendra Kaur**, the objections were filed under Order XXI Rule 99 of CPC and hence, the said judgment would also not come to rescue the case of the appellants/objectors.

Conclusion

41. It is, thus, evident that the transfer of the suit property during the pendency of the Civil Suit, in the instant case, is hit by the principle of *lis pendens*. It is also noted that the Executing Court erred in adjudicating the objections raised by the appellants/objectors on merits without first determining their *locus* and whether they were precluded from raising such objections under Rule 102 of CPC or barred by the doctrine of *lis pendens* as elucidated in Section 52 of the Act.

42. The legal position explicated through the aforementioned discussion, when construed in context of Order XXI Rule 103 of CPC, elucidates that any adjudication made under Rule 98 or Rule 100 is deemed equivalent to a decree. Consequently, such adjudicatory orders possess the same legal force and effect as decrees and may be appealed or enforced accordingly. However, objections filed by a transferee *pendente lite* are expressly barred under Order XXI Rule 102 of CPC. As a result, the provisions of Rule 103 do not apply to such objections and consequently, Sections 96 and 100 of CPC also lack applicability when objections are filed under Order XXI Rule 97 of CPC.

43. Additionally, if an application is ostensibly filed under Order XXI Rule 97 of CPC by a transferee *pendente lite* and the subsequent



adjudication arising therefrom is treated as a decree under Rule 103, it would render the provision of Rule 102 otiose. Such an interpretation would effectively create a fresh cause of action for appeal at the execution stage for an individual deriving title from the defendant or judgment-debtor, whose rights in the suit property have already been determined by the trial court or through subsequent appellate proceedings. The aforesaid interpretation would also undermine the finality of the adjudication of title in the suit property and frustrate the settled principle of constructive *res judicata*.

44. For an adjudication to fall within the ambit of Section 96 or Section 100 of CPC, it must be predicated upon a statutory provision that reflects the legislative intent to confer a right of appeal upon the aggrieved party. While the provisions under Order XXI, Rules 97 to 106 of CPC, constitute a comprehensive Code governing the adjudication of disputes relating to rights, title, and interest in the property under execution, it is evident from these provisions that the right to raise objections or impede the possession of a decree-holder is expressly unavailable to the judgment-debtor or any subsequent purchaser deriving title from the judgment-debtor *via* a transaction effectuated *pendente lite*. As delineated in the above-noted discussion, the doctrine of *lis pendens* is firmly rooted in principles of justice, equity, and good conscience, as permitting alienation during the pendency of litigation undermines the rights of the parties and prejudices the decree-holder, who has secured a decree in his favor on merit. Moreover, it also undermines the sanctity of the adjudicatory process in an equal measure. The certainty and sanctity of the subject-matter under adjudication is paramount and they must be preserved.



45. The objective of Rule 102 is to preclude a *pendente lite* transferee from obstructing the enjoyment of the fruits of the decree by the decree-holder and to prevent unwarranted delays in the execution proceedings. Entertaining such objections or permitting appeals arising therefrom would contravene the statutory bar under Rule 102 and further protract the execution of the decree, thereby, defeating the intent of the provision.

46. The provisions under Rules 97 to 106 of CPC are meticulously structured to address all issues arising from resistance or obstruction to the delivery of possession. These provisions are designed to uphold the sanctity and finality of decrees and to ensure that decree-holders can expeditiously enjoy the fruits of a decree in their favour. It has been copiously reiterated by the Courts that the provisions of CPC as regards to execution are of superior quality as the Executing Courts are entrusted with the actual administration of justice by way of executing a conclusive determination of the rights of parties in *lis*. It is also imperative that the Executing Courts should not allow judgment-debtors, who have failed to assert or defend their rights during the trial, or any other individuals deriving their claims from such judgment-debtors, to raise frivolous or statutorily barred claims and delay the administration of justice, thereby, unjustly depriving decree-holders of their right to speedy justice.

47. In a case wherein adjudication itself is statutorily barred due to a clear absence of *locus*, a foundational fallacy arises the moment the objector fails to disclose *locus*, and subsequent engagement on that count, in the name of appeal, would be a direct curtailment of the legislative intent. Suffice to observe that the same is neither directly permissible nor impliedly.



48. In the present case, it is observed that the proceedings have already been unduly protracted and delayed, given that the decree sought to be executed was rendered as far back as 1998. Therefore, at this stage, permitting a *pendente lite* transferee to perpetuate such proceedings would contravene the established principles of justice, equity, and good conscience.

49. In light of the provisions of Order XXI Rule 102 of CPC, the adjudication of objections raised by a transferee *pendente lite* under Order XXI Rule 97 of CPC, itself is not maintainable, and accordingly, no appeal shall lie as the same would not constitute a decree under Order XXI Rule 103 of CPC.

50. Accordingly, both the appeals stand dismissed along with pending applications, if any. No costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 28, 2025
aks/mjo