

RAJASTHAN HIGH COURT

Balraj Singh

Vs.

Ajit Singh

S.B. Civil Revision Petition Nos. 123 of 2004, 8 of 2004
(Sunil Kumar Garg, J.)

18.05.2004

JUDGMENT

Sunil Kumar Garg, J.

1. Both revision petition as well as transfer application are being decided by this common order as in both of them, parties are same.

S.B. Civil Revision Petition No. 123, 2004.

2. This revision petition has been filed by the petitioners (hereinafter referred to as the decree holders) against the judgment dated 16.1.2004 passed by the learned District Judge, Sri Ganganagar by which he allowed the appeal filed by the respondent Ajit Singh (hereinafter referred to as the obstructer to the decree in question) and set aside the order dated 14.10.2003 passed by the learned Civil Judge (SD), Sri Ganganagar and directed the learned Civil Judge (SD) to make enquiry under Order 21, Rules 97 to 106 Civil Procedure Code and decide the application filed by the obstructer under the provisions of Order 21, Rule 97 Civil Procedure Code in accordance with law, after giving opportunity of hearing to both the parties.

3. It arises in the following circumstances:

The decree-holders are the legal and absolute owners of premises of shop No. 84, Gurdwara Road, Sri Ganganagar comprising an area of 21 x 45 sq. ft and that shop was let out by the decree holders to M/s. Usha International Ltd., a public limited company having its registered office at Surya Kiran Building, 19 Kasturba Gandhi Marg, New Delhi (hereinafter referred to as the judgment-debtor).

The decree-holders filed a suit on 6.8.1977 in the Court of Civil Judge, Sri Ganganagar for eviction of the judgment-debtor from the shop in question and that suit was registered as Civil Suit No. 55/77. The said suit was decreed by the learned Civil Judge, Sri Ganganagar through judgment and decree dated 15.5.1980 and the judgment-debtor was ordered to be evicted from the shop in question.

Aggrieved from the said judgment and decree dated 15.5.1980 passed by the learned Civil Judge, Sri Ganganagar, the judgment-debtor preferred first appeal before the learned District Judge, Sri Ganganagar, which was transferred to the learned Addl. District Judge No. 1, Sri Ganganagar and that appeal was registered as Civil Appeal No. 77/80 and the learned Addl. District Judge No. 1, Sri Ganganagar through judgment and decree dated 3.12.1988 dismissed the appeal of the judgment-debtor.

Aggrieved from the said judgment and decree dated 3.12.1988 passed by the learned Addl. District Judge No. 1, Sri Ganganagar, the judgment-debtor preferred second appeal before this court being S.B. Civil Second Appeal No. 14/1989 and that second appeal was disposed of by this Court through judgment dated 18.7.2003 on the basis of compromise arrived at between the parties (decree-holders and judgment-debtor).

Thereafter, on 7.10.2003, the decree-holders filed an application under Order 21, Rule 35 Civil Procedure Code for taking possession of the shop in question before the learned Civil Judge, Sri Ganganagar and that application was treated as execution application being No. 18/2003.

During the execution proceedings, the Executive Court issued a warrant for possession of the shop in question in favor of the decree holders on 7.10.2003, but that warrant could not be executed because of the resistance made by the obstructer. The Nazir of the Court made a report on 14.10.2003 that execution of the decree in question could not be made and possession of the shop in question could not be delivered to the decree holders without the help of the police and therefore, Nazir sought help of the police for executing the decree in question, which was passed in favor of the decree holders. Not only this, Nazir in his report further observed that when he went to take possession of the shop in question, that was resisted by obstructer and one Bhajan Singh. Apart from this, the decree-holders also moved an application on 14.10.2003 seeking police help as the obstructer was making resistance in the execution of the decree in question.

On the same day i.e. on 14.10.2003, an application under Order 21, Rule 97 Civil Procedure Code was filed by the obstructer before the learned Civil Judge Sri

Ganganagar stating *inter alia* that he was the owner of the shop in question and the possession of the shop in question was with him for the last 12 years and therefore, enquiry be got conducted as provided in Order 21, Rule 97 onwards of Civil Procedure Code.

On the application of the obstructer dated 14.10.2003, the Court did not pass any order and it was posted for passing orders on 1.11.2003, but in execution file, an order was made by the Executing Court on 14.10.2003 that for execution of decree in question, police help be sought and issued a fresh warrant of possession in favor of the decree holders.

Aggrieved from the order dated 14.10.2003 passed by the Executing Court (learned Civil Judge (SD), Sri Ganganagar) ordering to take police help for execution of decree in question and treating that his application under Order 21 Rule 97 Civil Procedure Code was deemed to have been dismissed, the obstructer has filed an appeal being No. 80/03 before the learned District Judge, Sri Ganganagar and that appeal was allowed by the learned District Judge, Sri Ganganagar though judgment dated 16.1.2004 and set aside the order dated 14.10.2003 passed by the Executing Court (learned Civil Judge (SD), Sri Ganganagar) and directed the Executing Court to make enquiry under Order 21, Rules 97 to 106 Civil Procedure Code and decide the application filed by the obstructer under the provisions of Order 21, Rule 97 Civil Procedure Code in accordance with law, after giving opportunity of hearing to both the parties.

Aggrieved from the said judgment dated 16.1.2004 passed by the learned District Judge, Sri Ganganagar, the decree holders have preferred this revision petition.

4. In this revision petition, the following submissions have been made by the learned counsel for the decree-holders:-

(i) That the impugned judgment dated 16.1.2004 passed by the learned District Judge, Sri Ganganagar is without jurisdiction as no appeal lies against an order passed under Order 21, Rule 97 Civil Procedure Code hence, the learned District Judge acted without jurisdiction in entertaining and deciding the appeal of the obstructer.

(ii) that possession of the obstructer was not independent one as he was holding the possession of the shop in question as agent of the judgment-debtor and the provisions of Rules 98 to 100 of Order 27 Civil Procedure Code do not apply where judgment-debtor transferred the property after institution of the suit in

which decree was passed. From this point of view also, the impugned judgment is wholly erroneous one and should be set aside.

5. On the other hand, it has been submitted by the learned counsel for the obstructer that the appeal was maintainable as by the provisions of Order 21, Rule 97 Civil Procedure Code, the rights of third party are saved and therefore, no illegality or irregularity has been committed by the learned District Judge in entertaining and allowing the appeal of the obstruct or. Hence, no interference is called for with the impugned judgment and this revision petition deserves to be dismissed.

6. I have heard the learned counsel for the decree-holders and the learned counsel for the obstruct or and gone through the materials available on record.

7. So far as the factual scenario of the case is concerned, the same has been narrated above and there is no dispute on that point.

8. There is also no dispute on the point that a decree from the Court of Civil Judge, Sri Ganganagar and thereafter, from the Court of Addl. District Judge No. 1, Sri Ganganagar and from this Court, was passed in favour of the decree-holders and against the judgment-debtor and the decree-holders are entitled to take possession of the shop in question.

9. There is also no dispute on the point that in the execution proceedings, when the Nazir of the Court went to take possession of the shop in question, that was resisted by the obstructer and not only this, the obstructer filed an application under Order 21, Rule 97 Civil Procedure Code on 14.10.2003 before the Executing Court in which he has stated that he was the owner of the shop in question.

10. There is also no dispute on the point that on 14.10.2003 on the request of the Nazir of the Court, orders for police help were passed so that decree holders could get the possession of the shop in question.

11. There is also no dispute on the point that since application of the obstructer dated 14.10.2003 was not entertained by the Executing Court, the obstructer felt that it was deemed to have been dismissed and therefore, he filed an appeal before the learned District Judge and the same was allowed by the learned District Judge through impugned judgment dated 16.1.2004.

12. The question for consideration is whether in the above facts and circumstances, the impugned judgment dated 16.1.2004 passed by the learned District Judge can be

sustained or not.

Point No. 1

13. The submission of the learned counsel for the decree-holders is that if for the sake of argument, it is taken for granted that application filed by the obstructor under Order 21, Rule 97 Civil Procedure Code was deemed to have been dismissed by the Executing Court, even against that order, no appeal lies.

14. In my considered opinion, the above argument cannot be accepted because if application under Order 21, Rule 97 Civil Procedure Code was deemed to have been dismissed, such dismissal can be treated as decree in view of Rule 103 and can be challenged in an appeal and appeal against such orders passed under Order 21, Rules 98 to 100 Civil Procedure Code should be classified as appeals from orders and posted for hearing under Order 41, Rules 11 Civil Procedure Code.

15. Therefore, since in the present case the application of the obstructor under Order 21, Rule 97 Civil Procedure Code was deemed to have been dismissed, therefore, appeal lies against that order and thus, the learned District Judge was competent to entertain and hear the appeal of the obstructor and he has committed no illegality in entertaining the appeal of the obstructor and he was committed no illegality in entertaining the appeal of the obstructor. Hence, it cannot be said that the impugned judgment of the learned District Judge was without jurisdiction.

16. Thus, the argument No. 1 stands rejected.

Point No. 2

17. Before proceeding further, it may be stated here that Hon'ble Supreme Court in a catena of judgment has observed that a stranger can get his claim adjudicated even prior to losing possession to decree-holder, under Order 21 Rule 97 Civil Procedure Code and for that, the following rulings of the Hon'ble Supreme Court may be referred to :-

1. *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*¹

2. *Silverline Forum Pvt. Ltd. v. Rajiv Trust*,²

3. *Shreenath and anr. v. Rajesh*,³

18. Thus, it can be concluded that a person holding possession of an immovable property on his own right can object in the execution proceeding under Order 21, Rule

97 Civil Procedure Code. One has not to wait for his dispossession to enable him to participate in the execution proceedings. This shows that such person can object and get adjudication when he is sought to be dispossessed by the decree holder.

19. The main submission of the learned counsel for the decree holders is that the provisions of Rules 98 to 100 of Order 21 Civil Procedure Code would not be applicable in a case where judgment-debtor has transferred the property to third party after institution of the suit as provided in Rule 102 of Order 21 Civil Procedure Code.

20. In this case, an application under Order 21, Rule 97 Civil Procedure Code was filed by the obstructor on 14.10.2003 and in that application, he has categorically stated that he was in possession as well as owner of the shop in question. Therefore, to say that he was agent of the judgment-debtor and his possession was on behalf of the judgment-debtor, cannot be accepted unless and until there is some enquiry in that respect and this aspect prevailed over the mind of the learned District Judge while passing the impugned judgment.

21. In my considered opinion, the above view, which has been taken by the learned District Judge in his impugned judgment, cannot be said to be erroneous one, looking to the entire facts and circumstances of the case.

22. Apart from this, where in execution proceedings, it has come on record that the decree was being obstructed by that person who was not judgment-debtor, the Court has ample power, before issuing warrant of possession, to issue notice to such third party and enquiry whether such third party as holding property in question on behalf of the judgment-debtor, it can refuse to issue warrant of possession. In this case, this aspect has not been enquired so far by the Executing Court as the Executing Court did not pass any order on the application of the obstructor filed under Order 21, Rule 97 Civil Procedure Code and that is why, the learned District Judge gave direction to the Executing Court to do so.

23. It may be stated here that the adjudication mentioned in Order 21, Rule 97(2) Civil Procedure Code 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 resistor and the Court can direct the parties to adduce evidence for such adjudication if the Court deems it necessary.

24. In investigating the matter under Rule 97, the Court is only concerned with the fact whether the obstructionist is claiming under the judgment-debtor or not, if not, the

Court has to dismiss the application under Rule 97 and the Court is not concerned to see in what title the obstructionist was claiming.

25. In the present case, at this stage, it is not clear as to what is the position of the obstructer, therefore, if the learned District Judge through impugned judgment had given directions to the Executing Court to make enquiry under the provisions of Order 21 Rule 97 onwards of Civil Procedure Code, he has committed no illegality or irregularity in doing so.

26. Hence, argument No. 2 also stands rejected.

27. For the reasons stated above, no interference is called for with the impugned judgment dated 16.1.2004 passed by the learned District Judge, Sri Ganganagar as it does not suffer from any basic illegality or infirmity and this revision petition deserves to be dismissed.

S.B. Civil Transfer Application No. 8/2004.

28. This transfer application has been filed by the obstructer with the prayer that the Execution Petition No. 18/03 *Balraj Singh v. Raj. Industrial Distributors, Delhi* along with petition No. 2/04 *Ajit Singh v. Balraj Singh* be transferred from the Court of Civil Judge (SD) Sri Ganganagar to any other court of competent jurisdiction.

29. In my considered opinion, the grounds on which transfer of the case has been sought by the obstructer do not exist and further, they are not good and sufficient grounds.

30. The transfer of a case from one Court to another indirectly casts doubt on the competence and integrity of the Judge from whom the case is sought to be transferred. Mere presumptions or possible apprehensions are not sufficient therefore, only good and sufficient grounds, clearly set out in the order, may justify the transfer.

31. In this case, since through judgment dated 16.1.2004 directions were given by the Appellate Court (District Judge) to the Executing Court (Civil Judge (SD), Sri Ganganagar) to make enquiry under the provisions of Order 21, Rule 97 onwards of Civil Procedure Code and decide the application filed by the obstructer under the provisions of Order 21, Rule 97 Civil Procedure Code in accordance with law, after giving opportunity of hearing to both the parties and that judgment of the Appellate Court has been upheld by this Court, therefore, now the Executing Court (Civil Judge (SD) Sri Ganganagar) would decide the matter as per directions given by the

Appellate Court, which were affirmed by this Court. Simply because Executing Court has not passed any order on the application of the obstructer filed under Order 21, Rule 97 Civil Procedure Code and posted that application for orders on 1.11.2003 and passed orders for police help on the application of the decree-holders, it would not lead to the conclusion that the Executing Court was biased against the obstructer. There are no good and sufficient grounds to transfer the case from the Court of Civil Judge (SD), Sri Ganganagar to another court and thus, this transfer application deserves to be dismissed.

Accordingly, both revision petitions filed by the petitioners-decree holders and the transfer application filed by the obstructer are dismissed.

Petitions dismissed

Cases Referred.

1. AIR 1997 SC 856
2. AIR 1998 SC 154
3. AIR 1998 SC 1827