



2026:AHC:175662

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL DEFECTIVE No. - 863 of 2026

Phool Devi

.....Appellant(s)

Versus

Degree College Association Through Controller
District Magistrate Mirzapur Pracharya Kbp
College And Another

.....Respondent(s)

Counsel for Appellant(s)	: Ishwar Prasad Singh, Pradeep Kumar, Rahul Sahai
Counsel for Respondent(s)	: Haushila Prasad Mishra

Court No. - 34

(SN.5)

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Pradeep Kumar, learned counsel for the petitioners and Sri Haushila Prasad Mishra, learned counsel for the opposite party.

2. In the instant appeal, the question involved is whether the strangers to a civil suit can file objection under Order 21 Rule 97 to a decree passed in a civil suit at the time of the execution of the said decree. In all the appeals, the appellants had filed objection under Order 21 Rule 97 resisting the execution of the decree. The trial court had rejected those applications relying upon the judgment of *Shriram Housing Finance and Investment India Limited versus Umesh Mishra Memorial Charitable Trust, 2022 15 SCC 176*, wherein it was held that it is only the decree holder who can file objection under Order 21 Rule 97 when any person resists or obstructs the execution of the decree and third party has no right to file any objection under Order 21 Rule 97. Thus, all the applications filed by the appellants were rejected. Being aggrieved, the instant, these appeals have been filed by the appellants.

3. Learned counsel for the appellant has relied upon the judgment of the Apex Court in *Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal, (1997) 3 SCC 694*, and also the recent judgment of the Apex Court in *Periyammal (Dead) through LRs and Others versus V. Rajamani and*

Another, (2025) 9 SCC 568 and submits that even a third party who is not a party to a civil suit, before being evicted or dispossessed in execution of the decree, has a right to file an application under Order 21 Rule 97. It is further submitted that the judgment in **Shriram Housing Finance, (supra)**, which has been relied upon by the trial court did not consider the previous binding judgments of the Apex Court on the subject, and has been decided only on the literary interpretation of the provisions. In such view of the matter, the said judgment is per incuriam and is not binding. In **Brahmdeo, (supra)**, the Apex Court after considering the provisions of Order XXI Rule 97, 98, 99, and 101 has observed as under:

" A conjoint reading of Order 21, Rules 97, 98, 99 and 101 projects the following picture:

(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order 21, Rule 35 then the decree-holder has to move an application under Order 21, Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without a just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order 21, Rule 98, sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a decree under Order 21, Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on the spot on account of his absence from the place or for any other valid reason

then his remedy would lie in filing an application under Order 21, Rule 99 CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order 21, Rule 98, sub-rule (1) CPC the executing court can direct the stranger applicant under Order 21, Rule 99 to be put in possession of the property or if his application is found to be substanceless, it has to be dismissed. Such an order passed by the executing court disposing of the application one way or the other under Order 21, Rule 98, sub-rule (1) would be deemed to be a decree as laid down by Order 21, Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order 21, Rule 101.

*5. In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of the decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the executing court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order 21, Rule 97, sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21, Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21, Rule 97 in connection with removal of obstruction of purported strangers to the decree. **Once such an obstruction is on the record of the executing court it is difficult to appreciate how the executing court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order 21, Rule 99 CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order 21, Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal 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 as per Order 21, Rule 99. Order 21, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order 21, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order 21 and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order 21, Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order 21, Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the executing court, therefore, would fail also on the ground of non-compliance with basic principles of

natural justice. 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 grievances once and for all finally resolved in execution proceedings themselves."

6. In this connection we may also profitably refer to a judgment of a Bench of three learned Judges of this Court in the case of *Bhanwar Lal v. Satyanarain* [(1995) 1 SCC 6] . In that case the Bench consisting of K. Ramaswamy, S.C. Agrawal and N. Venkatachala, JJ., had to consider a parallel fact-situation. One Satyanarain had obstructed to the delivery of possession of the suit immovable property which was sought to be obtained in execution by the appellant decree-holder. After such an obstruction was offered by Satyanarain the decree-holder moved an application under Order 21, Rule 35 for police assistance to remove the obstruction caused by Satyanarain. The executing court directed the decree-holder to make an application under Order 21, Rule 97. This Court took the view that the very application under Order 21, Rule 35, sub-rule (3) for police assistance for removal of obstruction caused by Satyanarain had to be treated to be an application under Order 21, Rule 97 and such an application was maintainable and could not be said to be beyond limitation. In this connection the following pertinent observations were made by this Court: (SCC pp. 8-9, paras 2-6)

The crux of the question is whether the application filed on 25-5-1979 by the appellant, though purported to be under Order 21, Rule 35(3) against Satyanarain, is convertible to one under Order 21, Rule 97. Order 21, Rule 35(3) provides that:

35. (3) *Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.*

A reading of Order 21, Rule 35(3) postulates that the person in possession of the immovable property to be delivered under the decree must be per force bound by the decree. Admittedly, Satyanarain was not a judgment-debtor and that therefore, he is not bound by the decree unless he claims right, title or interest through the judgment-debtor, Ram Kishan. The person resisting delivery of possession must be bound by the decree for possession. In other words the resistor must claim derivate title from the judgment-debtor. The court gets power under Order 21, Rule 97 to remove such obstruction or resistance and direct its officer to put the decree-holder in possession of the immovable property after conducting enquiry under Rule 97.

Order 21, Rule 97 provides thus:

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.

*The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102. **A reading of Order 21, Rule 97 CPC clearly envisages that any person even including the judgment-debtor irrespective whether he claims***

derivative title from the judgment-debtor or sets up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.

When the appellant had made the application on 25-5-1979 against Satyanarain, in law it must be only the application made under Order 21, Rule 97(1) of CPC. The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule. On technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of res judicata which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost.

In view of the aforesaid settled legal position, therefore, and in the light of the statutory scheme discussed by us earlier it must be held that Respondent 1 decree-holder's application dated 6-5-1991 praying for issuance of warrant for delivery of possession with the aid of armed force, was in substance for removal of obstruction offered by the appellant and others under Order 21, Rule 97 CPC and had to be adjudicated upon as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 101 and Order 21, Rule 98. In this connection the Court had also to follow the procedure laid down by Order 21, Rule 105 which enjoins the executing court to which an application is made under any of the foregoing rules of the order to fix a date of hearing of the application. As the executing court refused to adjudicate upon the obstruction and the claim of the appellant who obstructed to the execution proceedings it had clearly failed to exercise jurisdiction vested in it by law. The High Court in

revision also committed the same error by taking the view that such an application was not maintainable. It is of course true as submitted by learned counsel for the decree-holder that in para 4 of the judgment under appeal the High Court has noted that there was some discrepancy about the khasra number. But these are passing observations. On the contrary in the subsequent paragraphs of the judgment the High Court has clearly held that such an application by the objector was not maintainable and his only remedy was to move an application under Order 21, Rule 99 after handing over possession and consideration of objection to delivery of possession by a stranger to the decree at any earlier stage was premature. It must, therefore, be held that neither the executing court nor the High Court in revision had considered the objection of the appellant against execution on merits. Consequently the impugned judgment of the High Court as well as the order of the executing court in Civil Execution Case No. 25 of 1990 dated 15-2-1996 are quashed and set aside and proceedings are remanded to the Court of Munsif II, Munger to re-decide the application of Respondent 1 decree-holder dated 6-5-1991 by treating it to be one under Order 21, Rule 97 for removal of obstruction of the appellant and after hearing the decree-holder as well as the appellant to adjudicate the claim of the appellant and to pass appropriate orders under Order 21, Rule 97, sub-rule (2) CPC read with Order 21, Rule 98 CPC as indicated in the earlier part of this judgment."

4. In ***Periyammal (supra)*** the Apex Court after relying upon the judgments of ***Brahmdeo (supra)*** has also considered the judgment in ***Silverline Forum Private Limited vs. Rajiv Trust and Another, (1998) 3 SCC 723***, which is by the three judges bench of the Apex Court, and ***Sameer Singh and Another vs. Abdul Rab, (2015) 1 SCC 379***, has held in paragraph 49, 50, 51, 52, 53, 54, and 55 as under:

"49. A conjoint reading of the relevant provisions and the principles laid down by this Court makes it clear that in execution of decree for possession of immovable property, the executing court delivers actual physical possession of the decretal land to the decree-holder. Rule 35 confers jurisdiction on the executing court to remove any person, who is

bound by the decree and who refuses to vacate the property. The words any person who is bound by the decree, clearly mandate that removal can only be of a person who is bound by the decree. Rules 97 to 101 deal with situation when execution is obstructed or resisted by any person claiming right, title or interest in the property. The words any person include even a stranger to a decree resisting the decree of possession as not being bound by a decree or by claiming independent right, title or interest to the property.

50. Thus, Rule 97 not only provides to a decree-holder in obtaining possession of an immovable property but also to a stranger who obstructs or resists delivery of possession of the property by claiming derivative title from the judgment debtor or independent right, title or interest in the decretal property. Whereas, Rule 99 gives right to a third party claiming right, title or interest in the property to seek restoration of the decretal property. Suffice it to say that the remedy under Rule 99 is available when a person claiming right to the decretal property is already dispossessed.

51. Rule 101 enjoins upon the executing court dealing with application under Rule 97 or 99 to determine all questions including questions relating to right, title or interest in the property, arising between the parties and relevant to the adjudication of the application. As held by this Court in Silverline Forum [Silverline Forum (P) Ltd. v. Rajiv Trust, (1998) 3 SCC 723] the question that the executing court is obliged to determine under Rule 101 must possess two adjuncts viz. (i) that such question should have legally arisen between the parties, and (ii) such question must be relevant for consideration and determination between the parties. Upon adjudication of such questions, the executing court is under an obligation to pass appropriate order as contemplated under Rule 98 or 100, as the case may be. When eventually such order is passed, it would be treated as decree and no separate suit would lie against such order. It therefore follows that the only remedy is to prefer an appeal before the appropriate court against such deemed decree.

(iii) Section 47CPC vis-à-vis Order 21 Rule 97CPC

52. Under Section 47CPC, questions arising between the parties to the

suit relating to the execution, discharge or satisfaction of the decree are covered whereas under Order 21 Rule 97 read with Rule 101 CPC, questions including those relating to right, title or interest in the property arising between the parties to the proceeding on an application under Rule 97 or Rule 99 of Order 21 are to be determined by the executing court. The language of Rule 97 provides that where the holder of a decree for possession of immovable property 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. The language used is obstructed by any person. It may be by the judgment-debtor or by a third person. Sub-rule (2) of the said Rule 97 further provides that where an application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions thereunder contained. Sub-rule (2) of Rule 98 of Order 21 further provides that 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, he shall direct that the applicant be put into possession of the property.

53. Rule 101 of Order 21 provides as under:

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.*

54. Thus the cumulative effect of all these rights read together is that if an application under Order 21 Rule 97 is made, then its determination will be under Rule 101 and then Rule 103 further provides that where any application has been adjudicated upon under Rules 98 or 100, the order made thereon shall have the same force and will be subject to the same conditions as to an appeal or otherwise as if it were a decree. Under Section 47CPC all questions relating to the execution, discharge or

satisfaction of the decree, have to be determined by the executing court whereas under Rule 101 all questions including question relating to right, title or interest in the property arising between the parties to the proceedings have to be determined by the executing court. Section 47 is a general provision whereas Order 21 Rules 97 and 101 deal with a specific situation. Moreover, Section 47 deals with executions of all kinds of decrees whereas Order 21 Rules 97 and 101 deal only with execution of decree for possession. Apart from that, earlier i.e. prior to the amendment, every order falling under Section 47 was appealable (as the terms decree included the order under Section 47CPC) whereas now only certain orders as provided for under Order 21 have been made appealable.

55. In such circumstances referred to above the application of Respondents 1 and 2 under Section 47CPC bearing REA No. 163 of 2011 was in substance an application for determination of their possessory rights under Order 21 Rule 97."

5. In **Silverline (supra)**, the Apex Court observed as under:

"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 resistor raised it. The questions which executing court is obliged to determine under rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g. if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. similarly, a third party, who questions the validity of a transfer made by a decree- holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. in the adjudication process envisaged in order 21 Rule 97(2) of the Code, execution court

can decide whether the question raised by a resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

13.

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.

15.

16.

17.

18. We, therefore, agree with the contention of Shri Siddhartha Shankar Ray, learned senior counsel for the second respondent that the High Court went wrong in holding that the contention of second respondent cannot be considered under Order 21 Rule 97 of the Code. But the aforesaid finding is not sufficient to dispose of this appeal.

6. In *S.S. Narayana Sharma vs. Other Gold Stone Exports Private Limited and Others*, (2002) 1 SCC 662, the Apex Court has observed as under:

"15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree-holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery

of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree-holder entitled to possession of the property encounters obstruction from any person. From the provisions in these Rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with all issues relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree-holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that 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. **On a fair reading of the Rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its responsibility by skirting the relevant issues arising in the case.**

(emphasis supplied)

19. From the principles laid down in the decisions noted above, **the position is manifest that when 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 which under the provisions of Order 21 Rule 103 is to be treated as a decree.** From the averments made in the petition filed by the appellants before the executing court it is clear that they are claiming independent right to the property from which they are sought to be evicted in execution of the decree. It is the further case of the appellants that the right in the property had vested in them much prior to filing of the present suit the decree of which is under execution. It is to be kept in mind that the suit as initially filed was a suit for partition simpliciter. In such a suit the High Court in course of execution proceedings ordered delivery of possession. Whether such a direction given in the suit is valid or not is a separate matter. We need not say anything more on the question at present. As noted earlier, the learned Single Judge and the Division Bench dismissed the petition filed by the appellants as non-maintainable without entering into the merits of the case. The Division Bench appears to have taken the view that since the appellants are claiming the property through the Pygah Committee or the State Government, who are parties in the suit, they are bound by the decree. The view taken by the Division Bench is unsustainable and does not at all stand scrutiny under law. It amounts to, if we may put it that way, begging the question raised in the petition filed by the appellants. At the cost of repetition, it may be stated here that the appellants are claiming independent title to the property as the transferees from the pattadars whose land did not vest in the State Government under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Jagirdar Regulation Act, 1958. On a perusal of the orders passed by the Single Judge as well as Division Bench of the High Court, we are constrained to observe that the said orders are based **on a complete misreading of the case of the appellants and misconception of the legal position relevant to the matter. Considering the facts and**

circumstances of the case, we are of the view that the matter should be remitted to the High Court for fresh consideration of the petitions filed by the appellants by a Single Judge at the first instance."

7. In ***Sameer Singh (supra)*** the Apex Court observed as under:

"25. At this juncture, we may refer with profit to the pronouncement in *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal* [(1997) 3 SCC 694 : AIR 1997 SC 856] , wherein a two-Judge Bench scanning the anatomy of the Rules came to hold that : (SCC pp. 702-03, para 9)

9.a stranger to the decree who claims an independent right, title and interest in the decretal 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 as per Order 21 Rule 99. Order 21 Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order 21 Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order 21 and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him.

26. The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained code, as

has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order 21 Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree. If a court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different. In the instant case the executing court has expressed an opinion that it has become functus officio and hence, it cannot initiate or launch any enquiry. The appellants had invoked the jurisdiction of the High Court under Article 227 of the Constitution assailing the order passed by the executing court on the foundation that it had failed to exercise the jurisdiction vested in it. The appellants had approached the High Court as per the dictum laid down by this Court in Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675] ."

8. In **Shriram, (supra)**, the Apex Court has observed as under:

"24.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."

9. From the aforesaid judgments, it is crystal clear that a third person who was not a party to a suit and if he is apprehending his dispossession pursuant to the execution of the decree to which he was not a party, it has been categorically held that such persons may file the objections under Order 21 Rule 97 which are required to be adjudicated upon by the trial

court in execution proceedings.

10. In such view of the matter, since the judgment passed in ***Shriram (supra)*** has not considered the previous binding judgments of the Apex Court specifically the ***Silverline (supra)*** which was a three judges Bench of the Apex Court, the said judgment in ***Shriram Housing Finance (supra)***, in the considered opinion of this court, with utmost respect, was a per incuriam judgment which has been wrongly relied upon by the trial court.

11. In such view of the matter, the impugned order dated 11.11.2025 whereby the application under Order 21 Rule 97 of the appellant had been rejected holding that the same is not maintainable is hereby ***set-aside*** and the matter is remitted back to the executing court concerned to adjudicate upon the claim of the appellant under Order 21 Rule 97 in accordance with law. Since the decree was passed in the year 1977 and the execution is still pending, therefore, the Executing Court is directed to adjudicate upon the claim of the appellant as early as possible preferably within a period of six months from the date of production of certified copy of this order.

12. With the aforesaid directions the instant appeal is ***allowed***.

(Anish Kumar Gupta,J.)

August 20, 2026
Shubham Arya