

(2025) 11 JH CK 1961

In the Jharkhand High Court

Case No : Civil Miscellaneous Petition No. 1036 Of 2025

Annu Devi

APPELLANT

Vs

Shweta Sinha @ Rinki, daughter of Late Kamal Kishore Prasad

RESPONDENT

Date of Decision : 17-11-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 21 Rule 97, Order 21 Rule 98, Order 21 Rule 101, Order 21 Rule 102
Transfer of Property Act, 1882 — Section 52

Citation : (2025) 11 JH CK 1961

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Mahesh Tewari, Sanskriti Shalini

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Instant civil miscellaneous petition has been filed against the order dated 16.09.2025 passed in Execution Case No.02 of 2020 passed by Civil Judge (Sr. Div.)- II, Koderma, whereby and whereunder Civil Misc. Case No.06 of 2025 filed by the decree holder along with analogous cases, has been allowed dismissing the objection raised by the petitioners to the execution of decree.

2. The execution case arises out of Partition Suit No.12 of 2005 in which preliminary decree has attained finality, and final decree has been drawn accordingly and levied for execution.

3. Decree holder filed the petition under Order XXI Rule 97 of the CPC in which the obstructionists filed their objections inter alia on the ground that the land under Khata No.106, Plot No.5863, area 26 decimals, village Gumo, P.S. Telaiya, District Koderma was purchased by Bandi Prasad through registered Sale Deed No.15578 dated 12.07.1974. Other plots of land were also purchased by Bandi Prasad by Khatiyani Raiyats, who died leaving behind his four sons namely Kamal

Kishor Prasad, Vimal Prasad, Sheetal Prasad, Dudheshwar Prasad Sinha and three daughters namely Shanti Sahay, Sushila Shrivastav and Meera Shrivastav. It is further averred in the objection petition that there had been a partition between Bandi Prasad and other joint family members. It is contended that Kamal Kishor Prasad, son of Bandi Prasad sold 18 decimals of land of Plot Nos.5865 and 5864 from his allotted share to Chandan Kumar Barnwal through registered sale deed on 08.06.2009, who got it mutated in his name and is paying rent to the State.

4. As per the case of these petitioners, both petitioner no.1- Annu Devi and petitioner no.2- Shakuntala Devi purchased different plots of land from Chandan Kumar Barnwal in 2009 and 2014.

5. It is argued by the learned counsel on behalf of petitioners that it was incumbent on the part of the executing Court to have heard the Obstructionists and decide the claim of title in terms of Order XXI Rule 97 read with Rules 98 and 101 of the CPC. Without deciding the title, the executing court has dismissed the petition. Reliance in this regard is placed on *Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal & Another*, (1997) 3 SCC 694; *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust & Another*, (1998) 3 SCC 723; *Maqsood @ Md. Maqsood Vs. Md. Salim & Others*, 2011 SCC OnLine Jhar 574.

6. This Court is of the view that authorities relied upon will not be applicable to the facts and circumstance of the present case for the reason that petitioners are pendente lite purchaser from Chandan Kumar Barnwal, who purchased the said property from one of the members of the joint family, namely Kamal Kishore Prasad, during the pendency of the suit for partition. Thus, petitioner being pendente lite purchaser shall be bound by the preliminary and final decree in the partition suit and cannot set up a new case at the stage of execution, which is barred under Order XXI Rule 102 of the C.P.C. It has been held in *Usha Sinha v. Dina Ram*, (2008) 7 SCC 144:

"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-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”.

7. Under the circumstances for the reasons as discussed above, Civil Miscellaneous Petition stands dismissed. Pending Interlocutory Application, if any, is disposed of.