
(2016) 08 KL CK 0035
In the High Court Of Kerala
Case No : Ex. F.A.No. 20 of 2016

K.K. Purushothaman

APPELLANT

Vs

Santhamma

RESPONDENT

Date of Decision : 18-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97

Citation : (2016) 167 AIC 401 : (2017) AIRCC 931 : (2016) 4 CivCC 9 : (2016) 4 CivilLJ 534 : (2016) 4 ICC 184 : (2016) 3 KerLJ 548 : (2016) 3 KLT 679

Hon'ble Judges : V. Chitambaresh and K. Harilal, JJ.

Bench : Division Bench

Advocate : Sri. K.V. Sadananda Prabhu, Advocate, for the Appellant; Sri. B. Premnath, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—Is there any bar for the Execution Court to treat an application filed to record resistance to the delivery of property as one for removal of obstruction under Order 21, Rule 97 of the Code of Civil Procedure, 1908 ["the CPC" for short] ?

2. An extent of 4 cents of land in R.S. No. 175/13 of Karumadi Village in Ambalapuzha Taluk was attached before judgment in a suit filed by the first respondent against the second respondent. The suit in O.S.No.186/2009 on the file of the court of the Subordinate Judge of Alappuzha was one for realisation of a sum of Rs. 4 lakhs. The suit was decreed ex-parte against the second respondent by judgment dated 6.11.2009 which has become final and the attachment of the property made absolute. The property attached was brought to sale in E.P. No. 165/2010 and the first respondent decree holder herself bid the property in auction held on 18.3.2014. The auction was confirmed for a sum of Rs. 5,01,000/- and a sale certificate issued to the first respondent enabling her to apply for delivery of the property. The first respondent filed E.A. No. 325/2014 for delivery whereupon the execution court ordered the property to be

delivered over. It was at this juncture did the appellants file E.A. No. 435/2014 to record their resistance to the proposed delivery of possession of the property to the first respondent.

3. The property taken in by the sale certificate and directed to be delivered over is a "Guru mandiram" which is a mantap wherein the statue of Sree Narayana Guru is housed. The appellants asserted that they are the "believers, devotees and worshippers" of Sree Narayana Guru entitled to resist the delivery of possession of the property. The court below treated E.A.No.435/2015 as one under Order 21, Rule 97 of the CPC and adjudicated the questions relating to the right, title and interest in the property. The court below by the order impugned dismissed E.A.No.435/2015 and directed the property to be delivered over to the auction purchaser after removing the obstruction. The appellants have come up in appeal under Order 21, Rule 103 of the CPC contending inter alia that the procedure adopted by the court below is irregular. It is the case of the appellants that only an application filed by the auction purchaser could be treated as one for removal of obstruction. The appellants also maintained that they being the believers, devotees and worshippers of Sree Narayana Guru are entitled to resist the delivery of possession of the property.

4. We heard Mr. K.V. Sadananda Prabhu, Advocate on behalf of the appellants and Mr. B. Premnath, Advocate as amicus curiae when the Execution First Appeal was listed for admission and hearing.

5. There is no hard and fast rule that only an execution application filed by the holder of a decree or the purchaser of a property could be treated as one under Order 21, Rule 97 of the CPC. It is open to the execution court to adjudicate all questions relating to right, title or interest in the property arising between the parties to such proceeding. The execution court can resort to adjudication whenever a resistance or obstruction to the delivery is brought to its notice by an application. The gamut laid down by Order 21 Rules 97 to 103 of the CPC is a complete code in itself and the adjudication is subject to the hierarchy of appeals by the parties. The Supreme Court in *Brahmdeo Choudhary v. Rishikesh Prasad Jaiswal* (1997) 3 SCC 694 had occasion to observe in this regard as follows:

"On the contrary, the statutory scheme envisaged by Order 21, Rule 97 CPC as discussed earlier clearly guards against such a pit fall 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 see 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 grievance once and for all finally resolved in execution proceedings themselves."

(emphasis supplied)

6. The above view finds approval in *Silverline Forum (P) Ltd. v. Rajiv Trust* (1998)3 SCC 723 wherein Mr. Justice K.T. Thomas speaking for the bench observed as follows:

"It is clear that the executing court can decide whether the resister or obstructer 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".

(emphasis supplied)

The Supreme Court after referring to the above two decisions reiterated the position in law in *Ashan Devi and another v. Phulwasi Devi and others* (2003) 12 SCC 219 as follows:

"As has been held by this court in the case of *Brahmdeo Chaudhary* a third party resisting or obstructing the execution of the decree can also seek adjudication of his rights under Order 21, Rule 97 in the same way as the decree holder. If that be so, it seems illogical that the third party which complains of actual dispossession because of the delivery of possession in execution to the decree holder should not be allowed to claim adjudication of his rights through the executing court. An interpretation of the provision which promotes or fulfils the object of the amended provisions of the code of curtailing litigation, has to be preferred to the one which frustrates it."

(emphasis supplied)

The contention that the court below erred in treating E.A. No. 435/2015 filed to record resistance to the delivery of possession as one for removal of obstruction is puerile. It is not obligatory always for the decree holder or the auction purchaser to file an application under Order 21, Rule 97 of the CPC regardless of the circumstances of the case.

7. The appellants resist the delivery of possession of the property on the ground that they are believers, devotees and worshippers of Sree Narayana Guru who was a social reformer. It is the case of the appellants that the statue of Sree Narayana Guru is an idol and the mantap (Guru mandiram) where the same is housed is a temple for them. The appellants assert that they have a locus standi to resist delivery of possession of the "Guru mandiram" as believers, devotees and worshippers of Sree Narayana Guru. The appellants maintain that the true beneficiaries are not the idols but the worshipers and that they as the next friend of the deity can resist or obstruct. Our attention was invited to *Deoki Nandan v. Muralidhar and others* AIR 1957 SC 133 and *Bishwanath v. Sri Thakur Radha*

Ballabhji AIR 1967 SC 1044. It has been held in the latter decision as follows:

"On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an adhoc power of representation to protect its interest."

The above argument of the appellants though appears to be attractive at first blush cannot be accepted to confer any right, title or interest in the property in their favour due to the reasons below.

8. The question whether a "Guru mandiram" could be treated as a temple has been considered threadbare in *Bhargavan v. Thankappan* 1989 (1) KLT 719 wherein it was observed as follows:

"These messages would show that Sree Narayana Guru wanted his followers as also the general public to understand that he did not believe in idol worship and that he did not belong to any one particular religion. To quote Vyasa, he was a perfect man even beyond the pale of our caste and creed. The aim of this great social reformer of Kerala who moved like a colossus on the soils of Kerala till his end in the year 1928, was to have an universal religion where there would be no difference between man and man. It is interesting to note that this was a period where religions were proving to be great obstacles in the way of human unity. This great apostle of truth therefore placed before the humanity as a whole the "one caste, one religion and one God for man" theory. He thereby meant an universal religion..... This great social reformer of Kerala thus refused to get himself identified with any one religion, caste, creed or sect. He belonged to the humanity; or to put it differently, humanity owned him..... Sree Narayana Guru therefore cannot be treated as an "Avatar" of God; he was only a social reformer who believed in the welfare of the humanity as a whole although some of his followers as stated by two ardent followers of Sree Narayana Guru namely Sri. C. Kesavan and Sri. Sahodaran Ayyappan, have been trying to get him recognised as Avatar. If that be so Sree Narayana Guru mandirams where the statue of Sree Narayana Guru is installed, to my mind, cannot be said to be a temple i.e. a "place of public religious worship for Hindus" within the meaning of that expression in the Rules".

(emphasis supplied)

The above decision rendered in the context of Abkari shops (Disposal in Auction) Rules, 1974 holds good for the present purpose also to decipher as to whether the appellants have any locus standi.

9. The dictum in *Bhargavan's* case (supra) was followed in *SNBP Branch v. State of Kerala* 2014 KHC 267 to hold that the location of a polling booth at a Guru mandiram cannot be objected to. This court has also in *M.K. Sanoo v. State of Kerala* 2002 (2) KLT 481 held that disciples of Sree Narayana Guru do not

constitute a religious denomination. The statue of Sree Narayana Guru (who did not believe in idol worship) cannot be treated as a deity and his followers permitted to represent it. Sree Narayana Guru was a social reformer and not an avatar of God and the Guru mandiram housing his statue cannot be treated as a temple as is projected. Of course a citizen can legitimately believe that Sree Narayana Guru is an eternal God [see: Haridas Palayil v. Speaker, Kerala Legislative Assembly (2003 (3) KLT 119. The appellants have as a matter of fact endorsed on E.A. No. 435/2015 that they have no oral or documentary evidence to be adduced. The appellants have miserably failed to establish their right, title or interest in the property independent of the second respondent judgment debtor. The resistance offered to the delivery of possession of the property as the believers, devotees and worshippers of Sree Narayana Guru is unfounded and liable to be removed. The court below has not committed any illegality in directing the property to be delivered over to the first respondent auction purchaser after removing the obstruction.

10. The Execution First Appeal is rejected in limine. No costs.