
(2007) 04 MP CK 0002

In the Madhya Pradesh High Court

Case No : First Appeal No. 101 of 2006

Manoharlal and Others

APPELLANT

Vs

Idandas and Another

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 36, Order 21 Rule 97, Order 21 Rule 99, 151
Contract Act, 1872 — Section 17

Citation : (2007) 2 JLJ 393 : (2007) 3 MPLJ 245

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : P.C. Chandil, for the Appellant; K.N. Gupta and Amit Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.

The objectors-Appellants have filed this appeal against the order dated 18.1.2006 passed by Sixth Additional District Judge, Gwalior, in Execution Case No. 53-A/93x94. By the aforesaid order the objections raised by the objectors have been rejected with regard to delivery of possession and execution of decree dated 3.9.1994 for specific performance of contract passed in Civil Suit No. 53-A/93.

The Respondent No. 1 filed execution proceedings before the trial Court on 28.10.1994 with regard to execution of sale-deed in pursuance to the judgment and decree passed by the trial Court and delivery of possession and also for construction of a wall over the suit land.

Earlier the Respondent No. 1-Plaintiff filed a civil suit with regard to specific performance of contract against the Respondent No. 2, who was the Defendant in the aforesaid suit. The suit was registered as Civil Suit No. 53-A/93. The Plaintiff

pleaded that Respondent No. 2-Defendant was the owner of the land admeasuring 19 ft. x 15 ft. and her son-in-law executed an agreement with the Plaintiff on 4.5.1990 to sell the aforesaid suit plot in favour of the Plaintiff at the rate of Rs. 150/- per sq.ft. He also received an advance of Rs. 5,000/- for the aforesaid purpose. The Plaintiff served notice with regard to execution of sale-deed and performance of contract as per the aforesaid agreement. However, the Defendant did not execute the agreement. Copy of the agreement was filed as Annexure P-1 which was a registered agreement. The Defendant-Respondent No. 2 did not appear before the Court and ex parte judgment was passed against her. On the basis of the documents and evidence the Court passed a decree of specific performance of contract in favour of the Plaintiff-Respondent No. 1 directing the Defendant-Respondent No. 2 to execute sale-deed of the suit plot in favour of the Plaintiff-Respondent No. 1 for a consideration of Rs. 150/- per sq.ft. and she was also directed to construct a boundary wall alongwith doors around the premises. Thereafter, the Respondent No. 1 filed the execution proceedings of the decree.

Before the executing Court the Appellants-objectors submitted an objection under Order 21 Rule 97 read with Order 21 Rule 36 and Section 151 of CPC on 2.4.1996. They pleaded that the agreement to sell the suit plot in favour of the Respondent No. 1 was a forged one and by an ex parte decree the Respondent No. 1 was trying to grab the property which is a public property and belongs to all the persons who are residing in the area including the objectors. They further pleaded that there was a house of Shitole family named at Bada Ajnam Narshing Niwas, Bada Shitole Jamdar Khana at Lashkar. The aforesaid house was a big one and it was sold by the family of the Shitole family namely Krishna Rao Shitole, Smt. Jyotsana, Ku. Arunadhanti Shitole, Ku. Yashashavi Shitole, Ku. Gayatri Shitole, Ku. Geeta Shitole and Ramchandra Shitole to various persons on different dates. Objector-Appellant No. 2 purchased some portion of the house on 2.12.1989, 13.3.1989 and 27.3.1989, Smt. Krishna Devi Appellant No. 3 on 30.11.1989, Shri Gangaram Appellant No. 4 on 20.3.1989, Manoharlal Appellant No. 1 on 31.3.1989, Smt. Kavita Devi Appellant No. 5 on 27.3.1989, Smt. Neha Devi Appellant No. 6 on 20.3.1989, Manoharlal Appellant No. 1 on 20.4.1989, Manoharlal Appellant No. 8 on 17.3.1989, and Tolaram on 16.3.1989. Copy of the sale-deeds have also been filed alongwith the objection. One of the condition of the sale-deed was that main gate of the Bada would remain as it is and all the purchasers and the vendors would have easementary rights over the main gate of the Bada. Similarly, the passage, main gate and one chowk and maidan, which was left out as open, would be used jointly and all the purchasers had easementary rights over the aforesaid open area and nobody could narrow the open space. The relevant portion, which was in Hindi is as under:

fc?hr laif?k ckMs dk eq[; njoktk tks yxHkx 25 QqV mapk rFkk yxHkx 20 QqV pkSM+k dh e; nhokjksa rFkk vktw&cktw esa cuh pkSfd;ksa ds gSa rFkk ftldk izos? ekxZ 14 QqV pkSM+k gS rFkk ftlesa yksgs ds QkVd yxs gSa ;g njoktk cnLrwj dk;e jgsxk A ml ij ?srk rFkk ckM+s ds vU; ?srkx.k dh loZIEefr lgefr ds fcuk

mDr njoktk rksM+k ugha tk ldsxk A blh izdkj l njokts ds o fn?k nf{k.k esa tks jkLrk pkSd o eSnku [kkyh NksM+k x;k gS og Hkh jkLrk eSnku pkSd ?keykrh gksdj ml ij lq[kkf/kdkj jkLrk ckM+s ds lHkh ?srkx.k o muds varj.kx`ghrk dk jgsxk vkSj bl jkLrk eSnku dks fdLh izdkj ladh.kZ djus dk fdLh Hkh ?srk ;k vU; fdLh O;fDr dks dksbZ vf/kdkj ugha gksxk A

After the aforesaid sale, the objectors have been using the open space and passage of the main gate. They further contended that there are other public premises in the courtyard including one school named as "Saraswati Shishu Vihar" and one marriage garden. Students of the school have also been using the passage and open space. Similarly, persons who used to attend the marriage ceremony in the marriage hall are also using the open space. They further pleaded that the decree could not be executed because it was obtained by way of fraud because the Respondent No. 2 had no right to sell the suit plot or enter into agreement to sell the suit plot in favour of the Respondent No. 1. Copy of the sale-deeds have been filed as Exhibits D-1 to D-9 by the objectors.

The Respondent No. 1 examined himself in support of the execution, he contended that he has been residing nearby of the plot. He purchased his house from Shitole Sahib and thereafter, he entered into an agreement to purchase the suit plot, which was an open one of 16 ft. x 19 ft. and thereafter, he received decree of specific performance of the contract. The land is an open land and Smt. Sunanda Raje had a right to sell the aforesaid plot. Another witness Madanlal was examined in support of his case, who contended that the Respondent No. 1 entered into an agreement to purchase the suit plot and it was an open land. Smt. Sunanda Raje did not appear before the trial Court. On behalf of the objectors one employee of the Registration Department, Smt. Vimala has been examined as witness No. 1, she verified the execution of sale-deeds Ex.D-1 to D-9. Manoharlal witness No. 2 and Naresh Agrawal, witness No. 3 have also been examined on behalf of the objectors. They deposed that they purchased one portion of the hosue, which was of the ownership of the Sardar Maloji Rao Shitole, from the family members of "Shitole family" including Smt. Sunanda Raje Shitole and as per the sale-deeds the land- was left as open and all the purchasers were given the right of easement over the open land and the Respondent No. 1 got a decree of specific performance of contract by pleading a fraud. Smt. Sunanda Raje had no right to sell or enter into agreement with regard to suit plot because all the purchasers had been given a right of easement over the open portion of the land. The same facts have been narrated by the other witnesses.

After appreciation of the aforesaid evidence, the trial Court dismissed the objections of the objectors by holding that Respondent No. 1 obtained a decree for specific performance of contract on the basis of the agreement, which was entered into by the son-in-law of the Respondent No. 2, who was authorized by a power of attorney. Hence, the suit land cannot be said to a land of general use and there was a passage available for use to the objectors. Hence, the objectors

had no right over the suit plot.

The learned Counsel for the Appellants has submitted that the executing Court has committed an error of law in rejecting the objections because the objectors have been given easementary rights over the open land of the courtyard, which was marked in the sale-deeds. Hence, Smt. Sunanda Raje could not enter into any agreement with the Respondent No. 1. He further submitted that Respondent No. 1 obtained the decree by practising fraud and concealing material evidence before the Court, hence, the decree is nullity and it cannot be executed.

Contrary to this learned senior counsel for the Respondent No. 1 has submitted that the objections under Order 21 Rule 97 of CPC filed by the objectors are not maintainable. He further submitted that Respondent No. 1 has got the decree in pursuance to the agreement and he has a right to execute the decree because the open plot, which was agreed to sell in favour of the Respondent No. 1 was not a part and parcel of the open land and the Appellants have no easementary rights over the said plot. In support of his contention he relied on the judgment of the Hon"ble Supreme Court in case of Hero Vinoth (minor) v. Seshammal 2006(4) SC 131.

Respondent No. 1 filed a civil suit before the Court pleading that he entered into an agreement with Respondent No. 2 through, son-in-law of Respondent No. 2, who had a special power of attorney to sell the plot, admeasuring 19 ft. x 16 ft. at the rate of Rs. 150/- per sq.ft. vide agreement dated 4.5.1990 and son-in-law of the Respondent No. 2, also received an advance of Rs. 5,000/-. She further agreed to put a boundary wall around the suit land and even after service of notice she did not perform her part of the contract. Before the trial Court Respondent No. 2 remained ex parte and thereafter, the Court granted a decree of specific performance of contract in favour of the Respondent No. 1 with regard to execution of sale-deed of the suit land and also the Defendant was directed that she would put a boundary wall around the suit land. In the proceedings of the execution of the decree, the Appellants/objectors filed the objection pleading the facts mentioned in the judgment. In support of the execution of the decree, the decree holder, Respondent No. 1 examined himself with one witness. He deposed before the Courts that he entered into an agreement with the son-in-law of Respondent No. 2 with regard to sale of the suit plot at the rate of Rs. 150/- per sq.ft. Subsequently, the Respondent No. 2 did not execute the sale-deed neither put him into the possession. He further stated that the plot was an open land and nobody had a right over the aforesaid plot. He pleaded his ignorance about the execution of sale-deeds by the Respondent No. 2 and other family members in favour of the objectors. He further stated that there was a passage available to the objectors, which can be used as another passage. In his cross-examination, he admitted that all the residents of courtyard including 10-12 familites have their entrance from the main gate and the suit land is 3-4 ft. away from the main gate. Similar facts have been stated by another witness Madanlal.

The objectors examined the employee of the Registration Department, Smt. Vimila, who deposed that the sale-deeds from Ex.D-1 to D-9 have been executed by the family members of the Krishna Rao Shitole family. Another witness Manoharlal, who is Appellant No. 1 in the present appeal, examined himself as witness No. 2. He deposed that he purchased the land vide sale-deed Ex.D-5 dated 20.4.1989. By the aforesaid sale-deed he purchased a portion of the building having an area of 38.56 sq.ft. named as Bada Ajnam Narshing Niwas, Bada Shitole Jamdar Khana at Lashkar in a consideration of Rs. 30,000/-. Alongwith the aforesaid sale-deed a map was also filed and in the aforesaid map maidan and rasta and the main gate have been shown in green lines. In the recital of the sale deed it has been mentioned that the portion which is in green lines including the rasta, passage and open space of maidan have been left out for easementary rights of the residents and nobody can narrow the open space neither it can be sold to anybody. The relevant portion, which is in Hindi is as under:

fc?hr laif?k ds iwoZ rFkk if"pe fn"kk ds nksuska ekxksZa ds e/; ckM+s dk eq[; njoktk tks yxHkx 25 QqV mapk rFkk yxHkx 22 QqV pkSM+k] e; nhokjksa rFkk vktw&cktw esa cuh pkSfd;ksa ds gSa rFkk ftldk izos? ekxZ 14-11 QqV pkSM+k gS] rFkk ftlesa yksgs ds QkVd yxs gSa] og cspk ugha x;k gS] mDr njoktk cnLrwj dk;e jgsxk] ml ij ?srkx.k dh loZIEefr lgefz ds fcuk mDr njoktk rksM+k ugha tk ldsxkA lh izdkj bl nkjokts ds fn"kk nf{k.k eas tks jkLrk pkSd eSnku [kkyh NksM+k x;k gS] og Hkh jkLrk eSnku pkSd "kkeykrh gksdj] ml ij lq[kkf/kdkj jkLrk ckM+s ds lHkh ?srkxk o muds varj.kxzghrk dks jgsxk vkSj bl jkLrk eSnku dks fdLh izdkj ladh.kZ djus dk fdLh Hkh ?srk ;k vU; fdLh O;fDr dks dks dksbZ vf/kdkj ugha gksxkA ;g jkLrk eSnku Jh xaxkjke rFkk Jh euksgjyky ds fgr esa iwoZ esa fu"ikfnr fo?;i=ksa esa gjh VsMh js[kkkvksa ls n?kZ;k x;k gS rFkk mDr njoktk rFkk jkLrk eSnku esa ls ckM+s ds lHkh ?srkx.k o muds varjxzghrk rFkk vf/kokflr HkkM+snkjksa dks vius uke ls uy] fctyh dusD?u] lhou ykbZu vkfn ds tkus dk lq[kkf/kdkj jgsxk A fo?hr laif?k dk iVko ;k vU; ikV iRFkj vkfn xSj fcds gq, Hkkx ij j[kk gS rks og dk;e jgsxk A

He further stated that since then all the residents of the courtyard including other public persons have been using the land. Near about 25 persons have purchased the land from the family members of the Shitole family. Mr. Naresh Chandra Agrawal has been examined on behalf of the objectors as witness No. 2, who deposed that the family members of the Shitole family named as Smt. Sunanda Raje Shitole w/o Jaisinghrao Shitole and her daughters Smt. Jyotsana Aangre w/o Kanhojirao Aangre, Arundhati Shitole, Yashashwani Shiteole and minor daughters Gayatri Shitole and Geeta Shitole and minor son Ramchand Shitole alias Ramrao executed a general power of attorney with regard to sale of the property because they could not come to Gwalior for the purpose of sale because they were residing at that time at Shivpuri. The aforesaid special power of attorney was registered on 11.10.1988 and witness No. 2, Naresh Chandra Agrawal executed the sale-deeds in favour of the objectors vide sale-deeds Ex.D-1 to D-9. In the aforesaid sale-deeds there is a mention of fact with regard

to main gate, general passage and open space, which can be used by all the residents for their easement rights. The relevant portion of the deposition which is in Hindi is as under:

mDr eq[;kjukes ds vk/kkj ij esjs }kjk vkif?kdrkZx.k dks mDr laif?k fofHkUu Hkkxksa eas fofHkUu fnukadksa dks fc?h dj nh xbZ gS ftuds }kjk laif?k ds fc? h&i=ksa esa ;g mYysf[kr fd;k x;k gS fd fc?hr laif?k esa ckM+s dk eq[; njoktk tks yxHkx 25 QqV mapk rFkk yxHkx 20 QqV pkSM+k nhokjksa rFkk vktw&cktw eas cuh pkSfd;ksa ds gSa rFkk ftldk NksVk ekxZ 14-11 QqV pkSM+k gS rFkk ftlesa yksgs ds QkVd Yxs gSa og njoktk cnLrwj dk;e jgsxk ftl ij ckM+s ds vU; ?srkx.k dk lq[kkf/kdkj jkLrk jgsxk rFkk ckM+s ds leLr ?srkx.k dh loZ lgefr ds fcuk njoktk rksM+k ugha tk ldsxk A blh izdkj bl njokts ds o fn?k nf{k.k esa tks jkLrk pkSd o eSnku [kkyh NksM+k x;k gS og jkLrk eSnku pkSd ?keykrh gksdj ml ij lq[kkf/kdkj jkLrk ckM+s ds lHkh ?srkx.k o muds varj.k xzfgrk dks jgsxk vkSj l jkLrk eSnku dks fdlh izdkj ladh.kZ djus dk fdlh Hkh ?srk ;k vU; fdlh O;fDr dk vf/kdkj ugha jgsxk A bl izdkj mDr Hkwfe lkoZtfud gksdj ckM+s ds ?srkvksa ds mi;ksx ds fy, NksM+h xbZ gS ftl ij fdlh Hkh O;fDr dks dksbZ fuekZ.k dk;Z djus dk vf/kdkj fc? h&i= ds vk/kkj ij ugha fn;k x;k gS A

In his cross-examination he admitted that he sold the property in portions to different persons and all the persons have been given the easementary rights and the open space was left out for use of all the persons.

From the above deposition of the objectors and Mr. Naresh Chandra Agrawal who was power of attorney holder of Smt. Sunanda Raje Shitole and other family members of Shitole family, it is clear that at the time of execution of the property, an open space in the courtyard and also passage and main gate have been left out for easementary rights to all the residents of the courtyard. The averments to this effect have been mentioned in each sale-deed and it has been proved by one of the objector, Manoharlal Appellant No. 1 in his evidence. It is clear from the registered sale-deed Ex.D-5, which is in favour of Manoharlal executed by power of attorney holder, some of the recital has been mentioned in para 3 of the judgment.

The trial Court has not considered the aforesaid factual evidence and the documents in its order in rejecting the claim of the objectors. It is further noteworthy that Respondent No. 1 filed a suit for specific performance of the contract. Nobody has been examined on behalf of the power of attorney holder, who was son-in-law of Respondent No. 2 and said to have executed agreement dated 4.5.1990 on the basis of which the Respondent No. 1 obtained a decree of specific performance of the contract. During the execution proceedings also Respondent No. 2 remain ex parte and before this Court also in spite of service of summons she did not appear. There are specific pleadings with regard to practising fraud by the objectors in their applications filed under Order 21 Rule 97 of CPC and they also led evidence to this effect. From the documentary and oral evidence of objector Manoharlal and another witness Naresh Chandra Agrawal and sale-deeds Exhibits D-1 to D-9, specially D-5 it is clear that the

open land and the passage marked by Smt. Sunanda Raje and other family members was for easementary rights to all the residents of the locality. It is also clear from the evidence of objector No. 1 that the aforesaid place was also used by children of the school named as "Saraswati Shishu Vihar" and by other persons.

In such circumstances in my opinion, Smt. Sunanda Raje had no right to sell the plot in favour of Respondent No. 1 neither Respondent No. 1 got any right on the basis of agreement Annexure P-1.

Hon"ble Supreme Court in case of Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, , after detailed consideration analysis of various judgments has held as under with regard to fraud:

9. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied See *Vimla (Dr.) v. Delhi Administration and Indian Bank v. Satyam Fibres (India) (P) Ltd.*

A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage See *S.P. Chengalvaraya Naidu v. Jagannath.*

"Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stands as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he known to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of other in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case, a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine

including *res judicata* [See *Ram Chandra Singh v. Savitri Devi*].

In *Shrisht Dhawan v. Shaw Bros.*, it was observed as follows SCC p.553, para 20]:

"Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Camus who exulted in his ability to, "Wing me into the easy-hearted man and trap him into snares". It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains any advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines "false" as an act committed by a party to a contract with intent to deceive another. From the dictionary meaning or even otherwise fraud arises out of the deliberate active role of the representator about a fact, which he knows to be untrue yet, he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case, *i.e.*, *Derry v. Peek* that constitutes "fraud" was described thus (All ER p.22 B-C):

Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, carelessly whether it be true or false.

The Hon'ble Supreme Court further in case of *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, held as under with regard to effect of fraud :

13. Fraud is a conduct either by letter or words, which induces the other persons or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud.

In *Lazarus Estates Ltd. v. Beasley* the Court of appeal stated the law thus :

I cannot accede to this argument for a moment. No Court in this land will allow a

person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever.

In *S.P. Chengalvaraya Naidu v. Jagannath* this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal.

Same principle has been retracted by Hon"ble Supreme Court in case of *N. Khosla Vs. Rajlakshmi (dead) and Others*, . The relevant portion of the judgment is as under :

The Respondents fraudulently obtained a mutation in the land records on 22.1.1977. Fraud cloaks everything. Fraud avoids all judicial acts. A decree obtained by playing fraud is a nullity and it can be challenged in any Court, even in collateral proceedings. Hence it is open to the Appellant to file a suit challenging the said fraudulent mutation against the legal heirs of the Respondent, whose appeal has been abated. If the suit is filed within two months from today, it shall not be dismissed as being barred by limitation.

Looking to the above principle of law and oral and documentary evidence on record, in my opinion, the Respondent No. 1 has obtained a decree of specific performance by practising a fraud. Hence, in such circumstances the decree is nullity, void ab initio and it cannot be executed.

With regard to another objection of the learned Counsel for the Respondent No. 1 that the objection filed by the objectors before the executing Court under Order 21 Rule 97 of CPC was not maintainable, in my opinion, the aforesaid agreement is also not tenable because as submitted earlier the Respondent No. 1 has also pleaded a relief of possession in pursuance to the decree of specific performance of the contract. In the decree it was the condition that the Respondent No. 2 put a wall around the open plot. In such circumstances the decree holder will get possession of the open land after execution of decree and under Order 21 Rule 97 a stranger can claim his right in execution of decree.

The Hon"ble Supreme Court in case of *Ashan Devi and Anr. v. Phoolwasi Devi and Ors.* AIR 2004 SC 511, has held as under with regard to provisions of Order 21 Rule 97 of CPC and status of a stranger claiming his right in the decretal property :

27. There is a fallacy in the above reasoning. As has been held by this Court in the case of *Brahmdeo Chaudhary* AIR 1997 SC 685, a third party resisting or obstructing the execution of the decree can also seek adjudication of his rights under Order XXI, 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 fulfills the object of the amended provisions of the Code of curtailing litigation, has to be preferred to the one which frustrates it. The High Court also lost sight of the fact that the property involved was a vacant land and it could have been possessed only by having ownership and control over it. Mere physical absence of the third party at the time of execution of the decree was not a relevant fact to reject application under Order XXI Rule 99 of the Code. From the trend and ratio of decisions of this Court surveyed above, if the objectors would have been present at or near the vacant land at the time of execution of a decree and had offered obstruction or resistance to the execution, they would have been entitled to seek adjudication of their rights and claims through the executing Court under Order XXI Rule 97. On the same legal position and reasoning even though the objectors were not in actual and physical possession of the vacant land, but as a result of delivery of possession of the land through Nazir to the decree-holder, lost their right and control over the land to put to it their use, they will have to be treated to have been "dispossessed" within the meaning of Order XXI Rule 99 of the Code. Such interpretation would fulfill aim and object of the amended provisions of the Code by allowing adjudication of disputes of title between the decree-holder and the third party in the executing Court itself without relegating them to an independent litigation.

The same principle has been retracted by Hon''ble Supreme Court in case of *Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another*, .

Consequently, appeal filed by the Appellants is hereby allowed. The impugned order passed on 18.1.2006 in execution case No. 53-A/93 is hereby set aside. The application filed by the Appellants-objectors with regard to execution of decree is hereby sustained. It is hereby ordered that Respondent No. 1 cannot execute the decree dated 3.9.1994 because it has been obtained by fraud. Looking to the facts of the case Respondent No. 1 would pay cost to the Appellants.