

(2008) 02 CAL CK 0022
In the Calcutta High Court
Case No : C.O. No. 1977 of 2007

Shib Saha and Others

APPELLANT

Vs

Shibudas Kanshabanik and Another

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 21 Rule 101, Order 21 Rule 97, Order 21 Rule 99
Constitution of India, 1950 — Article 227

Citation : (2008) 2 CHN 923

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Jiban Ratan Chatterjee and Shamit Sanyal, for the Appellant;
Hiranmoy Bhattacharyya, for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—Heard the learned Advocates appearing on behalf of the parties.

2. This is an application under Article 227 of the Constitution of India directed against an order, being order No. 126, dated 19th April, 2007 passed by the learned Civil Judge (Senior Division), 1st Court at Krishnagar, Nadia in Miscellaneous Case No. 25 of 2006.

3. The petitioners before this Court are not parties to the original suit proceeding. The order impugned has been passed by the learned Court below in an execution application filed by the decree holder under the provisions of Order 21 Rule 97 of the CPC read with Rule 208 of the Civil Rules and Orders.

4. The contention of the petitioners herein is that the Executing Court ought to have taken into consideration the fact that in terms of Order 21 Rule 101 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 and relevant to the adjudication of the application, shall be determined by the Court dealing with the said application, and not by a separate suit. Accordingly, learned Advocate appearing on behalf of the petitioners herein submits that the Court ought not to have allowed the miscellaneous application of the decree holder filed under the provisions of Order 21 Rule 97 of the CPC without determining the questions raised by the petitioners herein.

5. On the other hand, learned Advocate representing the plaintiff/decreed holder, being the opposite party herein, submits that in his client's application under Order 21 Rule 97 of the Code of Civil Procedure, the petitioners herein made an application under the provisions of Order 1 Rule 10 of the Code of Civil Procedure, to be added as parties to the execution proceeding. He submits that the said application under Order 1 Rule 10 of the CPC was dismissed on contest by the learned Court below. He therefore submits that in the facts of the case the learned Court below quite rightly proceeded to allow the plaintiff/decreed holder's miscellaneous application under Order 21 Rule 97 of the Code of Civil Procedure.

6. After considering the submissions made by the learned Advocates appearing on behalf of the parties and upon perusing the order passed by the learned Court below it appears that the following observations made by the learned Judge in the order impugned is relevant for the purpose of deciding the instant matter:

...Thereafter on 31.8.06 the said son of the judgement-debtor along with four others came up with an application praying for being impleaded in the instant misc. case on the ground of filing T.S. No. 132/06 in this Court against the decree-holder and the judgement-debtor, as defendants, which was still pending and that in case the instant misc. case was allowed in their absence, they would be highly prejudiced. However, the said attempt on the part of the other heirs and legal representatives of the judgement-debtor also proved to be futile as the said application also stood rejected on contest.

In the background of these facts and circumstances, it is abundantly clear that the judgement-debtor/O-P. has left no stone unturned to frustrate the legitimate decree standing in favour of the decree-holder/petitioner and when from the evidence of the judgement-debtor himself it is abundantly clear that without being provided with the assistance of police, there is no scope to execute the writ of delivery of possession in favour of the decree-holder/petitioner, I am of the view that the instant misc. case filed by the decree-holder petitioner bears real merit and the same should be allowed in the interest of justice as well as to honour the legitimate decree standing in favour of the decree-holder/petitioner.

7. From a plain reading of the above-quoted observations made by the learned Judge in the order impugned, it is clear that the petitioners herein were not even parties in the execution proceeding before the learned Executing Court since their application under Order 1 Rule 10 of the CPC had been rejected on contest.

8. In the context of this case, the provisions and scope of Order 21 Rule 101 may be examined:

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.

9. From a plain reading of the above provision of law it is absolutely clear that the Executing Court is empowered to determine all questions (including questions relating to right, title or interest in the property) arising between the parties (emphasis supplied by this Court) to a proceeding on an application under Rule 97 or Rule 99 and relevant to the adjudication of the application, without the necessity of filing a separate suit.

10. In the facts of the instant case however, the substratum of the petitioners herein to challenge the order impugned is missing. The petitioners herein have not even been made parties to the proceeding initiated by the decree holder under the provision of Order 21 Rule 97 of the Code of Civil Procedure. In fact, the application of the petitioners herein for addition of party under Order 1 Rule 10 of the CPC taken out before the learned Executing Court hearing out the said application of the decree holder under Order 21 Rule 97 of the Code of Civil Procedure, had been rejected on contest.

11. This being the factual position, the petitioners herein, cannot resist execution on the plea of applicability of the provision of Order 21 Rule 101 of the Code of Civil Procedure.

12. In the circumstances, the order impugned does not suffer from any infirmity and for reasons stated above, the present application stands dismissed.

13. Interim order/orders, passed earlier, stand automatically vacated.

14. There shall, however, be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the parties on priority basis.