
(1998) 10 AP CK 0081
In the Andhra Pradesh High Court
Case No : AAO No. 2647 of 1998

Zafu Javeed

APPELLANT

Vs

V. Narasimha Reddy and others

RESPONDENT

Date of Decision : 27-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 102, Order 21 Rule 103, Order 21 Rule 104
Transfer of Property Act, 1882 — Section 52

Citation : (1998) 6 ALD 663 : (1998) 6 ALT 608

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. Vilas v. Afzalpurkar, for the Appellant; Mr. B. Mahender Reddi, for the Respondent

Judgement

1. This CCCA is filed against the order passed by the learned Second Additional Chief Judge, City Civil Court. Hyderabad, in EA No. 14 of 1995 in EP No. 20 of 1991 in OS No.29 of 1965 dated 8th July, 1998.

2. The appellant is the petitioner-third party before the lower Court. He filed an application before the Court below under Order 21, Rule 97 read with Section 151 of CPC to enquire into the objections raised with regard to the right, title and interest and also the executability of the decree against the properties situate in S No. 129/51 and 52 belonging to the petitioner. Though the case had a long history only the relevant events and particulars which are necessary for disposal of the appeal are referred to in this order.

3. The suit in OS No.29 of 1965 was filed by one Mr. V. Radha Krishna Sastry against seven defendants seeking decree for specific performance of agreement of sale dated 29-12-1963 and for possession of the suit schedule property viz., Ac. 12-09 gts, being the western part of S. No.129/68 Paiki comprising of Ac.16-09 gts. of Shaikpet village, Hyderabad West Taluq. The learned Second Additional Chief Judge, by judgment and decree dismissed the suit for specific

performance of the agreement. But, however, granted decree in favour of the plaintiff for a sum of Rs.14,000/- against 1st and 2nd defendants. Aggrieved by the said Judgment and decree, the plaintiff filed an appeal before this Court in CCCA No.14 of 1972. The 1st defendant also filed cross-objections. The Division Bench of this Court on 26th October, 1976 allowed the appeal and dismissed the cross-objections. The Judgment and Decree of the lower Court was set aside and the 2nd defendant and daughter of 1st defendant (since defendant died by that date) were directed to execute the sale-deed in favour of the plaintiff or his nominees on payment of the balance amounts. The orders passed by this Court in the Appeal became final. It appears that the decree holder sold the suit schedule property to Kaushik Co-operative Housing Society on 17-9-1985 and executed a GPA in favour of the President of the Society Mr. D. Srikanth Reddy. the Judgment Debtors had partly satisfied the decree by executing sale deeds in favour of the Members of the Society. However, when the Judgment Debtors were exhibiting the signs of disinclination to execute further sale deeds in full satisfaction of the decree, the decree passed in CCCA No. 14 of 1972 was got assigned in favour of the three others by deed of assignment decree dated 15-9-1998. Thus the assignee stepped into the shoes of the decree holders, and they filed EP No.20 of 1991 for obtaining conveyance deeds in regard to the lands under unsatisfied portion of the decree. The said deed of assignment was recognised by the civil Court and when it was challenged before the High Court in CRP No. 1579 of 1992 the same was dismissed on 16-10-1992. Thereafter, the trial Court approved the draft sale deeds to be executed in favour of the decree holders and their nominees. Again challenge was made to the said order of approval in CRP No. 193 of 1993 and they were upheld. Thereafter the Judgment Debtors questioned the orders of this Court in SLP No. 1138 of 1994 before the Supreme Court and the same was also dismissed. Consequent on the finality to the litigation 41 sale deeds were executed by the Court in favour of the decree holders and nominees on behalf of the Judgment Debtors. When the possession of the property was sought to be delivered to the decree holders one Mr. Omar filed EA No.24 of 1994 u/s 47 of CPC and the said EA was dismissed. Revision filed by him was also dismissed. While so, the petitioner/third party Appellant herein filed EA No.14 of 1995 among other EAs claiming that he is legal heir of Abdul Rub and Abdul Basith, who were the owners of the land in S No. 129/51 and 129/52, and the land situated in S.No.129/68 Paiki (hereinafter called 129/68 P) is the subject-matter of the Execution Petition and that in the process of execution of the said decree, the decree holders are proceeding against the property covered by S.No.129/51 and 52 and since the land covered by the decree is quite different from the land on which the decree is sought to be implemented, an application was filed for adjudicating the right, title and interest in the property and also the executability of the decree against the property situated in S. No.129/51 and 52 which is alleged to be belonging to the predecessors in interest of the petitioner. The matter was seriously contested by the decree holder. It is the case of the petitioner before the lower Court that the S.No. 129/68-P of Shaikpet village was a non-existing survey number and the

petitioner is the owner and possessor of the property situated in S.Nos. 129/51 and 52 of Shaikpet village. The petitioner is the legal heir of defendants No.3 and 4 who are alleged to be the owners of the land in S.No.129/52 and 129/51 to the extent of Ac.8-18 gts. and Ac.7-09 gts. respectively situated in village of Shaikpet, Former Hyderabad District. As far as the decree is concerned, it only relates to the land in S.No.129/68-P. Since the petitioner was apprehending dispossession from the property in S-No.129/51 and 52, in the guise of executing the decree in OS No.29 of 1965, he filed an application under Order 21 Rule 97 CPC for appropriate relief. The said application was heard by the learned Judge holding that the property covered by the decree is quite different from the property in which the petitioner is claiming the ownership and therefore the petition filed under Order 21 Rule 97 was not maintainable. Accordingly, he dismissed the same by an order dated 8-7-1998. Aggrieved by the said order, the present Appeal has been filed u/s 96 of CPC.

4. Elaborate arguments were advanced by the learned Counsel for the parties taking the history from 1965 and various events that took place in the process.

5. But the question that calls for consideration in the present Appeal is very limited, as to whether the appeal is maintainable and if so whether an order passed under Order 21 Rule 97 CPC is entertainable by the lower Court for the relief claimed by the Appellant. The learned Counsel for the Appellant/Petitioner Mr. Vilas Afzal Purkar submits that the finding of the lower Court that the application is not maintainable is wholly misconceived and the learned Judge failed to appreciate the relevant provisions of CPC in proper perspective. He submitted that the learned Judge observed that the land in S.No.129/51 and 52 was not the subject-matter of the present execution proceedings and the petitioner was not claiming any ownership or possession in S/No.129/68-P, which is the property covered by the decree and the execution petition and on that premise the learned Judge held that the petition is not maintainable and that the said finding is wholly untenable. On the other hand, the learned Counsel appearing for the respondent raised two principal contentions. The order of the lower Court rejecting the application is quite legal and valid and the same is unassailable. Secondly, also submits that against the orders passed by the lower Court, no appeal lies to this Court u/s 96 read with Order 21 Rule 103 CPC. He submits that any order passed though treated as a decree of the civil Court, yet no regular appeal lies u/s 96 CPC. Even on merits also he submits that no case is made out to interfere with the principles of execution of the decree.

6. Before dealing with the matter as to the maintainability of the application before the lower Court it is necessary to decide whether an appeal lies before this Court u/s 96 of CPC. For proper appreciation of the case, it is necessary to extract certain provisions of CPC. Order 21 relates to the execution of the decrees and orders. Rules 97, 98, 100, 101, 103 and 104 are extracted below:

"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.

98. Orders after adjudication :-- (1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),--

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) 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, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the Judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

100. Order to be passed upon application complaining of dispossession :--Upon the determination of the questions referred to in Rule 101, the Court shall in accordance with such determination-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order, as in the circumstances of the case, it may deem fit.

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.

103. Orders to be treated as decrees :--Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

104. Order under Rule 101 or Rule 103 to be subject to the result of pending

suit :-Every order made under Rule 101 or Rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under Rule 101 or Rule 103 is made has sought to establish a right which he claims to the present possession of the property."

In this regard, it is stated that sub-clause (2) of Rule 97, and 98 and the other rules were substituted by Amendment Act 104 of 1976 with effect from 1-2-1977. A reading of Rules 97, 98 and 101 it would indicate that Rule 97 can be invoked by the decree holder if any resistance is offered by any person in obtaining the possession of the property and in such event he shall make an application and the Court shall adjudicate upon the application and pass orders either allowing the application directing the applicant be put in possession of the property or dismissing the application or pass any orders as it may deem fit. Under Rule 99 any person who is sought to be dispossessed of immovable property by the decree holder for the possession of such property he may make an application to the Court complaining of dispossession and the said application shall be adjudicated. All the questions including the questions relating to the right, title and interest in the property shall be determined by the Court dealing with the said application and not by a separate suit for this purpose. Thus, two types of applications are contemplated under this provision, namely, (1) by the decree holder u/s (sic Rule) 97 for clearing the obstructions for execution of the decree and (2) u/s (sic Rule) 99 by the person who is sought to be dispossessed under the shelter of the decree. So, both these applications have to be determined by the Court and no separate suit is necessary to determine the respective right, title and interest. Admittedly, in the instant case an application was filed by the petitioner u/s (sic Rule) 97 and obviously he was not a decree holder. However, the learned Counsel for the appellant-petitioner submits that it is only a typographical mistake and that it should be read as 99 and he further submits that the enquiry in respect of two categories of applications is the same as contemplated u/s 101 of the CPC. We will revert to the issue at a later stage. An order was passed by the Court below and the status to be given to the said order has to be considered for purpose of the maintainability as the appeal itself is under challenge. Under Rule 103 it is stated that any order passed under Rule 98 or Rule 100 the said order shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree. The learned Counsel for the respondent. Mr. Ramakrishna Reddy, however, submits that even though the order passed by the lower Court is treated as if it were a decree subject to appeal, but yet a regular appeal u/s 96 CPC does not lie, and he relies on the decisions of the Madras High Court reported in *Jubedabai v. Lakshmi Ammal*, 1992 (1) MLJ 479, and also a decision of the Division Bench of this Court reported in *B. Nookaraju v. M.S.R. Charities* 1994 (1) LS 235. On the other hand, the learned Counsel for the appellant relies on the decision of the Supreme Court reported in *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another*, , and the judgment of the learned single Judge of this Court Justice K. Ramaswamy (as he

then was) reported in Tahera Sayeed Vs. M. Shanmugam and Others, . In the decision of the Madras High Court one of the contentions raised was that, once an order was made under Order 21, Rule 98 CPC the remedy of the party aggrieved is to file an appeal as if it was a decree and he cannot come forward with a fresh application for removal of the obstruction. The said contention was rejected stating that there was no adjudication of any claim made by the parties. Order 21 Rule 98 contemplates an adjudication of the questions referred to in Rule 101 CPC. Unless an order amounts to an adjudication, it cannot be treated as a decree and no appeal can be filed against it. In that case, the application was dismissed on the footing that the petitioner's Counsel reported no oral evidence. Therefore, it is not an order in any sense of the terms within the meaning of Order 21 Rule 98 CPC. Hence, it was treated only as a closure of the application for statistical purposes. The decision does not assist the respondents. In B. Nookaraju's case (supra) the Division Bench of this Court was considering the status of the order passed under Order 21 Rule 58. The Division Bench held that the order made in Rule 58(3) of Order 21 of the amended code has only status of "deemed decree" and not a "decree" by itself and that such orders are not covered by definition u/s 2(2) namely of "decree" so as to attract the provisions of Section 96 of CPC and thereby only a "Miscellaneous Appeal" lies against such "order" and not a "Regular Appeal". As already stated that Order 21 of amended CPC deals with execution of the decrees. In the said Order different types of attachments in execution of the decrees are provided. Rule 58 provides adjudication of claims and objections. Sub-rule (4) of Rule 58 states that where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree. The learned Counsel submits that the said provision is in pari-materia with Rule 103 and the Division Bench clearly held that the order passed though declared as a deemed decree but it is not a decree by itself. Rules 58 and 103 are forming part of Order 21, but however, they apply to different situations. While Rule 58 applies to the objections to the attachment of decratal property. Rule 97 and Rule 99 apply to the objections for the execution of deliver)" of the decratal property. Rule 58(4) and Rule 103 are extracted below:

"Rule 58(4) : Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree."

Rule 103: Already extracted supra.

There is no dispute that both the rules are in para materia.

7. In the case reported in Silverline Forum's case (supra), the Supreme Court observed at para 9 and 10 as follows:

"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" is 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.

8. 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 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.

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.

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 question 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 secondly 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 the 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."

But the question that falls for consideration is whether such an order is appealable as a regular appeal or the Civil Miscellaneous Appeal. No doubt the Supreme Court has categorically held that an order passed u/s 104 is appealable, but whether such an order is appealable u/s 96 CPC as if it a regular appeal or it is a miscellaneous appeal was not the issue which fell for consideration. The Division Bench after considering the definition of "decree" u/s 2(2) before amendment and after amendment observed as follows:

"The real question now that arises for our consideration is, whether the order passed under Order, 21 Rule 58(3) of amended Code is in the nature of "an original decree" or "an appealable order".

Under the unamended Code, all questions decided by the Executing Court and covered by Section 47 were treated as decrees as defined u/s 2(2) of the unamended Code and therefore, they were not "appealable orders". Now, in view of exclusion of "orders" passed u/s 47 of unamended Code from the definition of "decree" as per the amended Code, orders passed u/s 47 of amended Code are no more "decrees" and they are only "appealable orders" not attracted by Section 96 of the Code.

No doubt, Order 21 Rule 58(4) declared that the order made under Sub-Rule (3) will have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree." Thus, the order is declared to be a "deemed decree" and not a "decree" by itself."

The Division Bench also relied on the judgment of Madras High Court reported in Mrs. Vasanthi v. Karruppa Gounder, 1988 (2) Law Weekly 45, and the reasoning assigned in the case of this Court reported in Biksha Reddy v. Venuku Bai 1982 (2) An.WR 181, I am in full agreement with the view taken by the Division Bench. Keeping the objects of Rule 58 and Rules 97, 98, 99 and 103 with reference to the decided cases, I have no hesitation to hold that no regular appeal u/s 96 CPC lies to this Court. It is only a miscellaneous appeal which is maintainable against the orders passed by the lower Court under Rule 103. I accordingly, hold so. But the question is should this Court again ask the party to approach this Court once again by way of filing the appeal under different provision. The regular appeal u/s 96 and Miscellaneous Appeals u/s 104 CPC are treated on equal par. The power of appellate Court while dealing with appeals under both the provisions are the same as stipulated in Section 107 which reads thus:

"Section 107: Powers of appellate Court :- (1) Subject to such conditions and

limitations as may be prescribed, an appellate Court shall have power-

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein."

Thus when the scope of appeals are same and in the interest of the parties to avoid prolongation "of litigation, I am inclined to exercise the inherent power of this Court u/s 151 CPC for rendering substantial justice to the parties. Accordingly, the appeal filed by me appellant shall be treated as Civil Miscellaneous Appeal and it stands converted as such. The Office shall assign the CMA Number instead of CCCA.

9. The next question that calls for consideration is whether application under Order 21 Rule 97 read with Section 151 is maintainable by the petitioner/Appellant. Somewhat a similar issue was considered by Justice K. Ratnaswamy (as he then was) in Smt. Tahera Sayeed's case (*supra*). The maintainability of a petition was the subject matter in the case. The learned Judge considered the same in para 4 which is extracted below:

"The rival contentions give rise to the first question whether the petition is maintainable. If it is held that the petition is not maintainable, then the need to go into other questions does not arise. Order 21, Rule 35(1) of the Code posits that where a decree is for delivery of immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such person as he may appoint to receive delivery on his behalf, and if necessary, by removing any person bound by the decree who refused to vacate the property. When resistance for delivery of possession is caused, Order 21, Rule 97 comes into operation to take aid of. It provides that, where the holder of a decree for the 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. On making such application, the Courts shall adjudicate it under sub-rule (2) thereof. Rule 99(1) of Order 21 gives a right to any person who is dispossessed by the decree-holder or the purchaser, to lay the application for restitution. When either of those applications have been filed, under Rule 98(1) the Court is enjoined to determine the questions, referred to in Rule 101, which postulates that all questions, including the 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 dealing with those applications and not by a separate suit. Thereafter, the Court is given power, when it 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 or by a transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property and, where the applicant is still resisted or obstructed, in obtaining possession, the Court may also, at the instance of the applicant order the judgment-debtor or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days. The person dispossessed shall be entitled to restitution under Order 21, Rule 98 (1)(a). Under Rule 103, the adjudication made under Rule 98 or Rule 100 shall have the same force and subject to the same conditions as to an appeal or otherwise as if it were a decree. Under Rule 104, every order made under Rule 101 or Rule 103, shall be subject to the result of any suit that may be pending on the date of the commencement of the proceeding in which such order is made if in such suit the party against whom the order under Rule 101 or Rule 103 is made has sought to establish a right which he claims to the present possession of the property.

It is to remember that preceding the CPC Amendment Act, 1976, the enquiry under Rule 97 and 99 was only summary subject to right of suit whereas the questions relating to right, title or interest were to be established. With a view to shorten the litigation and the execution is given *quietus* expeditiously right of suit is taken away and enquiry is enjoined in the proceedings under Rule 98 of Order 21 itself and the order therein is treated to be decree and it is subject to appeal.

It is true, as contended by Sri Ramachandra Reddy, that on putting up obstruction or resistance to the execution of the decree, the decree-holder or purchaser is to lay an application for removal thereof, or on dispossession, the dispossessed gets cause of action under Order 21 Rule 97 or 99 respectively. At the cost of repetition, it is to state that the petitioner asserts her independent title and right in B portion house as owner. She was not made party to any proceedings anterior to the execution. Narasimha derives title from Shanmukham who in turn claims from Periaswamy. The petitioner asserts that Periaswamy played fraud on her. If fraud is established the sale under Ex.B2 becomes void. When threat to possession was simmering in EP 10 of 1985 of Shanmukham, she resisted it and it was averted. Now, at the instance of Narasimha, the threat to dispossession is imminent. She is now claiming adjudication of her right, title and interest before being actually dispossessed ostensibly through Periaswamy against whom there is subsisting injunction. The question is whether an application, under the circumstances, is maintainable under Order 21, Rule 97. It is not the duty of the Court to adjudicate the petitioner's claim to render fair and substantial justice? Could resistance or obstruction be removed without adjudication? The rules of procedure are handmaids to ends of justice. The substance of the matter, but not the forum is the guiding star to the goal of

justice. An application after dispossession by the petitioner is no solace and many a time prove abortive or ineffective. Adjudication before execution is efficacious as an aid to prevent fraud or abuse of the process of the Court or miscarriage of justice. Adjudication under Order 21, Rules 98, 100 and 101 is sine qua non to a finality of the order and a decree under Rule 103. But what is the relevant provision is the question."

He also further held at para 8 as follows:

"Though Rule 99 of Order 21 gives right to file an application by a person dispossessed of the immovable property, it is a poor consolation to him to be asked to approach the Court after dispossession when he lays bear the facts in advance and seeks assistance to protect his possession. In *Savamma v. Radhakrishna Moorthy* (1985) 1 ALT 436, I held that the faith of the people is the saviour and succour for the sustenance of the rule of law and any weakening link in this regard would rip apart the edifice of justice and cause dis-illusionment to the people in the efficacy of law. The acts of the Court should not injure a party. When the stains on the purity of fountain of justice is apparent, it is but the duty of the Court to erase the stains at the earliest. It is well settle that right to an adjudication is a procedural right. The procedure has been devised as handmaid to advance justice and not to retard the same. The primary object for which the Court exists is to do justice between the parties. The approach of the Court would be pragmatic but not pedantic, or rigmorale. Considered from this perspective, I have no hesitation to hold that when the third party, not bound by the decree approaches the Court to protect his independent right, title or interest before he is actually dispossessed from immovable property and files an application under Order 21, Rule 97 it must be treated to be an intimation to the Court as caveat to the decree-holder or purchaser or a person claiming through him that "look here, your fraud would be exposed and collusion uncovered; I am not a pretender for judgment-debtor. I have my own just right, title or interest in the immovable property in my possession and I am not bound by your decree", and the Court is to treat it as a complaint or a counter in opposition as an application for the purpose of Order 21 Rule 97 and to adjudicate it under Rule 98 or Rule 101 which shall be final and conclusive between the parties and it shall be treated to be a decree for the purpose of Rule 103 and it is subject to appeal and further subject to the result in the prior pending suit under Rule 104. This approach is consistent with *Ubi jus ebi remidium*, shortens the litigation, prevents needless protraction and expenditure and affords expeditious quietus to execution apart from assuaging fair justice. Accordingly, I hold that the application under Order 21, Rule 97 of the petitioner or the counter of respondent 1, Narasimha, be treated as an application under Order 21, Rule 97 and it is maintainable.""

It was a case where the petitioner was not a party before the proceedings and the petitioner asserted that a fraud was played in obtaining the decree. Under those circumstances, the learned Judge held that application filed by the

petitioner complaining threatened dispossession could be treated as a Caveat for application under Order 21 Rule 97 and the same could be adjudicated. But, in the instant case, it is not the case of the petitioner that a decree was obtained by a fraud. On the other hand it is the case of the petitioner that the property which is sought to be dispossessed by the decree holders is not the property which is covered by the decree. Moreover in the case dealt with by the learned Judge was the matter in which the decree was being sought to be executed on the decretal property and not the property which do not form part of the decretal property. Again the similar issue came up before the Supreme Court in *Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another*, , where the issue came up before the Supreme Court for consideration was whether the Appellant who claims to be a stranger occupying the decretal premises in his own right and who has played fraud resistance to the execution of the decree obtained by the decree holder against the Judgment Debtors qua such property can request the Executive Court to adjudicate upon his resistance and obstruction without being insisted upon that first he must hand over the possession and then only move the application under Order 21 Rule 99. The Supreme Court after considering the Rules 97, 98, 99 and 110 observed as follows:

"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 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 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 resorted to him. If such an application is allowed after adjudication than 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 substantiated 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 order as clearly enjoined by Order 21, Rule 101."

The purpose of engrafting such a section was also considered by the Supreme Court in para 5 which is to the following effect:

"In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of 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 by-pass such obstruction and insist on re-issuance of warrant for possession under Order 21, Rule 35 with the help of police force, as that course would amount to by-passing 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 de hors 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. 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 Executive 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 pit fall and provides a statutory remedy both to the decree-holders 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 concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves."

Even from the reading of this decision, it did not relate to the property other than the property covered by the decree, the issue is whether a person possessing a particular property (other than decretal property) out of his own right can make an application in a petition filed by the decree-holder for possession of the decretal property when the decree-holder is attempting to execute the decree over the land occupied by that person. However, great stress is laid on the judgment of the Supreme Court in Noorduiddin Vs. Dr K.L. Anand, , wherein it is stated that it is open for the Court to adjudicate the matter to find out whether the decree-holder had trenched into the land of others under the guise of the execution of the decrees. It was a case where the decree was in respect of Khasra Sakni No.13 and 14 while the attempts were being made to dispossess the appellant by trenching in Khasra No. 179 on which he was claiming independent right. In that case, the land was not demarcated and that the allegation was that the decree was obtained in collusion and by fraud. In that perspective of the matter, the Supreme Court said:

"When the appellant has been claiming right, title and interest in Khasra No. 179 from which he is now sought to be dispossessed in execution of the decree by the respondent in respect of Khasra Sakni Nos-13 and 14, the executing Court necessarily has to go into the question whether the property in Khasra No.179 is

part of Khasra Sakni Nos.13 and Hand if so, whether the respondent while executing the decree trespassed upon his property and sought to dispossess him. The appellant's possession, pending adjudication, needs to be protected by interim orders. Unfortunately, the Courts below had not adverted to these crucial aspects of the matter. When the appellant claimed independent right, title and interest and resisted the execution, the decree-holder or the appellant should make an application under Rule 97(1) and the Court, in that event, is enjoined to adjudicate the claim and record a finding, allowing or rejecting the claim. It should be remembered that Parliament intended to shorten the litigation and to give effect to it, a simplified procedure was devised for adjudication."

In the instant case, no fraud was alleged nor overlapping of area was involved. On the other hand, the Division Bench had held that these survey numbers are different and situate at different places. Therefore, on facts the judgment of the Supreme Court is distinguishable.

10. The Supreme Court considering various provisions under Order 21, held at para 8 and 9 as follows:

"8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the Court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding CPC Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the Legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

9. Adjudication before execution, is an efficacious remedy to prevent fraud, oppression, abuse of the process of the Court or miscarriage of justice. The object of law is to mete out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and Courts. The rules of procedure have been devised as a channel or means to render substantive or at best substantial justice which is the highest interest of man and almanac (sic) for the mankind.

It is a foundation for orderly human relations- Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the Court to subvert justice. The Court has, therefore, to wisely evolve its process to aid expeditious adjudication and would preserve the possession of the property in the interregnum based on factual situation. Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution."

11. Therefore, the entire reading of the provisions only indicate that it is not only a judgment-debtor, but a stranger who is occupying the decretal property is entitled to make objections and the said objections can be adjudicated and orders could be passed. Such orders are treated as if they are decrees and liable to be appealed to the Court to which an appeal lies against original decree.

12. The entire chapter of Order 21 only revolves on the decrees and decretal properties. In 1977 an amendment was brought only with an intention to see that there should not be any multiple proceedings in respect of the decretal property which is the subject matter of a decree which has become final. Therefore, for that purpose any objections made either in the process of execution of a decree for attachment or for delivery of a possession the persons who are effected are given an opportunity to file objections and their objections should be considered without driving them to file a separate suit. That itself indicates that the Parliament intended to avoid multiplicity of suits in respect of the decretal properties only. But, when the property is not covered by the decree, the proceedings under Order 21 would not arise. Otherwise there is every scope for misusing this provision by strangers or other persons unconnected with decretal properties. They could file application in execution proceedings alleging that the decree-holder is dispossessing him from his own property and seek declaration of title or interest in the property circumventing the process of regular suit. In *Silverline's case* (supra), the Supreme Court has categorically observed that the question which the executing Court is obliged to determine the application in an enquiry under Rule 101, should possess two adjuncts, (1) that such question should be legally arising between the parties and (2) such question must be relevant for the consideration of determination between the parties. Admittedly, in the instant case, no such questions between the parties arose legally nor such question was relevant for the consideration of the determination of issue between the parties.

13. Admittedly, the appellant/petitioner according to him was in possession of the property situate in S.No. 129/51 and 129/52 and the decretal property is in S.No. 129/68-P. Therefore, no legal question would arise between them. As already stated, there is a clearly finding of the Division Bench of this Court in CCCA No. 14 of 1972 that the property covered by S.No. 129/68-P is quite distinct and different than the properties under S.No.129/51 and 129/52 and in between these two lands there are other survey numbers. Therefore, there is no

question of trenching upon the land of the appellant/petitioner. Order 21 is only meant for protecting the decretal property and ensures that the decree of the Civil Court is executed without any hindrance. For this purpose, if any obstructions are created by the third parties during the execution of the decretal property, the claimants were permitted to file objections and the Court is empowered to hear and decide the title or interest of the objector in the decretal property, in the guise of filing the application by the third parties or strangers they cannot be permitted to take the advantage of determination of right, title or interest in the property which they are in possession and which is not the subject matter of decree. That is not the intendment of Order 21. The adjudication of right, title and interest etc, should be only with reference to the decretal property and not the other property. Therefore, it has to be concluded that when the property possessed by the third party is quite distinct and different, he cannot seek adjudication of right or title or interest of the property possessed by him in the proceedings under Order 21 CPC. Even though the petitioner contended that S.No.129/68-P is non-existing that cannot be accepted as there is already a finding of the Division Bench that this S.No. 129/68-P exists and that it is a different and distinct survey number. The learned Counsel for appellant submits that the matter can be treated under Rule 99 for purpose of adjudication of right, title etc. Even then same principle will apply inasmuch as the decretal property as well as the property in which the appellant is claiming right, title or interest are different and distinct. Though the learned Counsel for the respondent submits that the appellant/petitioner did not establish that he is the legal representative of Defendant No.3 and 4 and that it is purely vexatious litigation, I am not inclined to go into these aspects since I held that application itself is not maintainable.

14. Under these circumstances, I am of the clear view that the appellant/petitioner cannot maintain an application under Order 29 Rule 97 or 99 CPC.

15. Under these circumstances, the order of lower Court is sustained. I do not find any merits in the appeal. Accordingly, the Appeal is dismissed. The parties shall bear their own costs.