

CIVIL PROCEDURE CODE, 1908

— Or. 21 Rr. 97, 99 (after amendment in 1976) & 100 — Locus standi to bring applications under Rr. 97 & 99 — Execution of decree of specific performance of sale of vacant land — Delivery of possession to decree-holder — Third party purchasers of property claiming to be in possession on basis of registered sale deeds, though not in actual or physical possession of land, objecting thereto under Or. 21 R. 99 — Maintainability of such application — ``Possession'', ``Dispossession'' — Meaning and test for, especially in the context of vacant land — Physical presence in property whether a mandatory requirement — Delivery of possession by execution of decree of possession — Whether ``dispossession'' — Held, ``possession'' is a word of ``open texture'' — Its legal meaning has to be ascertained from the context — The test for determining whether a person is in possession of anything is whether he is in ``general control'' of it — May be, that he is not in actual or physical possession or using the same — Loss of right and control over land to put it to his use, even though the person had not been physically present to offer obstruction or resistance to execution of a decree of possession against him, would still be a ``dispossession'' of him within the meaning of Or. 21 R. 99 — Jurisprudence — Hart's ``open texture'' of law — ``Possession'' whether one such word .

The principal question that arose in the appeal was whether a purchaser of vacant land under a registered sale deed and claiming to be in possession of the land can maintain an application under Order 21 Rule 97 CPC complaining of his alleged dispossession in execution of a decree for specific performance of a contract of sale obtained ex parte by the decree-holder against the original owner of the suit property.

The parties are described in their status in the executing proceedings as decree-holder, judgment-debtor and objector. According to the decree-holder, an agreement of sale was obtained on 12-7-1984 from the judgment-debtor in respect of the suit lands which are now potential building sites on the outskirts of Patna city. The case of the decree-holder is that when she filed a suit, being Suit No. 22 of 1987, against her vendors for specific performance of the agreement of sale dated 12-7-1984, she was not aware that the objectors had obtained title to the suit property by four separate sale deeds in the year 1985 and got them registered in Calcutta where the vendors resided. The objectors were not made parties to the suit.

The case of the objectors is that pursuant to the execution of the registered sale deeds, they obtained possession of the land and got their names mutated in the records of Patna Municipality. According to them, they had no knowledge of any prior agreement of sale existing in favour of the decree-holder.

The vendors did not contest the suit for specific performance of agreement of sale filed by the decree-holder. An ex parte decree of specific performance of contract was passed on 8-11-1990 in favour of the decree-holder. The decree was put in execution by the decree-holder by depositing the balance consideration of sale in the court. A registered sale deed was executed by the court in favour of the decree-holder as the judgment-debtors absented themselves despite notice and failed to execute it. According to the decree-holder, on 5-9-1996, through the process issued by the executing court, possession of the decreed property was obtained by the decree-holder through Court Nazir without any obstruction or resistance from anyone.

On 21-9-1996, the objectors filed an application under Order 21 Rule 99

before the executing court complaining of their illegal dispossession and seeking restoration of possession to them. It was urged that they were not parties to the suit for specific performance of the contract and could not have been dispossessed in execution of the decree. Their case was that they had no knowledge of any alleged prior agreement in relation to the same property existing in favour of the decree-holder. It was alleged that the suit for specific performance and the decree obtained ex parte against the judgment-debtors were collusive.

The application under Order 21 Rule 99 CPC filed by the objectors was opposed by the decree-holder stating that with prior knowledge of the agreement of sale, the objectors having obtained the sale deeds, the decree of specific performance could be executed against them in accordance with Section 19(b) of the Specific Relief Act, 1963.

A preliminary objection was also raised by the decree-holder to the maintainability of the application under Order 21 Rule 99 CPC. It was urged that since the objectors did not offer any resistance or obstruction to the execution of the decree and were not present at the time of its execution through court, they cannot be held to have been "dispossessed" physically or actually within the meaning of Order 21 Rule 99 CPC.

The executing court decided all the contesting issues including the preliminary objection to the maintainability of the application under Order 21 Rule 99 CPC in favour of the objectors.

Aggrieved by the order of the executing court allowing the objection under Order 21 Rule 99 CPC, the decree-holder preferred an appeal to the High Court. The High Court came to the conclusion that as in execution of the decree, the objectors were not "actually and physically dispossessed", the application under Order 21 Rule 99 CPC was not maintainable and the executing court could not have decided the competing claims of the parties to the property in the course of execution proceedings. The High Court set aside the order of the executing court and observed that the objectors could resort to a separate suit for enforcing their rights and title to the property.

The High Court also observed that if such a suit was filed, the findings and observations recorded by the executing court and the High Court would neither be binding on the parties nor prejudice their contentions in such a suit.

Aggrieved by the reversing judgment of the High Court, the objectors appealed. The connected special leave petition was filed by the decree-holder as it felt aggrieved only by the last direction of the High Court giving liberty to the objectors to file a separate suit for their rights, without being prejudiced by the findings and conclusions reached in proceedings under Order 21 Rule 99 CPC.

Allowing the appeal of the objectors, rejecting the connected SLP of the decree-holder and remanding the case to the High Court for decision afresh,

Held :

Salmond on Jurisprudence explains that the word "possession" is a word of "open texture". Its legal meaning has to be ascertained from the context. The property involved in the present case is open vacant land. Such property is possessed by a person who has control over the same. This "control" over the property means "power to exclude all others". The test then for determining whether a man is in possession of anything is whether he is in "general control" of it — maybe, that he is not in actual and physical possession or using the same.
(Para 23)

Merely because at the time of execution of the decree through Court Nazir,

the objectors were not physically present on the property, it cannot be said that the delivery of possession to the decree-holder by the court does not amount to the objectors' legal ouster or "dispossession". The word "possession", therefore, has to be given contextual meaning on facts of a particular case and the nature of the property involved. (Paras 24 and 27)

The High Court also lost sight of the fact that the property involved was 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 an application under Order 21 Rule 99 CPC. (Para 27)

An interpretation of the provision which promotes or fulfils the object of the amended provisions of the Code of Civil Procedure, 1908, of curtailing litigation, has to be preferred to the one which frustrates it. In interpreting the provisions of Order 21 Rule 97 CPC and the other provisions in the said Order, the aims and objects for introducing amendments to the Code cannot be lost sight of. Under the unamended Code, third parties adversely affected or dispossessed from the property involved, were required to file independent suits for claiming title and possession. The legislature purposely amended provisions in Order 21 to enable third parties to seek adjudication of their rights in the execution proceedings themselves with a view to curtail the prolongation of litigation and arrest delay caused in execution of decrees. The provisions of Order 21 Rules 97 and 99 have been widely and liberally construed to enable the executing court to adjudicate the *inter se* claims of the decree-holder and third parties in the execution proceedings themselves to avoid prolongation of litigation by driving parties to file independent suits. (Paras 27, 25 and 21)

A third party resisting or obstructing the execution of the decree can also seek adjudication of his rights under Order 21 Rule 97 CPC 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. (Para 27)

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 21 Rule 97 CPC. 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 Court Nazir to the decree-holder, lost their right and control over the land to put it to their use, they will have to be treated to have been "dispossessed" within the meaning of Order 21 Rule 99 CPC. Such interpretation would fulfil the 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. (Para 27)

The executing court was well within law in recording evidence and adjudicating the claim of the third party. The executing court rightly rejected the preliminary objection to the maintainability of the application of the objectors under Order 21 Rule 99 CPC and decided the other issues on merits of their claims arising between the decree-holder and the objectors. (Para 28) *Ashan Devi v. Phulwasi Devi*, (2003) 12 SCC 219 : AIR 2004 SC 511 : (2004) 1 CHN 182.

Bench Strength 2. Coram : *Shivaraj V. Patil* and **D.M. Dharmadhikari**, JJ. [Date

of decision : 19-11-2003]

Pera Naidu v. Soundaravalli Ammal, AIR 1954 Mad 516: (1954) 1 MLJ 179; *Rajendra N. Das v. Minatunnisa Bibi*, (1966) 32 Cut LT 972: ILR 1966 Cut 611; *Emerciano Leonardo Dias (Dr.) v. Ganexama B. Naique Vaingancar*, AIR 1978 Goa 48, impliedly overruled

Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal, (1997) 3 SCC 694; *Shreenath v. Rajesh*, (1998) 4 SCC 543; *Silverline Forum (P) Ltd. v. Rajiv Trust*, (1998) 3 SCC 723: AIR 1998 SC 1754; *Tanzeem-E-Sufia v. Bibi Haliman*, (2002) 7 SCC 50; *Bhag Mal v. Ch. Parbhu Ram*, (1985) 1 SCC 61, relied on

Phulwasi Devi v. Ashan Devi, (2001) 2 Pat LJR 679, reversed

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