

Before R. N. Mittal & M. M. Punchhi, JJ.

HARIJAN WOOD WORKERS PRODUCTION-CUM-SALES  
COOP. SOCIETY LTD., JULLUNDUR CITY,—*Petitioner.*

*versus*

SMT. MAYA WATI AND ANOTHER,—*Respondents.*

*Civil Revision No. 970 of 1982.*

February 20, 1984.

*Code of Civil Procedure (V of 1908)—Order 21 Rules 97 & 99—Decree for possession of immovable property—Decree-holder seeking execution of the decree—Possession of the decree-holder resisted by a third party—Such party filing objections under order 21 Rule 97—Such objections—Whether maintainable—Person other than the Judgment-debtor—Whether has a right to file objections under Rule 97.*

*Held*, that if a decree-holder is resisted or obstructed by any persons in obtaining possession of the property, he can make an application under Rule 97 of Order 21 of the Code of Civil Procedure, 1908, complaining of the resistance or obstruction. The person causing resistance or obstruction is not entitled under that rule to make an application. However, if the decree-holder makes the necessary application, the person causing the resistance or obstruction is entitled to defend his conduct. In other words, at that stage he is entitled to be in defensive but cannot take an offensive step. In case he wants to take such a step he can do so under Rule 99 but after surrendering possession. The Rule has been framed to protect the decree-holder from frivolous claims by third persons. All questions arising between the parties to the proceedings on an application under Rule 97 or Rule 99 and relevant to the adjudication of the application are now required to be determined by the Court dealing with the application. However, if the person in possession wants to raise any dispute before surrendering possession, he can do so by filing a suit for declaration of his title to the property. During the pendency of the suit, he can protect his possession by making an application for temporary injunction. The Court will dispose of the application on merits and grant relief of temporary injunction if the plaintiff is able to establish *prima facie* strong case in his favour. Therefore, any person other than the judgment-debtor cannot file an objection petition under Rule 97 on the ground that he is not liable to ejection in execution of a decree obtained by the decree-holder against the judgment-debtor.

(Para 4).

Dhian Chand etc. vs. Parkash Kaur etc. 1978 P.L.R. 216.

*Overruled*

*Petition under section 115 C.P.C. for revision of the order of the Court of Shri P. S. Bajaj Sub Judge Ist Class, Jullundur dated 23rd March, 1982 dismissing both the objection petitions.*

*Claim : Objections under order 21 Rule 97 C.P.C.*

*Claim in Revision : For reversal of the order of the Lower Court.*

*Sunil Parti, Advocate, for the Petitioners.*

*M. L. Sarin, Advocate, for the Respondents.*

### JUDGMENT

*Rajendra Nath Mittal, J.*

(1) This revision petition has been filed by the objector against the order of the Subordinate Judge Ist Class, Jullundur, dated 25th March, 1982.

(2) Briefly, the facts are that Smt. Maya Wati obtained an order of ejection from the property in dispute against Mohan Lal on 30th April, 1980. She filed an execution application against the judgment-debtor in which warrant of possession was ordered to be issued. While the execution proceedings were pending, the objector, through its President, filed two objection petitions *inter alia* on the ground that it was in possession of the property since long in its own right as owner, and, therefore, was not bound by the order of ejection obtained by the decree-holder. The decree-holder contested the objection petitions and *inter alia* pleaded that the objections were not maintainable by the objector and that these were got filed by Mohan Lal judgment-debtor through his relations who were members of the society. It was also pleaded that earlier one Khushi Ram, a relation of Mohan Lal, judgment-debtor filed a civil suit claiming himself to be the owner in possession of the property and the same had been dismissed.

(3) On the pleadings of the parties, three issues were framed. Later, an issue with regard to the maintainability of the objection petitions, which is as follows, was framed and tried as a preliminary issue :—

“Whether the objection petitions are maintainable? OPO”

The Court came to the conclusion that the objection petitions were not maintainable by the objector. Consequently, it dismissed the

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objection petitions. The learned Motion Bench, finding some divergence of opinion, admitted the revision petition to a Division Bench. That is how the matter is listed before us.

(4) The question that requires determination is whether any person other than the judgment-debtor can file an objection petition under Rule 97 of Order 21 on the ground that he is not liable to ejection in execution of a decree obtained by a decree-holder against the judgment-debtor. In order to determine the question, it will be necessary to read Order 21, Rules 97 and 99, Code of Civil Procedure (hereinafter referred to as the Code), which are as under:—

“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.

99. Dispossession by decree-holder or purchaser.—(1) Where any other person than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

From a bare reading of the aforesaid Rules, it is clear that if a decree-holder is resisted or obstructed by any person in obtaining possession of the property, he can make an application under Rule 97 complaining of the resistance or obstruction. The person causing resistance or obstruction is not entitled under that rule to make an application. However, if the decree-holder makes the necessary application, the person causing the resistance or obstruction is

entitled to defend his conduct. In other words at that stage he is entitled to be in defensive but cannot take an offensive step. In case he wants to take such a step he can do so under Rule 99 but after surrendering possession. The Rule has been framed to protect the decree-holder from frivolous claims by third persons. All questions arising between the parties to the proceedings, on an application under Rule 97 or Rule 99 and relevant to the adjudication of the application are now required to be determined by the Court dealing with the application. However, if the person in possession wants to raise any dispute before surrendering possession, he can do so by filing a suit for declaration of his title to the property. During the pendency of the suit, he can protect his possession by making an application for temporary injunction. The Court will dispose of the application on merits and grant relief of temporary injunction if the plaintiff is able to establish *prima facie* strong case in his favour. Therefore, we are of the opinion that any person other than the judgment-debtor cannot file an objection petition under Rule 97 on the ground that he is not liable to ejection in execution of a decree obtained by the decree-holder against the judgment-debtor.

(5) In the above view, we are fortified by the observations of the Full Bench of Madhya Pradesh High Court in *Smt. Usha Jain and others v. Manmohan Bajaj and others*, (1) wherein it was observed that the executing Court had no jurisdiction to start an inquiry at the instance of a third party other than the decree-holder under Order 21, Rule 97. This judgment was followed by two Single Benches of this High Court in *Om Parkash v. M/s. Durga Das Harbans Lal*, (2) and *Sushil Kumar and another v. Ved Parkash*, (3). Rule 97, as it stood before the coming into force of the Code of Civil Procedure (Amendment) Act, 1976, was interpreted by P. C. Pandit J. in *Smt. Kamla Devi and others v. Surinder Kumar and others*, (4). The learned Judge observed that under Rule 97, it was only the holder of a decree for possession of immovable property or the purchaser of such a property in Court auction who could take proceedings when he was resisted or obstructed by any person in obtaining possession of the property. So far as sub-rule (1) of that Rule is concerned, there is no change after the amendment. There is a change in sub-rule (2), but that relates to procedure. Therefore, the above observations are fully applicable

(1) A.I.R. 1980 M.P. 146

(2) 1981(2) R.L.R. 331.

(3) 1983(2) R.L.R. 710.

(4) 1969 C.L.R. (Pb. & Hary.) 131.

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even now. We are in respectful agreement with the view expressed in the above cases.

(6) The learned counsel for the petitioner made a reference to *Dhian Chand etc. v. Parkash Kaur etc.*, (5). That case was also decided under the Rules as they stood before the coming into force of the Code of Civil Procedure (Amendment) Act. The learned Chief Justice in that case took a contrary view. With great respect to the learned Chief Justice, we have not been able to persuade ourselves to accept the view taken in that case. We, therefore, overrule the same.

(7) For the aforesaid reasons, we do not find any merit in the revision petition and dismiss the same with costs.

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