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*Before V.S. Aggarwal, J*

SHIV DAYALA,—*Petitioner*

*versus*

SMT. SULOCHANA DEVI AND ANOTHER—*Respondents*

C.R. No. 1463 of 1999

12th October, 1999

*Code of Civil Procedure, 1908—O. 21, Rls. 98 & 103—Rent Controller ordering eviction of respondent No. 2—Appellate Authority not granting stay in appeal—Plaintiff filing execution application—Wife of respondent claiming her ownership & filing objections—Rent Controller dismissing the objections—Appellate Authority allowing the appeal of the wife & remanding the case to the Rent Controller—Challenge thereto—Respondent admitting before trial Court that he was in occupation as a tenant of a third person—Wife cannot protect the possession of respondent by setting up her own right—Objections filed by wife held to be frivolous & deserve to be dismissed.*

*Held*, that there is no controversy that if there is a third person in possession who *bona fide* claims a right, title and interest, the same can be adjudicated in the objections that are filed. If the objections are on the face of it *bona fide* requiring a consideration, necessarily a trial would proceed. In case they are frivolous and on the face of it *mala fide*, the same should be dismissed.

(Para 10)

*Further held*, that the petitioner had filed an eviction petition alleging that he is the landlord and Maman Ram is the tenant. Maman Ram took up certain pleas. He denied the relationship of tenant and landlord but took up the plea that he is the tenant of a third person. The learned Rent Controller held that there is a relationship of landlord and tenant between the parties. Thus, the matter as such had been adjudicated. It was thus clear even from the case of Maman Ram that he was in occupation as a tenant. His wife Sulochana Devi now sets up here own right in the property. It has not been shown in the objections that Maman Ram had ever delivered possession to Sulochana Devi. Thus, whatever title Sulochana Devi may have, so far as possession is concerned, it must be taken to be that of Maman Ram. The objections, therefore, require no further hearing and must be taken to be frivolous. Once the objections are frivolous, they deserve to be dismissed.

(Para 11)

S.K. Mittal, Advocate—*for the Petitioner.*

O.P. Goyal, Sr. Advocate with Bhuwan Luthra, Advocate—*for the Respondents.*

### JUDGMENT

*V.S. Aggarwal, J.*

(1) Shiv Dayal son of Ram Kumar has filed the present revision petition directed against the judgment of the learned Additional District Judge/Appellate Authority, Narnaul dated 4th February, 1999. By virtue of the impugned judgment, the learned Court had set aside the order passed by the learned Rent Controller dated 7th September, 1998. It was directed that the objections of the respondents should be disposed of after framing of the issues and recording of evidence.

(2) The relevant facts are that petitioner Shiv Dayal filed an eviction petition against Maman Ram husband of respondent No. 1 Sulochana Devi. The eviction was prayed with respect to the suit premises on the ground of non payment of rent, impairing the value and utility of the property without the consent of the landlord. Respondent Maman Ram contested the petitioner and challenged the *locus standi* of the petitioner to file the eviction petition. He asserted that petitioner was not the owner in possession of the house in dispute. Rather the house belonged to one Basu Dev and Kamalapati. He had taken the house on rent from Kamalapati son of Ram Partap and had purchased the same in the name of his wife. The learned Rent Controller had gone into the controversy and held that Kamalapati had no right to sell the property in dispute and further that the sale deed was not proved by Maman Ram. It was held that there was an oral tenancy of Maman Ram under the petitioner. Even the Rent Controller went on to hold that in the eviction petition, respondent Maman Ram was liable to be evicted on the ground of non payment of rent.

(3) It appears that Maman Ram even has filed the appeal which is pending before the Appellate Authority, Narnaul. In appeal the order passed by the learned Rent Controller had not been stayed.

(4) The petitioner filed an execution application. Therein Sulochana Devi respondent No. 1 wife of Maman Ram filed objections. She asserted that she is the owner of the house and purchased it,—*vide* sale deed dated 7th January, 1994. The sale deed is within the notice of the petitioner and he has challenged the correctness of the same. She insisted that the property was once owned by one Bal Bahadur Parsad. He had four sons. It fell to the share of Kamalapati.

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who was the grandson of Bal Bahadur Parsad. Kamalapati had let out the property to Maman Ram,—*vide* a rent note. Later on Sulochana Devi wife of Maman Ram had purchased the said property. She is *bona fide* purchaser for consideration and, therefore, can protect her possession.

(5) Objections had been contested by petitioner Shiv Dayal. He insisted that objector Sulochana Devi has nothing to do with the objections. The sale deed is illegal, null and void. It is a paper transaction. Needless to emphasise that Sulochana Devi has filed a civil suit for declaration in the court of learned Civil Judge, Mahendergarh. During the pendency of the civil suit, she prayed for an *ad interim* injunction to restrain the petitioner from interfering in her possession. Learned Civil Judge, Mahendergarh on 14th November, 1998 held that respondent Sulochana Devi has no *prima facie* case. The *ad interim* injunction had been refused.

(6) The learned Rent Controller dismissed the objections holding that respondent Sulochana Devi had the knowledge of the eviction petition. She has filed the objections in collusion with judgment debtor Maman Ram. Holding that the same were without merit, the claim was rejected. Aggrieved by the same, Sulochana Devi preferred the appeal. *Vide* the impugned judgment, the learned Appellate Authority held that Smt. Sulochana Devi is a third party and she has the right to file the objections and protect her possession. It was the duty of the Executing Court to frame the issues and dispose of the objections after recording of evidence. Accordingly, the case was remitted to the learned Rent Controller and the appeal was allowed. Aggrieved by the same, the present revision petition has been filed.

(7) On behalf of the respondents a preliminary objection was raised that the appeal to the Appellate Authority was not maintainable. He urged that an appeal before the Appellate Authority could only be filed under Section 15(1) of the Haryana Urban (Control of Rent & Eviction) Act, 1973. It does not contemplate of an appeal whereby the objections are dismissed. On behalf of the respondents on the contrary reliance was placed on Section 18 of the said Act to urge that since order of eviction has to be executed like a decree of the civil court, Sulochana Devi on dismissal of her objections could file the appeal in accordance with the provisions of the Code of Civil Procedure.

(8) Sub-section (1) of Section 15 and Section 18 of the Act read as under :—

“15(1) The State Government may, by a general or special order by notification, confer on such officers and authorities as it

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may think fit, the powers of appellate authorities for the purpose of this Act, in such area or in such classes of cases as may be specified in the order.

18. Execution of orders.—Every order made under the provision of this Act shall be executed by a civil court having jurisdiction in the area as if it were a decree or order of that court.

*Explanation.*—One year's rent of the building or rented land, preceding the date of the order which is sought to be executed, shall be the jurisdictional value for the purposes of determining the forum of appeal."

In exercise of the power under sub-section (1) of Section 15, the notification dated 11th August, 1984 had been issued and the same reads :—

"8. District Judges and Addl. District Judges appointed appellate authorities under section 15(1) of Haryana Urban Rent Act No. 11 of 1973 to hear appeals against order under sections 4, 10, 12 and 13 of the Act. No. S.O. 119/H.A./73/S.15/84 (dated 11th August, 1984).

In exercise of the powers conferred by sub-section(1) of section 15 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and in supersession of all previous notifications issued in this behalf, the Governor of Haryana hereby confers on all the District Judges and Additional Distt. Judges in the State of Haryana with the powers of appellate authority to hear appeals against the orders made by the Controller under sections 4, 10, 12 and 13 of the said Act to be exercisable within their respective jurisdiction."

It is abundantly clear from aforesaid that so far as appeals that have to be filed under sub-section (1) of Section 15, the same can only be filed with respect to orders made by the Controller under Sections 4, 10, 12 and 13 of the Act. Admittedly, the present appeal was filed to the Appellate Authority not in pursuance of any such order having been passed by the learned Rent Controller. But as already mentioned above, under Section 18 all orders passed under the Act can be executed as if it was a decree of the civil court. Therefore, they are being executed by a civil court having jurisdiction in the area. Once it is executed by the civil court, necessary implication would be that appeal would be as prescribed under the Code of Civil Procedure. The argument to the contrary raised by the petitioner's learned counsel, therefore, must fail.

(9) On behalf of the respondents it was urged vehemently that the learned Additional District Judge/Appellate Authority was justified in allowing the appeal and remanding the case because under Order 21, Rule 98 and Order 21, Rule 103 of the Code of Civil Procedure, even without delivering possession a person could protect her possession. In support of his argument, learned counsel relied upon the decision of the Supreme Court in the case of *Babulal v. Raj Kumar and others* (1). It was held that when the objector has objected to the execution of the decree and that he was not a party to it, the matter requires determination. In paragraph 7 the Court noted :—

“It would, therefore, be clear that an adjudication is required to be conducted under Order 21, Rule 98 before removal of the obstruction caused by the object or the appellant and a finding is required to be recorded in that behalf. The order is treated as a decree under Order 21, Rule 103 and it shall be subject to an appeal. Prior to 1976, the order was subject to suit under 1976 Amendment to CPC that may be pending on the date of the commencement of the amended provisions of CPC was secured. Thereafter, under the amended Code, right of suit under Order 21, Rule 63 of old Code has been taken away. The determination of the question of the right, title or interest of the objector in the immoveable property under execution needs to be adjudicated under Order 21, Rule 98 which is an order and is a decree under Order 21, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. Thus, the procedure prescribed is a complete code in itself. Therefore, the executing Court is required to determine the question, when the appellants had objected to the execution of the decree as against the appellants who were not parties to the decree for specific performance.”

Similarly in the case of *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and another* (2), it was held that when a stranger filed objections, it is not necessary that he should firstly deliver possession. In paragraph 5 the Supreme Court held :—

“In short the aforesaid statutory provisions of Order XXI 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

(1) A.I.R. 1996 S.C. 2050

(2) A.I.R. 1997 S.C. 856

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 XXI, Rule 97 sub-rule (1) and he cannot by-pass such obstruction and insist on re-issuance of warrant for possession under Order XXI, Rule 35 with the help of police force, as that course would amount to by-passing and circumventing the procedure laid down under Order XXI, 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 XXI, Rule 99, CPC and pray for restoration of possession.”

A year later in the case of *Shreenath and another v. Rajesh and others* (3) taking note of the Amendment of the Code of Civil Procedure in the year 1976 a similar view was expressed :—

“Rule 100 of the old law, as referred in the aforesaid Full Bench decision of the Madhya Pradesh High Court is a situation different from what is covered by Rule 97. Under Rule 100 (old law) and Order 99 (Rule) the new law covers cases where persons other than judgment-debtor is dispossessed of immoveable property by the decree-holder, of course, such cases are also covered to be decided by the Executing Court. But this will not defeat the right of such person to get his objection decided under Rule 97 which is a stage prior to his dispossession or a case where he is in possession. In other words, when such person is in possession the adjudication to be under Rule 100 (old law) and Rule 99 under the new law. Thus a person holding possession of an immovable property on his own right can object in the execution proceeding under Order 21, Rule 97. One has not to wait for his dispossession to enable him to participate in the execution proceedings. This shows that such person can object and get adjudication when he is sought to be dispossessed by the decree-holder. For all the aforesaid reasons, we do not find the Full Bench in *Smt. Usha Jain* (supra) correctly decided the law.”

Same was the view expressed in the case of *Ghasi Ram and others v. Chait Ram Saini and others* (4) that all questions including right, title

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(3) A.I.R. 1998 S.C. 1827

(4) A.I.R. 1998 S.C. 2476

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and interest in the property will have to be taken note of by the executing court.

(10) Thus, there is no controversy that if there is a third person in possession who *bona fide* claims a right, title and interest, the same can be adjudicated in the objections that are filed. If the objections are on the face of it *bona fide* requiring a consideration, necessarily a trial would proceed. In case they are frivolous and on the face of it *mala fide*, the same should be dismissed. While in certain cases the stay even can be refused.

(11) The Supreme Court in the case of *Kazi Akeel Ahmed v. Ibrahim and Anr.* (5) held :—

“He submitted that there is absolutely no merit or any substance in the false and fictitious claim of respondent No. 2 Girraj that he is a tenant in the shop in his own right independently of respondent No. 1 which is evident from the fact that the suit for injunction and declaration filed by him against the appellant was dismissed on 2nd November, 1995, a certified true copy of which with English translation has been placed on record.

XX                      XX                      XX                      XX  
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These facts clearly go to show that the claim of the respondent No. 2 that he is a tenant is wholly fictitious and without any foundation and it was for this reason that the suit had been dismissed with cost to the tune of Rs. 2,000. Having regard to these facts and circumstances, we find absolutely no merit in the application of respondent No. 2 resisting the execution of the decree validly passed by a competent Court of Law.”

This Court in the case of *Rocky Tures v. Ajit Jain*, (6) reiterated the same view point and held :—

“Thus the carnal principle of law that follows is that the purpose of granting an opportunity to prove his case to an objector while entertaining objections under Section 47 read with Order 21 Rules 97 to 108 of the Civil Procedure Code does not amount to permission for abusing the process of law or Court. The discretion must be exercised by the Court in such cases. Of

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(5) 1996 (3) S.L.J. 1697

(6) 1998 (2) S.L.J. 1637

course discretion is governed by settled judicial principles and must be exercised within four corners of law, but such a discretion cannot be termed as a mere routine exercise of judicial discretion. Either way it should be for well founded and settled principles governing the subject.”

That being the legal position one can conveniently revert back to the facts of the case. The petitioner as mentioned above had filed an eviction petition alleging that he is the landlord and Maman Ram is the tenant. Maman Ram took up certain pleas. He denied the relationship of tenant and landlord but took up the plea that he is the tenant of a third person. The learned Rent Controller held that there is a relationship of landlord and tenant between the parties. Thus, the matter as such had been adjudicated. It was thus clear ever from the case of Maman Ram that he was in occupation as a tenant. His wife Sulochana Devi now sets up here own right in the property. In the present case this Court is not expressing any opinion regarding title of Sulochana Devi because she had already filed a civil suit in this regard. But the fact remains that it was Maman Ram who was in possession. In execution his possession is being disturbed. It had not been shown in the objections that Maman Ram had ever delivered possession to Sulochana Devi. Thus, whatever title Sulochana Devi may have, so far as possession is concerned, it must be taken to be that of Maman Ram. The objections, therefore, require no further hearing and must be taken to be frivolous. It goes without saying that Sulochana Devi even filed a civil suit and *ad-interim* injunction even had been refused. Thus, it is only a belated attempt to protect the possession of Maman Ram. But taking totality of facts, there is no escape from the findings that she cannot protect the possession of Maman Ram. Keeping in view the said fact, once the objections are frivolous, they deserve to be dismissed.

(12) For these reasons, the revision petition is allowed and the impugned judgment is set aside. Instead the objections are dismissed.

(13) However, it is made clear that nothing said herein should be taken as any expression of opinion regarding the title of Smt. Sulochana Devi. Since the appeal was stated to be pending before the Appellate Authority for eviction against Maman Ram, nothing said herein should be taken as any expression of opinion in that regard also.

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