

# **Sohan Lal vs Sohan Lal Passi (Deceased) Thr Lrs on 26 February, 2019**

**Author: Anu Malhotra**

**Bench: Anu Malhotra**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ EX.S.A. 1/2019 & CM APPL. 6642/2019  
SOHAN LAL ..... Appellant  
Through: Mr. Pradeep Kumar & Mr. Parveen  
K. Nagpal, Advocates.

versus

SOHAN LAL PASSI (DECEASED) THR LRS ..... Respondent  
Through  
CORAM:  
HON'BLE MS. JUSTICE ANU MALHOTRA  
ORDER

% 26.02.2019 Reliance is inter alia placed on behalf of the appellant on the observations in Para 23 of the verdict in "North Delhi Power Limited Vs. Mahindra Cold Storage" in EX.S.A.4/2014 a verdict dated 17.07.2018 referred to in proceedings dated 13.02.2019 advertizing to specific reliance in relation to Para 23 to the effect:-

"23. Else, Order XXI only in Rules 46H, 58 and 103 makes the orders specified therein appealable."

with inter alia reliance placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in "Shreenath and another Vs. Rajesh and others" AIR 1998 SC 1827 with specific reference to observations in Para 10, 11, 13 & 14 of the said verdict, which read to the effect:-

"10. Under sub-clause 1 order 21, Rule 35, the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by the decree. Order 21, Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the Court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21, rule 99 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". this

may be either by the person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree holder, in such case, may make an application to the Executing Court complaining such resistance, for delivery of possession of the property. Sub- clause (2) after 1976 substitution empowers the executing Courts when such claim is made to proceed to adjudicate upon the applicants claim in accordance with provisions contained hereinafter. This refers to Order 21, Rule 101 (As amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21, Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit, By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstructed by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the Executing court could adjudicate the claim made in any such application under order 21, Rule 97. Thus by the use of the words 'any person' it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.

11. So, under order 21, Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to relegate itself to the long drawn out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that order 21, Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21, Rule 36 only symbolic possession is given where tenant is in actual possession. Order 21, rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. 'Any person', as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including stranger.

13. So far sub-clause (1) of Rule 97 the provision is same but after 1976 amendment all disputes relating to the property made under Rules 97 and 99 is to be adjudicated under Rule 101, while under unamended provision under sub- clause (2) of Rule 97, the Executing Court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 he Court puts back a decree-holder in possession where the Court finds obstruction was occasioned without any just cause, while under rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the Court has to dismiss the decree-holder application. Thus even prior to 1976 right of any person claiming right on his own or as a tenant, not party to the suit such person's right has to be adjudicated under rule 99 and he need not fall back to file a separate

suit, By this, he is saved from a long litigation. So a tenant or any person claiming a right in the property, on his own, if resists delivery of possession to the decree-holder the dispute and his claim has to be decided after 1976 amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. However, under the old law, in cases order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he has to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the Executing court itself finally under rule 101.

14. We find both either under the old law or the present law the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under order 21, Rule 97, has to be decided by the Executing court itself."

to contend that the only mode that the appellant could assail the impugned order was by raising objections. Inter alia it has been submitted on behalf of the appellant that the discrepancies in the impugned order dated 01.10.2018 in MCA No.13/17 of the Court of the learned ADJ-07, South East, Saket Courts, New Delhi are apparent from the factum that vide para 2 of the said verdict, it has been observed to the effect that the appellant herein i.e. the objector Sohan Lal had expired during the pendency of his appeal and his LRs were brought on record whereas the appellant in fact, filed the present EX.S.A.1/2019.

Without any observations on the merits or demerits of the prayer made, notice of the appeal and of the accompanying application CM APPL. 6642/2019 be issued to the respondents on taking of steps by the appellant through all permissible modes, returnable for 24.04.2019.

The operation of the impugned order is stayed till the next date of hearing.

ANU MALHOTRA, J FEBRUARY 26, 2019/NC