

Jini Dhanrajgir vs Shibu Mathew And Anr. Etc. Etc. on 16 May, 2023

Author: Dipankar Datta

Bench: Dipankar Datta, A.S. Bopanna

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3758 – 3796 /2023
[ARISING OUT OF SLP(C) NOS.28258-28296/2018]

Jini Dhanrajgir & Anr.

... Appellants

Versus

Shibu Mathew & Anr. Etc.

...Respondents

WITH

CONTEMPT PETITION(C) NO.2091/2018
IN
SPECIAL LEAVE PETITION (C) NO.24344/2014

Jini Dhanraj Curi & Anr.

...Petitioners

Versus

Thomas Mathew (Dead) @ Thampykunju & Anr. ..Respondents

JUDGMENT

DIPANKAR DATTA, J.

Leave granted.

2. More than a century and a half back, the Privy Council (speaking of The Raj Durbhunga, Under the Court of Wards vs. Maharajah Coomar Ramaput Singh¹ lamented that the difficulties of litigants

in India indeed begin when they have obtained a decree. A reference to the above observation is also found in the decision of the Oudh Judicial Commissioner's Court in *Kuer Jang Bahadur vs. Bank of Upper India Ltd.* Lucknow 2. It was ruled there that the Courts had to be careful to ensure that the process of the Court and the laws of procedure were not abused by judgment-debtors in such a way as to make the courts of law instrumental in defrauding creditors, who had obtained decrees in accordance with their rights.

3. Notwithstanding the enormous lapse of time, we are left awestruck at the observation of the Privy Council which seems to have proved prophetic. The observation still holds true in present times and this case is no different from cases of decree-holders' woes commencing while they are in pursuit of enforcing valid and binding decrees passed by civil courts of competent jurisdiction. The situation is indeed disquieting, viewed from the perspective of the decree-holders, but the law, as it stands, has to be given effect whether the court likes the result or not. In *Martin Burn Ltd. vs. Corporation of Calcutta*³, this Court held that a court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.

1 (1871-72) 14 Moo IA 605 2 AIR 1925 Oudh 448 3 AIR 1966 SC 529

4. The challenge in these civil appeals by the Appellants herein, daughter and son of Mrs. Tara Cherian ("Mrs. Cherian", hereafter), is to the common interim order of the Principal Sub-Judge, Kottayam, ("the Executing Court", hereafter) dated 29th June, 2018. The Executing Court was seized of an execution application under Section 47 read with Order XXI Rule 97 of the Civil Procedure Code, 1908 ("CPC", hereafter) filed by the Appellants, seeking enforcement of the decree dated 21st October, 2000 ("Decree", hereafter) and removal of resistance put forth by the contesting respondents herein ("Respondents", hereafter). By the impugned order, the Executing Court held several objections filed by the Respondents to be maintainable and deemed it necessary to adjudicate the same on their own merits, after due recording of evidence.

5. Having regard to the nature and extent of controversy raised, a decision on these appeals should not have necessitated noting the facts triggering the appeals and the rival contentions advanced across the bar in any great depth; however, since the parties have addressed us at length, we propose to briefly narrate the essential facts and refer to the rival claims as advanced by learned senior counsel for the parties before recording our conclusions on such claims.

6. The basic facts arising from the two sets of proceedings, which we would presently advert to, are intertwined; hence, it is considered appropriate to dissect the same for facility of appreciation.

7. The first part of the factual matrix is that:

a. Mrs. Cherian, as the original plaintiff, instituted OS No. 28/1987 ("the Suit", hereafter) inter alia against Mr. V.T. Mathew [defendant no.1], his sons [defendant no. 2, Mr. Thomas Mathew ("Mr. Thomas", hereafter) and defendant no. 3, Mr. Abraham Mathew ("Mr. Abraham", hereafter), and Mr. Mathew's assistant defendant no. 4, Mr. K.T. Joseph ("the Defendants", wherever referred to collectively, hereafter)

for declaration of title of Mrs. Cherian in respect of land measuring in excess of 2.81 acres in Village Nattakom, Kottayam, Taluk, Kottayam District, Kerala (“Suit Property”, hereafter), and recovery of possession with mesne profits from the Defendants.

b. Mrs. Cherian contended that Mr. Mathew, the caretaker of the Suit Property, had intended to purchase the same from her deceased husband, that the sale had not been completed as balance consideration was still to be paid, and that in the interim the Defendants had made constructions on the Suit Property. The Defendants contended that they were tenants in respect of the Suit Property through an oral lease agreement with Mrs. Cherian’s deceased husband and his brothers and were entitled to fixity of tenure under the provisions of the Kerala Land Reform Act, 1963 (for brevity “KLR Act”, hereafter).

c. In course of trial of the Suit, the question of tenancy was referred by the trial court to the Land Tribunal under Section 125(3) of the KLR Act. In R.C. No. 84/1988, the Land Tribunal found that Mr. Mathew was a cultivating tenant entitled to protection under the KLR Act. Based on the observation of the Land Tribunal, the Suit was dismissed by the trial court on 16 th November 1989. Challenging the dismissal of the Suit, Mrs. Cherian filed A.S. No. 27/1991 before the High Court. d. Mr. Mathew passed away on 18 th January 1998, and the proceedings before the High Court continued with his sons Mr. Thomas and Mr. Abraham contesting the appeal. e. The High Court, allowed A.S. No. 27/1991 on 18 th December 1998, and opined that the Defendants were not entitled to fixity of tenure. The Suit was remanded to the trial court for adjudication on other issues.

f. A Division Bench of the High Court while hearing CMA No. 34/1999, being an appeal against the aforementioned order of the Single Judge, dismissed the same on 13 th December 1999, and confirmed that Mr. Mathew had only been the caretaker of the Suit Property.

g. Upon remand, the Suit was decreed on 21 st October 2000, in favour of Mrs. Cherian and the Defendants were directed to put Mrs. Cherian in possession of the Suit Property. h. Mr. Thomas and Mr. Abraham filed A.S. No. 219/2001 before the High Court. It was partly allowed on 11 th February 2014, inter alia, to the extent that the Decree was modified whereby Mrs. Cherian was required to deposit Rs. 25,99,250 as compensation in lieu of part-payment of the purchase consideration paid by Mr. Mathew, after which the Defendants would surrender vacant possession of the decretal property to her.

i. The order dated 11th February 2014 was carried before this Court by Mr. Thomas and Mr. Abraham in S.L.P. (C) No. 24344/2014. On 13th October 2014, this Court while disposing of the said petition marginally enhanced the compensation to Rs. 30,00,000.00. The Appellants were directed to deposit the balance compensation,

whereafter the Defendants were required to handover possession of the decretal property to the Appellants; the Decree was otherwise kept undisturbed.

8. This being one part of the factual matrix, we proceed to notice the other part. It begins with proceedings under the KLR Act, being S.M. Nos. 107/1992 and 55-56/1989 before the Land Tribunal. On 23 rd January 1993, the Land Tribunal issued a Purchase Certificate to Mr. Mathew in S.M. No. 107/1992, whereby Mr. Mathew was conferred the status of a cultivating tenant. Pertinently, Mrs. Cherian was put on notice but did not ultimately contest the proceedings. After obtaining the Purchase Certificate, parcels of the decretal property were sold by Mr. Mathew to some of the Respondents. Certain other Respondents were also issued Purchase Certificates in S.M. No. 55/1989 and S.M. No. 56/1989 qua parcels of the decretal property during the period intervening between institution of the Suit and much before the same was decreed on 21st October 2000.

9. The following subsequent events are of further importance to the instant case:

a. The Executing Court on 27th May 2017, in E.P. No. 379/2012, accepted the Appellants' prayers for delivery of the decretal property, appointed an Advocate Commissioner, and issued directions to deliver possession of the decretal property within

10 days of the order, with the help of the relevant Sub- Inspector of Police.

b. The Commissioner, on 23rd June 2017, submitted a report to the effect that the Respondents objected to the delivery of possession to the Appellants.

c. Subsequently, certain Respondents as objectors filed multiple objections in the main execution proceedings objecting to the execution of the Decree and refusing to give possession to the Appellants. They inter alia contended that they were not aware of the proceedings in the Suit and became aware of the same only when the Commissioner attempted to take delivery of possession as per the order of the Executing Court on 27 th May 2017.

d. The Appellants then filed a petition before the High Court under Article 227 of the Constitution of India. On 5 th April 2018, a Single Judge of the High Court directed the Executing Court to consider the Appellants' contentions on the objections filed by the Respondents and decide the same on or before 30th June 2018.

e. Upon a contested hearing, the Principal Sub-Judge, Kottayam, being the Executing Court, passed the present impugned interim order on 29th June 2018.

10. Mr. Diwan, learned senior counsel for the Appellants contended that:

a. The pleadings in S.L.P. (C) No. 24344/2014, filed by Mr. Thomas and Mr. Abraham, made no disclosure of anyone else being in possession of the decretal

property. Further, the conduct of the Respondents was in wilful disobedience of the Decree passed by the trial court and its affirmation up to and by this Court. The Respondents had no rights in the decretal property and hence no locus standi in the matter to resist the Decree which was made two decades back.

b. The contentions of the Respondents are based on Purchase Certificate being SM No. 197/1992, obtained by Mr. Mathew from the Land Tribunal, Kottayam. However, the Respondents held no title to the said properties as the person from whom the title flowed, i.e., Mr. Mathew himself had no title to the decretal property.

c. The persons alleging to have purchased different plots in the decretal property from Mr. Mathew did not produce documents of title along with their objection petitions in the Executing Court.

d. The objections are frivolous and not maintainable and in the light of the order of this Court dated 13 th October 2014, in SLP (C) No. 24344/2014, which had given finality to these proceedings, the conduct of the Respondents has the effect of nullifying such order.

e. The Appellants had already deposited Rs. 30,00,000 with the trial court in compliance with this Court's directions on 13 th October 2014, and that the Respondents were enjoying the decretal property without delivering possession to the Appellants.

f. As per Section 52 of the Transfer of Property Act, 1882, the aforesaid transfers are hit by lis pendens, and were impermissible; also, in view of Rule 102 of Order XXI of the CPC, Rules 98 and 100 thereof would not be attracted and the Executing Court misdirected itself in holding the objections of the Respondents to be maintainable.

11. Mr. Diwan cited the following decisions of this Court in support of his contentions:

a. Usha Sinha vs. Dina Ram⁴, where this Court, inter alia, held that a pendente lite purchaser had no right to offer resistance or cause obstruction as the purchaser's rights had not been crystallised in a decree.

b. Board of Trustees vs. Nikhil Gupta ⁵, where this Court issued directions to the obstructionists to handover possession ⁴ (2008) 7 SCC 144 ⁵ (2015) 10 SCC 1339 to the petitioner therein in a case where a decree of eviction was obtained after three decades of litigation.

c. Sriram Housing Finance and Investments India Ltd. vs. Omesh Mishra Memorial Charitable Trust⁶, where this Court expounded that Order XXI Rule 97 empowers a decree- holder to make an application complaining about any resistance or obstruction in possession of immovable property and that Rule 102 also clarified that Rules 98 and 100 would not apply in cases where resistance or obstruction in execution was offered by a transferee pendente lite, where the property was

transferred by a judgment debtor to such a person after the institution of a suit in which the decree sought to be executed was passed.

d. Firm Ganpat Ram Rajkumar vs. Kalu Ram and Ors 7, where this Court held that non-compliance of the orders of the Supreme Court, with an objective to mislead the Court, should not lead to frustration of the order.

12. Mr. Diwan, accordingly, appealed that justice of the case demands setting aside of the impugned order and a direction on the Executing Court to put the Appellants in possession of the decretal property after removing the obstructions raised by the Respondents.

13. Per contra, Mr. Chitambaresh, learned senior counsel appearing for the Respondents contended that:

a. Mr. Mathew was a tenant of the entire decretal property and on a part thereof he along with Mr. Thomas and Mr. Abraham 6 (2022) SCC OnLine SC 794 7 (1989) Supp 2 SCC 418 Mathew had constructed buildings. In S.M. No. 107/1992 before the Land Tribunal, Mrs. Cherian was a party, yet, she did not challenge the Purchase Certificate after it was issued in favour of Mr. Mathew. Further, two other Purchase Certificates had been issued by the Land Tribunal to certain Respondents in the proceedings being SM Nos. 55 and 56/1989.

b. In terms of the decision of this Court in Cheeranthoodika Ahmmedkutty & Anr. vs. Parambur Mariakutty Umma & Ors⁸, where it was held that in the absence of any material to doubt the veracity of the Purchase Certificates due weight should have been given to them as per law, it was submitted that the Purchase Certificate issued in suo motu proceedings under Section 72K of the KLR Act in favour of inter alia Mr. Mathew was conclusive proof of his title, and since the same has remained unchallenged, would operate as res judicata. c. The Respondents as objectors had set up title, independent of the judgment-debtors, and that their objection deserved to be adjudicated by the Executing Court.

d. That apart, the Executing Court had only held the objectors' applications to be maintainable; in such circumstances, this Court ought not to interfere when adjudication on merits was yet to be made.

e. Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal 9, is an authority for the proposition that a claim filed pursuant to Section 47 read with Order XXI Rule 97 CPC is maintainable 8 (2000) 2 SCC 417 9 (1997) 3 SCC 694 despite the right being independent of that of the judgment-

debtor.

f. The decision in T Vijendradas & Anr. vs. M. Subramanian & Ors¹⁰ has held that if any judgment or order was obtained by fraud, then the same is a nullity; and since the judgment in A.S. No. 27/1991 was obtained without impleading all the legal representatives of Mr. Mathew, for this

reason, the proceedings are vitiated by fraud and a nullity due to suppressio veri.

g. In *ITI Ltd. v. Siemens Public Communications Network Ltd*¹¹, this Court had noted that despite the vast powers it had to directly entertain an appeal, litigants should not be encouraged to bypass other available remedies in the potential hope of a more efficacious remedy.

h. The Appellants' conduct in directly approaching this Court under Article 136 of the Constitution of India without invoking the revisional or appellate jurisdiction of the appropriate forum is open to criticism based on the decision in *Columbia Sportswear Company v. Director of Income Tax, Bangalore*¹², where this Court opined that the scope of discretion under Article 136 of the Constitution of India while granting special leave was such that only a substantial question of general importance or one already pending before this Court should be entertained, especially when remedies 10 (2007) 8 SCC 751 11 (2002) 5 SCC 510 12 (2012) 11 SCC 224 under Article 226 and/or 227 were available on the same grounds before the High Court.

i. The question of application of *lis pendens* doctrine does not arise on facts and in the circumstances of the present case since the sale transactions were effected when no *lis* was pending.

14. Resting on the aforesaid contentions, Mr. Chitambaresh urged that no case for interference has been set up by the Appellants and that the Executing Court ought to be left free to decide the objections on merits.

15. The only issue that we are tasked to decide at this stage is, whether interference with the common order under appeal is called for or not.

16. In our considered view, for more reason than one, relief claimed by the Appellants ought to be declined.

17. Section 47 of the CPC, being one of the most important provisions relating to execution of decrees, mandates that the court executing the decree shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit. What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree. Should there be any resistance offered or obstruction raised impeding due execution of a decree made by a court of competent jurisdiction, the provisions of Rules 97, 101 and 98 of Order XXI enable the executing court to adjudicate the *inter se* claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits. No wonder, the provisions contained in Rules 97 to 106 of Order XXI of the CPC under the sub-heading "Resistance to delivery of possession to decree-holder or purchaser" have been held by this Court to be a complete code in itself in *Brahmdeo Chaudhary* (*supra*) as well as in a decision of recent origin in *Asgar vs. Mohan Verma*¹³. In the latter decision, it has been noted that Rules 97 to 103 of Order XXI provide the sole remedy both to parties to a suit as well as to a stranger to the decree put to

execution.

18. In *Bhanwar Lal vs. Satyanarain*¹⁴, this Court held that when any person, whether claiming derivative title from the judgment-debtor or sets up his own right, title or interest de hors the judgment debtor, the executing court whilst executing the decree, in addition to the power under Rule 35(3), is empowered to conduct an enquiry whether the obstruction by that person is legal or not. 13 (2020) 16 SCC 230 14 (1995) 1 SCC 6

19. This Court in *Noorduddin v. Dr. K.L. Anand*¹⁵ reiterated that the executing court was bound to adjudicate the claim of an obstructionist and to record a finding allowing or rejecting the claim which was laid before the executing court, the person being neither a party to the earlier proceedings nor the decree being passed against him.

20. Yet again, in *Babulal v. Raj Kumar & Ors.*¹⁶, this Court after setting aside the order impugned held that a determination is required to be conducted under Order XXI Rule 98 before removal of the obstruction caused by the objector and a finding is required to be recorded in that regard. It was also held that the executing court was required to determine the question relating to when the appellants had objected to the execution of the decree as against those appellants who were not parties to the decree for specific performance.

21. The decision in *Brahmdeo Chaudhary* (supra) cited by Mr. Chitambaresh, is also to the same effect.

22. Considering the scheme of Order XXI Rules 97 to 106, this Court in *Silverline Forum Pvt. Ltd. v. Rajiv Trust & Anr.*¹⁷ found it difficult to agree with the High Court that resistance or obstruction made by a third party to the decree put to execution cannot be gone into under Order XXI Rule 97. Referring to Rules 97 to 106, this 15 (1995) 1 SCC 242 16 (1996) 3 SCC 154 17 (1998) 3 SCC 723 Court further held that they were intended to deal with every sort of resistance or obstruction raised by any person and that Rule 97(2) made it incumbent on the court to adjudicate upon such complaint in accordance with the procedure laid down. This Court also proceeded to observe:

"It is clear that executing court can decide whether the resistor or obstructer is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21, Rule 97(2) of the Code. The adjudication. mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course, the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary".

23. The long line of precedents notwithstanding, it is indeed true that in terms of the ordainment of Rule 102 of Order XXI, Rules 98 and 100 thereof would not apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed.

24. The thrust of Mr. Divan's argument has been that the Respondents are pendente lite transferees, the doctrine of lis pendens applies, and in view of the clear terms of Rule 102, the objections were not maintainable; therefore, the Respondents are not entitled to the protection of having an adjudication of their claims in terms of Rule 98.

25. The argument, though attractive at first blush, pales into insignificance in view of the peculiar facts obtaining here. From the factual narrative, it appears that the Suit instituted by Mrs. Cherian in 1987 was initially dismissed on 16th November 1989 and upon an appeal being preferred in 1991, the Suit was restored to the file of the trial court by the order of the High Court dated 18 th December 1998. If, indeed, there have been transfers post dismissal of the Suit during the time when there was no pending lis, it would be most appropriate for the Executing Court to determine the question as to whether any of the transfers made by Mr. Mathew to the Respondents would attract Rule 102. This would indeed involve an exercise of leading of evidence by the parties and merely because the Suit was ultimately decreed on 21 st October 2000 and ultimately was upheld by this Court with a minor modification of the amount of compensation, that would not be sufficient justification to throw out the objections raised by the Respondents as being devoid of merit.

26. That apart, the effect of the Purchase Certificate obtained by Mr. Mathew in proceedings before the Land Tribunal where Mrs. Cherian was noticed on the transfers made in favour of the Respondents, would also have to be examined by the Executing Court. Notably, it is the contention of the Respondents that the said Purchase Certificate was issued in terms of the KLR Act and not only the same went unchallenged at the instance of Mrs. Cherian, she did not make any disclosure thereof at any stage of the civil proceedings.

27. The impugned order of the Executing Court bearing in mind the unchallenged order dated 5th April 2018 passed by the High Court has found the objections to be maintainable, at least warranting an enquiry. On facts, this Court finds no legal infirmity in such order deserving interference.

28. Now, it is time to consider the effect of the order of this Court dated 13th October 2014, whereby the special leave petition of Mr. Thomas and Mr. Abraham was disposed of enhancing the compensation by a marginal amount. Simply because this Court did not interfere with the first appellate decree dated 11th February 2014 is no ground to hold that such order would bar an enquiry of the nature contemplated by Rule 101. This Court would not allow its vision to be colored by treating the order dated 13th October 2014 as bringing an end to the controversies between the decree-holders and the strangers/third parties, who were not before it. While it cannot be gainsaid that the dignity, prestige and majesty of this Court has to be maintained, yet, merely because the issue between the Appellants on the one hand and Mr. Thomas and Mr. Abraham on the other has attained finality, the same would not afford any justification for this Court, much less sufficient justification, to uphold the contention of the Appellants which has the effect of subverting, rather than effectuating, the substantive right that Rules 97 to 103 of Order XXI confer on strangers/third parties not bound by the decree for recovery of possession. The claim regarding right, title and interest in respect of their respective shares in the decretal property, as raised by the Respondents, cannot be thrown out at the threshold since it is well within their rights to contest the application

under Order XXI Rule 97, CPC filed by the Appellants. Since evidence is required to be led before it, the Executing Court was well-nigh justified in holding the objections to be maintainable at this stage not in the sense that the decree cannot be executed against them but in the sense that a prima facie case had been set up for an enquiry to be conducted, and posting the matter for evidence to be led by the parties. We are sure that upon determination of the questions referred to in Rule 101, the Executing Court would proceed in the manner mandated by Rule 98.

29. Further, Mr. Chitambaresh is right when he submits that this Court should not entertain the aforesaid appeals against the order of the Executing Court without such order having been subjected to any challenge by the Appellants before the High Court. In the decision cited by Mr. Chitambaresh, viz., ITI Ltd. (supra), it was observed that litigants should not be indulged to hop, skip and jump to reach the Supreme Court for no better reason than the remedy is quick and more efficacious. As a matter of practice, the Supreme Court in its discretion does entertain special leave petitions directly from orders of tribunals/courts without the High Court having been approached only in matters where substantial questions of general importance are involved or where a similar issue is pending for its (the Supreme Court's) consideration. The decision in Columbia Sportswear Company (supra) is to that effect. However, these are cases which are few and far between. The power to grant leave under Article 136 itself being discretionary, this Court would not allow a party invoking the 'special leave' jurisdiction to bypass the remedy available at the level of the High Court without the two situations, as aforesaid, being satisfied. Indeed, this is not one such case.

30. For the foregoing reasons, we find no reason to interfere with the order under challenge. It is upheld and the appeals stand dismissed, without any order for costs.

31. It is made clear that the Executing Court shall proceed to deal with the application of the Appellants under Rule 97 of Order XXI of the CPC together with the objections raised by the Respondents on their own merits and without being influenced by any observation made in this order which has been necessitated only for disposal of the present appeals.

32. Having regard to the fact that the Appellants have been deprived of the fruits of the Decree dated 21 st October 2000 for over two decades, it would only be just and proper to request the Executing Court to proceed to decide the contentious issues in accordance with law as early as possible without granting unnecessary adjournments to any of the parties. It would, thus, be eminently desirable if the proceedings are completed within 18 months of receipt of a copy of this judgment and order.

33. In view of the aforesaid order, Contempt Petition (C) No. 2091/2018 initiated by the Appellants to punish Mr. Thomas and Mr. Abraham for willful disobedience of the order dated 13th October, 2014 passed by this Court in Special Leave Petition (C) No. 24344/2014, at this stage, does not survive; hence, the same stands dismissed.

.....J. [A.S. BOPANNA]J. [DIPANKAR DATTA] NEW DELHI;

16th MAY, 2023.