

IN THE COURT OF CIVIL JUDGE-I (SR. DIV.), PIRO AT BHOJPUR
Execution Case No.-01 of 2020

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S.L. No.	Date of Order of Proceedings	Order with signature of Court	Office action taken with date/ Remarks
	18.12.2025	<p>Attendance of the decree holder and judgment debtor filed through their ld. counsel. On call, ld. counsel on behalf of the decree holder Mr. Rakesh Sinha and judgment debtor Mr. Jai Gopal Pandey appeared.</p> <p>An objection on behalf of Arrah Sasaram Light Railway Company Ltd. through its appoined power of attorney holder Md. Aslam Khan has been filed on 04-01-2024 under Order XXI Rule 97 read with 151 C.P.C. praying to allow the objection petition and with prayer to drop the execution case holding right, title and possession of the company over plot no. 1802, khata no. 1409 of mauza- Piro.</p> <p>It is submitted on behalf of objector company that the present execution case arises out of a compromise decree dated 04.05.2019 passed in title suit no. 44 of 2019 filed by the decree holder. The subject matter of dispute in the said suit was 9 decmial land in khata no. 1409, plot no. 1802 under mauza piro. The suit property is the exclusive property of the Arrah Sasaram Light Railway and neither the decree holder nor the judgment debtor has any concern with the said plot no. 1802 having total area of 20 decimal.</p> <p>It was further submitted that the purpose of establishment of the company namely Arrah Sasaram Light Railway was running small gauge train between Ara and Sasaram within the then District of Sahabad. The then Government of Bengal wide notification no. 39R dated 12.10.1909 formed Ara Sasaram Tramway Company order incorporated under the Bengal Tramway Act. For the aforesaid purpose, about more than 156 acres of total lands were acquired for the company in the year 1910-11 by the then Government of Bengal at the cost of the company for running small gauge train between Ara and Sasaram. This acquisition included acquisition of more than six acre land of</p>	
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Mauza- Piro through Land Acquisition Case no. 21/1910-11, Land Acquisition Case no. 26/1910-11 and Land Acquisition Case No. 05/1911-12. After acquisition, the company came in exclusive possession of the acquired lands and since the lands were acquired at its cost, the company became rightful owner of the same.

It was further submitted that the acquired land of the company included lands appertaining to khata no. 1409, plot no 1802, area 20 decimal.

On 20.02.1978, the company after closing its operation went into coluntary liquidation. The liquidation proceedings of the company under the provisions of the Companies Act, 1956 started in the supervisory control of the Calcutta High Court wide Company Petition NO. 623/1977 filed in its original side.

The company closed its operation sometime in the year 1977 and went into voluntary liquidation and for this purpose, Company Petition No. 623/1977 was filed before the Hon'ble Calcutta High Court. In the year 1982, the Company applied for grant of permission to sell the said acquired lands, but when the State of Bihar did not respond, the Company moved Hon'ble Calcutta High Court in Matter no. 166/1983 in original side and the Hon'ble Calcutta High Court in terms of order dated 13.05.1988 directed the State of Bihar to consider the matter for grant of permission. In spite of the said order no step was taken by the State of Bihar and the Company had to file Company Application No. 267/1990 before Hon'ble Calcutta High Court for a direction to the State of Bihar either to acquire the land of the Company or to grant it permission to sell the lands. After hearing the parties, the Hon'ble Calcutta High Court rejected the plea of the State of Bihar wide order dated 07.02.1992 and granted permission to the liquidator of the Company to sell the land at highest price giving the State of Bihar a preferential right to purchase on the highest price offered. Against the said order the State of Bihar filed Appeal No. 415/1992 but the same was

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dismissed on 07.12.1992 by a Division Bench of the Calcutta High Court, where after the State of Bihar preferred S.L.P. No. 22256/1997 before the Supreme Court but the said case was also dismissed on 15.12.1997.

The only thereafter the liquidator namely K.N. Fathepuria, of the company started selling lands of the company and with a purpose to fetch more consideration amount the liquidator executed several power of attorney with local people. One of such power of attorney was executed by the liquidator in favor of Md. Aslam Khan.

It was submitted on behalf of objector that on the facts and in the circumstances set-forth above, the right, title, interest and possession of the company over its land including the land of the plot no 1802 is manifest .

It was prayed that in light of the aforesaid mentioned facts and circumstances ; objection be allowed and present execution case be dropped ; holding right, title and possession of the company over the plot no. 1802, khata no. 1409 mauza-Piro.

The rejoinder has been filed on behalf of decree holder on 15-01-2024 praying to reject the objection on the ground that Arrah Sasaram Light Railway is not having title over land bearing khata no. 1409 kheshra no. 1802. It was stated that the said company has executed deed on 05-12-1922 in favour of one Chandrama Pandey. It was further submitted that the liquidator has cancelled the power of attorney stated to be in favour of present objector. The company has no concern with the land in question and the objector is claiming for his personal benefit. It was further submitted that the liquidator has informed to the power of attorney holder wide letter in May 2023 that khata 1409 kheshra no. 1802 area 20 decimal has been sold by the company to Chandrama Pandey on 05-12-1922 and directed not to make any objection. The objector has not file any appeal against the judgment and decree or has brought any stay

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on the execution. The vendor of the purchaser has also executed different deeds in favour of different persons but the same has not been challenged so far. Even the company has not challenge the entry in the survey khatiyani. It was further stated that the Settlement officer in-charge, has directed company to provide the document if the land acquired in its favour has been relinquished or sold but the same has not been made available. On these grounds, he prays to reject the objection.

Heard already the learned counsel
for the parties at length and perused the case record .

It is clear that this execution case no. 01 of 2020 has been brought by decree holder for execution of decree passed in T.S. 44 of 2019 with prayer for recovery of possession by the process of Court. From perusal of the order and decree passed in T.S.-44 of 2019, it appears that the suit has been decided on the basis of compromise between the parties and the order dated 30.04.2019 further goes on to say that the defendant in the suit ie, Rajendra Bhup Bahadur has assured to deliver possession of the disputed land to the plaintiff within ten days from the order, failing which the plaintiff may recover possession by the process of Court.

At the very beginning ; it would be pertinent to mention here that this said petition has been filed in violation of rule 459 of Civil Court Rules as the present objector was supposed to file miscellaneous case instead of a simple petition in the pending execution proceeding. Nonetheless this Court will decide the matter on merit.

Before going into the complicated question of title and possession raised by the objector ;it would be relevant to discuss the applicable law.

Order XXI Rule 97 CPC reads as under-

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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 the upon the application in accordance with the provisions herein contained.”

Two things are clear from the bare reading of the above rule firstly that this Court is under duty to adjudicate this application even if raised by any persons & as per rule 97 (2) ,the same has to be decided in accordance with the provisions contained in rule 101.

Rule 101 of Order XXI CPC reads as under- “101. Question to be determined:- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

It means the right ,title and interest of that any person ; here objector needs to be decided in this application. Let us discuss what is to be done and how same is to be done .

It was observed by Hon’ble Supreme Court in case of Periyammal (Dead Thr. Lrs.) vs V. Rajamani And Anr. Etc (on 6 March, 2025) that it is a settled position of law that an application under Order XXI Rule 97 may be made in respect of obstruction raised by any person in obtaining possession of the

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decretal property. The courts adjudicating such application have to do so in accordance with Rule 101 and hold a full-fledged inquiry to determine all questions including questions relating to right, title or interest in the property arising between the parties.

It means that this Court has to decide right, title or interest in the property ;of the objector by holding an inquiry .

In Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr. reported in 1998 (3) SCC 723, a three Judge Bench of Supreme Court has observed that It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refused 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.

Upon going through the objection petition & rejoinder discussed above; it is clear that none of the facts are admitted by the parties and this Court cannot act on the averments made by the resistor in his petition to which the decree holder has denied. Thus this Court has no option but to hold an inquiry.

In spite of disposal of the above petition in the light of above discussion and in view of observations of Hon'ble Supreme Court of India in Periyammal (Dead Thr. Lrs.) vs V. Rajamani And Anr. Etc (on 6 March, 2025) & Rahul S.Shah v Jitendra Kumar Gandhi; certain guidelines and directions for conduct of execution proceedings were given by Supreme Court and it was stated that the same has to be mandatory followed in execution proceeding but since the decree under execution is a

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consenting decree and therefore those directions which are mandatory in nature; have not been followed by the Court.

In suits relating to delivery of possession, the court was to examine the parties to the suit under Order 10 relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties; but the same was not done.

After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court was under duty to add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit ; but the same was not done.

It was further directed that the court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property; but the same was not done as being a consenting decree , the same would not occasioned .

Though the court should discourage taking of evidence during the execution proceedings but the proceeding in which decree was passed ; was decided on the basis of compromise between the parties & certain question of fact could not be decided being consenting decree.

The executing court has been directed by Hon'ble Supreme Court to dispose of the execution proceedings within six months and hence this Court directs the decree holder to file clear status of the property on affidavit along with the photograph of the same .Meanwhile this Court directs appointment of Survey Commissioner to assess the accurate description and status of the property at the cost of decree holder .The office clerk is directed to send a letter of request to The Principal District and

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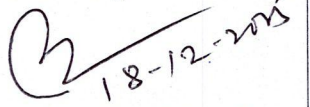
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Sessions Judge, Ara upon payment of his fee by the decree holder. This Court directs the parties to adduce evidence for determination of the questions raised in the objection petition; so that right ,title or interest of the objector; if any; may be decided. In the light of above observations, the instant petition is disposed off. The office clerk is directed to register this matter as misc. Judicial case.

Put up on 17.01.26 for further proceeding.


18-12-2025
**Civil Judge (Sr. Div.)-I
Piro.**

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