

MHSN150006532020



COMMON ORDER BELOW EXHS.33 AND 39
IN REGULAR DARKHAST NO.12/2020

(Sadashiv Govind Dange Vs. Yashodip Samajik Vikas Sanstha
Shivajinagar)

Perused the applications below Exh.33 and 39. Gone through the say filed by the Decree Holder (D.H.) below Exh.45 and 50 respectively. Heard the learned counsel for both parties.

2. These applications are preferred by the third persons raising objections to the execution petition and it is prayed by the third parties that the decree passed in Special Civil Suit No.250/2016 is not executable and it be declared that the sale deed dated 14.06.2023 is bogus and executed without consideration and therefore, liable to be canceled.

3. It is pertinent to note that this darkhast petition is filed by the D.H. for execution of the compromise decree passed in Special Civil Suit No.250/2016 dated 25.06.2018. That after filing of this execution petition, the D.H. filed draft of the sale deed on record to which no objection was given by the Judgment Debtor (J.D.) on 11.10.2022 below Exh.16. Accordingly, registered sale deed was executed by A.S. of this Court on 19.06.2023 in favour of the D.H. and he filed report at Exh.24 giving intimation of the same to this Court dated 27.06.2023. Xerox copy of the registered sale deed is also filed on record vide list of document at Exh.27.

4. Thereafter D.H. moved application for possession of the property under Order 21 Rule 35 of the CPC in pursuance of the sale deed. The said application came to be allowed on 06.09.2023 as no objection was given by the J.D. to decide the application. Accordingly, bailiff had given a detailed report at Exh.29 of the delivery of possession of the property mentioned in the scheduled. The said Kabjepatti is at Exh.29. Also the panchanama of the same is drawn on the same day i.e. 26.09.2019 which is signed by the independent panch witnesses.

5. That after delivery of possession of the property mentioned in the sale deed, the third parties appeared raising the above objections on 25.01.2024 vide applications below Exhs.33 and 39. It is pertinent to note that thereafter the D.H. filed pursis dated 10.04.2024 at Exh.44 stating therein that the darkhast is fully satisfied and it be disposed of.

6. In the backdrop of this fact, I passed the order dated 30.07.2025 below the applications at Exhs.33 and 39 and direction was given to the counsel for the third parties to argue as to under which provision of Law these applications are maintainable. In view of the order passed mentioned above, the learned counsel for the third parties argued that these applications are preferred by the third parties under Order 21 Rule 97 of the C.P.C., though specific provision is not quoted in the applications. Therefore, it becomes necessary to look into the provision of Order 21 Rule 97 of the C.P.C. which is summarized herein under :-

“Order 21 Rule 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”.

7. After going through the above provision carefully, it reveals that application under Order 21 Rule 97 of the CPC can be filed by the D.H. or the purchaser of the property sold in execution of the decree and not by the third person. However, the learned counsel for the third person argued that the application under Order 21 Rule 97 of the CPC can be maintainable at the behest of third party and on this point, he relied on the judgment of the Hon'ble Supreme Court in a case of **“Shreenath and another Vs. Rajesh and another, AIR 1998 Supreme Court 1827”**. The counsel for the third parties relied on following highlighted paras of the said judgment.

“This appeal arises out of the judgment and order of the High Court of Madhya Pradesh, Bench at Indore, in Civil Revision No. 406 of 1983.

The question raised is, whether the third party in possession of a property claiming independent right as a tenant not party to a decree under execution could resist such decree by seeking adjudication of his objections under order 21, Rule 97 of the Civil Procedure code ?

In Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and Another (1997) (3) SCC 694, the question raised was whether a stranger occupying the premises on his own right when offered resistance to the execution of the decree obtained by the decree holder can or cannot request the Executing Court to adjudicate his claim

without being insisted upon that first he must handover the possession and then move an application under Order 21, Rule 97. It is held in para 9 :-

"Para 9 : In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of the 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 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 21, Rule 97, sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21, Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21, Rule 97.

The Hon'ble Supreme Court in the last para of the above judgment given the direction as follows :-

We direct the Executing Court to consider and dispose of the objections and the application of the appellants under Order 21, Rule 97 after giving opportunity to the parties in accordance with law. The appeal is accordingly allowed. On the facts and circumstances of the case, cost on the parties"

8. Gone through the relevant paragraph highlighted by the counsel for the third parties. The question of Law in the above case was, whether the third party in possession of property claiming independent right as a tenant not party to decree under execution could resist such decree by seeking adjudication of his objection under Order 21 Rule 97 of the CPC ? This question is answered by the Hon'ble Supreme Court in the last para of the said judgment in the affirmative.

9. However, in a case before me, there is no question of resistance to possession of the decree holder has been arose and D.H. is not obstructed by the third parties in receiving possession of the property. In a case in hand, already bailiff report is there on record dated 26.09.2023 showing that the D.H. has obtained the possession of the property in execution of warrant under Order 21 Rule 35 of the CPC. These applications for raising objections to the execution petition are filed by the third parties thereafter on 25.01.2024. Therefore with with due respect the third parties cannot avail the benefit of the above citation as it is not applicable to the fact and circumstances of the case in hand.

10. In the fact and circumstances before me, the third party could have appear under Order 21 Rule 99 of the CPC by making complaint of the dispossession. However, it is not the case as appeared from the arguments of the learned counsel for the third parties and as per their arguments and citation relied on them in support of their arguments, they came under Order 21 Rule 97 of the CPC. In my opinion, their applications are not maintainable under the facts and circumstances mentioned above.

11. Also the learned counsel for the third parties further relied on another citation of the Hon'ble Apex Court in the case of **"Periyammal (dead) and others Vs. V. Rajamani and another, 2025 SCC Online SC 507"**

12. The learned counsel for the third parties has relied on para No.40, 43, 45 and 49 of the above judgment. However, I am of the

opinion that only particular para cannot be read in order to arrive at conclusion that whether the ratio of that case is applicable to the case in hand or not and whole judgment is required to be read. After going through the above judgment and looking into the para Nos.64, 68, 70 and 79, with due respect it reveals that the third parties cannot avail the benefit of above judgment as it is not applicable to the fact and circumstances of the case in hand. It is necessary to reproduce the above para Nos.64, 68, 70 and 79 hence those are reproduced herein under to clarify the position.

“64. In the present case, the appellants have pleaded in their plaint that the respondent Nos. 1 and 2 respectively were impleaded therein as defendants as they were in possession of the suit property. However, the respondent Nos. 1 and 2 chose not to contest the suit despite being aware of the prayer of the appellant for delivery of possession of the suit properties. They could have filed a joint written statement stating that they are cultivating tenants at the stage of the original suit itself, but rather raised the said issue in the form of objections at the stage of execution.

68. In our considered view, the aforesaid by no stretch of imagination can be construed to be a legal right of possession existing independently from the title of the vendors which has now stood transferred to the appellants. It is nothing but a case of apparent collusion between the vendors and the respondent Nos. 1 and 2 to deprive the appellants from availing the fruits of the decree in their favour.

70. In such circumstances referred to above, we find it extremely difficult to accept that the respondent Nos. 1 and 2 are bona fide cultivating tenants of the suit property and thus, the determination of the question of them being in possession of the same must necessarily go against them and in favour of the

appellants. Therefore, there is no question of deciding the validity of the decree on the ground of being a nullity due to lack of jurisdiction of the civil court to evict cultivating tenants.

79. The Executing Court shall now proceed to ensure that vacant and peaceful possession of the suit property is handed over to the appellants in their capacity as decree holders and if necessary, with the aid of police. This exercise shall be completed within a period of two months from today without fail”.

13. However, with due respect in the above case the respondent Nos.1 and 2 who were obstructionist were impleaded in the plaint as a defendants as they were in possession of the property. However, they chose not to contest the suit despite being aware of the prayer of the appellant for delivery of possession of the suit properties. This fact can be seen by reading para No.64 of the above judgment. Whereas in the case before me, third parties were not parties to the original suit. Therefore, with due respect third parties cannot avail benefit of above citation.

14. The learned counsel for the third party relied upon another citation in a case “**Asgar and Others Vs. Mohan Varma and others reported in 2019 Gojuris (SC) 115**” and he brought to my notice the highlighted portion of the case which is reproduced hereunder :-

*“Constitution of India, 1950 Article 227
Kerala Compensation for Tenants Improvements Act
1958 Transfer of Property Act, 1882 Section 51-- Civil
Procedure Code, 1908 Order 21 Rules 97 to 101 --
Suit for partition Land in dispute constructive res
judicata Barred by the principle of The High Court*

upheld the finding of the executing court that the appellants are not entitled to claim compensation Whether the bar of constructive res judicata stands attracted, it is necessary to advert to the earlier application which was filed by the appellants in the execution proceedings -- All defences of the respondents upon the invocation of a remedy by the appellants were kept open for decision The claim which the appellants asserted in Execution Application specifically for declaring that they were entitled to remain in possession as lessees and that the respondents were not entitled to dispossess them from the property in their possession The appellants were entitled, though they were strangers to the decree, to get their claim to remain in possession of the property independent of the decree, adjudicated in the course of the execution proceedings -- Matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future -- The failure of the appellants to raise a claim would result in the application of the principle of constructive res judicata both having regard to the provisions of Sections 4 & 5 of the Act of 1958 and to the provisions of Order 21 Rules 97 to 101 of the CPC Appeal dismissed”.

However with due respect the above citation is in respect of the claim which the appellants asserted in execution proceeding specifically declaring that they were entitled to remain in possession as lessees and the respondent were not entitled to dispossess them from the property in their possession. However, in the case before me there is no such stand taken by the third party that they were lessees or tenant. The third parties in case before me have not shown their own

independent right which is required to be decided in the present darkhast proceeding. Hence, third parties cannot avail the benefit of above citation.

15. Whereas the learned counsel for the decree holder drawn my attention to the citation relied on by the counsel for third parties in **Shreenath's** case cited supra to show that ratio in the said citation cannot come to rescue the third parties. He drawn my attention to para Nos.15, 16 and he argued that if we perused the above citation carefully, it clearly speaks about the independent own right of the third parties. He further argued that in order to avail the benefit of above citation, the third parties in the present matter must show that he is having any independent own right and must not derived his rights from either D.H. or J.D. However, as the third parties in the present matter derived their rights from J.D. hence their claim is not maintainable. Here I find substance in the arguments advanced by the counsel for D.H.

16. The learned counsel for D.H. further to show that the remedy under Order 21 Rule 97 of the C.P.C. is not available to the third party in the present matter. He drawn my attention to the Civil Manual Chapter XIX Para No.337 (i) (ii) which deals with Miscellaneousness proceedings requiring judicial inquiry. The said provision is reproduced here in under :-

337 (i) *Under the Head Miscellaneous Judicial Proceedings are included all proceedings and enquirers of a judicial nature which do not form part of the proceedings in a suit or darkhast or appeal pending before the Court.*

ii) The expression includes

Proceeding under Order 21 Rule 58, 97 and 99 of the Code of Civil Procedure

and other proceeding on application in which relief is asked against the person not a party to suit or proceeding”

17. The above provision of the Civil Manual makes it abundant clear that if any party is having grievance under Order 21 Rule 97 or 99 of the CPC then he is required to file Miscellaneous proceeding requiring judicial inquiry and he cannot resort to darkhast proceeding or appeal. The above provision is explicit here in my opinion to negate the claim of the third parties in the present darkhast proceeding.

18. In my opinion, these applications filed by the third parties are nothing but futile attempt to keep the matter lingering without any just reason when the decree has been fully satisfied and the same is certified by the decree holder vide pursis at Exh.44. Therefore, nothing remains with this Court thereafter to consider these applications of the third parties.

19. In my opinion all the contents in the application and prayer made therein cannot form part of the application under Order 21 Rule 97 of the CPC. Surprisingly, enough third parties have sought declaration in their applications to declare the sale deed executed by the order of this Court as illegal and not executable and they also prayed to cancel the same. I am of the opinion that already sale deed is executed as per order of this Court and also the possession of the

property is given in pursuance of the same, therefore, such prayer is not maintainable at this stage. If the third parties have any genuine grievance then they have separate remedy for the redressal of the same. From the above discussion, I arrived at the conclusion that there is no merit in the applications preferred by the third parties, hence, I proceed to pass the following order.

ORDER

Applications at Exhs.33 and 39 are hereby rejected.

Vita.

Date : 18.08.2025.

(A. R. Malvade)

Civil Judge, Senior Division, Vita.

CERTIFICATE

I affirm that, the contents of this P.D.F file order are same, word to word, as per the original order.

Name of Stenographer:	Hemant M. Kshirsagar (Grade-II)
Court -	Civil Judge, Senior Division, Vita.
Date	18.08.2025.
Order signed by the Presiding Officer on -	18.08.2025
Order uploaded on -	18.08.2025