



2025:CGHC:38623

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 28 of 2015

1. Arjun Prasad S/o Nanhe Prasad Gupta Aged About 60 Years R/o Shanti Nagar, Ward No. 2, P.O. And Tah. Bagbahara, Distt. Mahasamund C.G., Chhattisgarh

... Appellant

versus

1. Food Corporation Of India Fci Titlagarh And Ors. R/o Titlagarh, Distt. Balangir Orissa, Orissa
2. Hiralal Punji S/o Charandas Panji Aged About 50 Years R/o Katabhanji, Distt. Balangir Orissa, District : Balangir, Orissa
3. Smt. Lajwati Punji W/o Charandas Punji R/o Katabhanji, Distt. Balangir Orissa, District : Balangir, Orissa

... Respondent(s)

For Appellant : Mr. Vivek Kumar Tripathi, Advocate

For Respondent No. 1 : Mr. R.M. Solapurkar, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

Judgment on Board

05.08.2025

1. **Heard on admission.**
2. This second appeal has been preferred by the appellant/objector against the order dated 07.11.2014 passed by the learned first appellate Court in unregistered Civil Appeal by which the said appeal has been rejected and objection about remedy of suit for



declaration of title in favour of appellant has been affirmed by the learned Executing Court.

3. The parties have been described as per their description in Execution Suit No. 16/95.
4. Brief facts as reflected from the record are that:
 - (a) A civil suit was filed by the respondent No. 1 Food Corporation of India against the Hiralal Punji and Smt. Lajwati Punji before Civil Judge, Senior Division, Titlagarh, Odisha. The learned Civil Judge has decreed the suit of the respondent No. 1 and since the property was situated within the territorial jurisdiction to Mahasamund district C.G., therefore, the execution proceedings were transferred to the learned Civil Judge, Class-I, Mahasamund for execution of decree passed by the Civil Judge, Senior Division, Titlagarh, Odisha.
 - (b) In pursuance of the transfer decree for execution the execution proceedings were initiated and the objector appeared before the Executing Court as the decree was for recovery of Rs. 1,92,713.20 as principle amount with interest of Rs. 48,173/-. In the said proceeding the present appellant raised an objection for execution of the suit property mainly contending that the property bearing Khasra No. 119 Rajasva Nirikshak Mandal Khallari, Tahsil and District Mahasamund which has been subjected to execution by the learned Civil Judge in the present proceedings is illegal as the judgment debtor Smt. Lajwanti Punji widow of Charan Das has sold the property to him on 16.11.1990 through registered sale deed for sale consideration



of Rs. 21,000/- and said property was in possession of the objector prior to sale deed since 1984. It has also been contended that he is bonafide purchaser, therefore, the suit property should be exempted from execution.

(c) The said objection was rejected by the trial Court by recording its finding that as per Order 21 Rule 58(5) of CPC the present appellant/objector has liberty to file a separate suit where he can claim his title or right over the suit property. Being aggrieved with this order, the appellant has preferred first appeal which has also been rejected. Hence this second appeal.

5. The second appeal is still not admitted by this Court.
6. I have heard learned counsel for the appellant and learned counsel for respondent Food Corporation of India and perused the record of both the Courts below with utmost circumspection.
7. Learned counsel for the appellant would submit that substantial question of law involved in this case as both the Courts below have committed apparent mistake of law as their objection has not been considered whereas it is incumbent upon the executing court to consider and decide all the objections before initiating execution proceedings. He would further submit that the appellant was rendered remediless in the matter, therefore, the second appeal deserves to be admitted by this Court on substantial question of law.
8. On the other hand learned counsel for the decree holder opposing



the submission and would submit that both the Courts below have rightly granted the liberty in favour of the appellant to claim title by filing separate suit which is inconformity with the provisions of Order 21 Rule 58(5) of CPC, thus, he would submit that no illegality has been carried out by both the Courts below, as such, the second appeal is liable to be dismissed as no substantial question of law is involved in this case.

9. Considering the submissions made by both the parties, it is expedient for this Court to extract Order 21 Rule 58(5) of CPC, which reads as under:

“58. Adjudication of claims to, or objections to attachment of, property.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claims or objection shall be conclusive.”

10. From perusal of Rule 5, it is quite vivid that the objector has liberty to raise his claim by filing separate suit. This issue has also been considered by the Delhi High Court in case of **Pradip Vaid vs. Universal Constructors & Others** reported in **2005 (82) DRJ 95 (DB)**, wherein the Delhi High Court has held in paragraphs 20 as under:

“20. We are also not impressed by the submission that Appellant was rendered remedyless in the matter. Because where the objections or claims are not entertained under proviso (a) and (b) to Rule 58(1), Order 21 Rule 58(5) provides for a remedy of separate suit.”

11. Considering the submissions of the parties and also considering the



provisions of Order 21 Rule 58(5) of CPC, it is quite vivid that the appellant is at liberty to file a civil suit for claiming himself to be bonafide purchaser of the suit, as such, the judgment passed by the trial Court and affirmed by the appellate Court does not suffers from perversity and illegality which entitled this Court to admit the second appeal and no substantial question of law is exists which is sine-qua-non for admission of the appeal, I am of the view that the second appeal deserves to be dismissed accordingly, it is dismissed. However, liberty as granted by the trial Court is reserved in favour of the plaintiff to file suit claiming that he is bonafide purchaser of the suit property.

12. A decree be drawn up accordingly.

Sd/-
(Narendra Kumar Vyas)
Judge