

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 07 of 2008

Kusum Kumari Gupta @ Kusum Gupta, wife of Late Sanjay Kumar Gupta, resident of Sunder Nagar, P.O. & P.S. Sunder Nagar, Town Jamshedpur, District Singhbhum East

... ... **Applicant/Appellant/Appellant**
Versus

1. Ganesh Nag, Son of Late Pashupati Nag
2. Dalma Nag
3. Goutam Nag

Both sons of Ganesh Nag, Nos. 1 to 3 resident of Holding no. 6, Golmuri Market, P.O. & P.S. Golmuri, Town Jamshedpur, District Singhbhum East

... ... **Opposite parties/Respondents/Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Mr. K. K. Ambastha, Advocate
For the Respondents	: Mr. Vishal Kumar, Advocate Ms. Ishaani Singh, Advocate

17/19th September 2025

1. Heard the learned counsel appearing on behalf of the parties.
2. This second appeal has been filed against the judgment and order dated 20.12.2007 passed by the learned District Judge, East Singhbhum in Misc. Appeal No. 31 of 2007, whereby the learned District Judge has dismissed the appeal and confirmed the order dated 13.08.2007 passed by the learned Munsif, Jamshedpur dismissing the Misc. Case No. 09 of 2007.
3. This appeal was admitted vide order dated 14.02.2008 for hearing on the following substantial question of law: -

“Whether the Trial Court and the Appellate Court has erred in law by rejecting the objection filed by the appellant under Order XXI Rule 97 of the CPC at the stage of admission itself without adjudicating upon the right, title, interest and possession of the appellant in the suit property in accordance with the provisions contained in Order XXI Rule 97 of the CPC?”

4. The records of the case reveal that an Execution Case No. 11 of 2001 was filed by the respondents, which in turn was arising out of Eviction Suit No. 52 of 1994, against a tenant who was evicted on account of default of payment of rent. The judgment in the eviction suit became final and at the stage of execution of the case, the applicant/appellant had filed a petition being Misc. Case No. 09 of 2007 under Order XXI Rule 97 and 101 of CPC claiming that she was put in possession of the property by the owner (the landlord) by virtue of agreement of sale dated 21.03.2002 whose total consideration amount was Rs. 1,00,000/- and an amount of Rs. 75,000/- was already paid. However, at the time of filing of the objection under Order XXI Rule 97 and 101 of CPC, the applicant did not disclose that she had already filed a suit for specific performance of contract being Title Suit No. 125 of 2006. This fact was brought to the notice of the executing court by the landlord who responded to the petition filed under Order XXI Rule 97 and 101 of CPC and ultimately Misc. Case No. 09 of 2007 which was a petition under Order XXI Rule 97 and 101 of CPC was not admitted and was dismissed.

Arguments of the appellant

5. The learned counsel appearing on behalf of the appellant has submitted that it was the specific case of the applicant that her possession over the suit property was based on agreement of sale. He has further submitted that the applicant was claiming an independent right, title and interest over the property by virtue of agreement of sale dated 21.03.2002 and the same was required to be admitted. He submits that when she was claiming independent title and not through the tenant, her right was certainly required to be adjudicated and the learned executing court erred in not admitting the case.

6. The learned counsel has submitted that the aforesaid aspect of the matter has not been properly considered by the learned 1st appellate court also and therefore the aforesaid substantial question of law be answered in favour of the appellant.

7. The learned counsel submits that he is not seeking any adjudication by this Court on merits, but the matter, having not been admitted by the executing court, is required to be adjudicated by the executing court and the impugned orders be set-aside after answering the substantial question of law and the executing court be directed to adjudicate the claim of the applicant.

8. The learned counsel for the appellant has relied upon the following judgments: -

- (i) ***(2002) 7 SCC 50 (Tanzeem-e-Sufia vs. Bibi Haliman & Others)*** paragraph 15;
- (ii) ***(2015) 1 SCC 379 (Sameer Singh & Anr. vs. Abdul Rab & Others)*** paragraph 25 and 26;
- (iii) ***2022 Supreme (All.) 116 (Salik Ram Singh @ Salik Ram vs. Addl. District Judge Court No. 3 Gonda & Others)*** paragraph 11 and 35; and
- (iv) ***CMP No. 511 of 2025 (Shankar Lal Gupta vs. Smt. Rajeshwari Devi)*** decided on 02.07.2025 which in turn had relied upon the judgment reported in ***(2015) 1 SCC 379*** paragraph 25 and 26.

Arguments of the respondents

9. Learned counsel appearing on behalf of the respondents, on the other hand, has vehemently opposed the prayer and has submitted that the suit filed by the appellant seeking specific performance of contract has already been dismissed and therefore there is no need for any adjudication now. He has submitted that the present case has become infructuous and no useful purpose will be served by remitting the matter to the executing court to adjudicate the independent title of the appellant.

Rejoinder argument of the appellant

10. In response, the learned counsel for the appellant has submitted that an appeal has been filed against the judgment passed by the learned trial court rejecting the plea of specific performance of contract and the said appeal is pending and has not yet attained finality. The learned counsel

has also submitted that in second appeal, this Court is required to only answer the substantial question of law as framed and appropriate order with regard to the nature of possession etc. has to be passed by the executing court, had the executing court admitted the miscellaneous application.

Findings of this Court

11. After hearing the learned counsel for the parties and upon going through the impugned judgments and considering the nature of substantial question of law as framed, this Court is of the considered view that the appellant was seeking adjudication of her independent right in connection with the property and she claimed that she was put in possession of the property directly by the owner of the property who was the landlord in Eviction Suit No. 52 of 1994 which was filed against a tenant other than the appellant. However, the learned executing court refused to admit the case and **adjudicate the claim of the appellant**. The learned 1st appellate court has also dismissed the appeal.

12. In the judgment passed in the case of ***Tanzeem-E-Sufia v. Bibi Haliman (supra)***, the right of a third-party objecting to a decree at the execution stage has been considered in paragraph 13 to 15 as under: -

“13. In support of the contention raised on behalf of the appellant, Shri Sanyal placed reliance upon a decision of this Court reported in Shreenath v. Rajesh [(1998) 4 SCC 543] . It has been held in this case that the term “any person” includes even a person not bound by the decree who shall also be entitled to file objections. It has been so provided to widen the scope of Order 21 Rule 97, so that all such matters may be decided at the execution stage itself to curtail the lengthy procedure of an independent suit claiming a right not to be dispossessed from the property covered by the decree of a court. Another decision relied upon is reported in Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal [(1997) 3 SCC 694] . It has been held that the executing court must first adjudicate upon the objection of the objector on merits under Rule 97(2) of Order 21 CPC. It is also observed that it should not be insisted that possession be handed over first and an application under Order 21 Rule 99 be moved later on complaining about dispossession.

*14. We find that in the case in hand the appellant is claiming its independent right over the property and asserts its possession thereof. Order 21 Rule 101 clearly provides that all questions relating to right, title or interest in property relevant to the adjudication of the application, shall be dealt with the application and not by a separate suit. The High Court therefore, erred in refusing to hear the appellant, on the ground that it has already filed a suit for declaration of its title and for declaration that the decree passed in Title Suit No. 8 of 1983 is not binding on it. The provision contained under Order 21 Rule 101 CPC seems to have escaped the notice of the High Court while passing the order. We would also like to observe that the reasoning given by the executing court while rejecting the application of the appellant as indicated in the order of the High Court, that the remedy of the appellant would only lie by moving an application under Order 21 Rule 99 CPC is also erroneous as in the case of *Brahmdeo Chaudhary* [(1998) 4 SCC 543] it has been held that it should not be insisted that possession be delivered first and the objector may later on move the court under Order 21 Rule 99 CPC.*

15. For the reasons indicated above, we allow the appeal and set aside the judgment and order passed by the High Court as well as passed by the executing court. We further provide that the executing court shall dispose of the application dated 13-3-1995 moved by the respondents afresh after giving an opportunity of hearing to the appellant. In the interest of justice it is desirable that the application is disposed of expeditiously.”

13. In the judgement of ***Sameer Singh v. Abdul Rab (supra)***, the scope and right of filing objection by a third party at the stage of execution of decree has been considered as under: -

*“25. At this juncture, we may refer with profit to the pronouncement in *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal* (1997) 3 SCC 694 : AIR 1997 SC 856, wherein a two-Judge Bench scanning the anatomy of the Rules came to hold that:*

“9. ... a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order 21 Rule 99. Order 21 Rule 97 deals with a stage which is prior to

the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order 21 Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order 21 and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him.”

26. The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order 21 Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree. If a court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different. In the instant case the executing court has expressed an opinion that it has become functus officio and hence, it cannot initiate or launch any enquiry. The appellants had invoked the jurisdiction of the High Court under Article 227 of the Constitution assailing the order passed by the executing court on the foundation that it had failed to exercise the jurisdiction vested in it. The appellants had approached the High Court as per the dictum laid down by this Court in *Surya Dev Rai v. Ram Chander Rai* (2003) 6 SCC 675.”

14. In view of the aforesaid judgments cited by the learned counsel for the appellant, this Court is of the considered view that the objection filed by the appellant before the executing court claiming her independent right

and objecting to dispossession was required to be adjudicated and the learned executing court erred in law in refusing to admit the case. The learned 1st appellate court also erred in upholding the order of the executing court.

15. Accordingly, the substantial question of law as framed vide order dated 14.02.2008 is decided in favor of the appellant and against the respondents.

16. The impugned judgments are hereby set-aside and the matter is remitted to the learned executing court to decide the objection filed by the appellant under Order XXI Rule 97 and 101 of CPC in accordance with law.

17. The parties to appear before the learned executing court on **15th of December 2025 at 11:00 a.m.**

18. The execution case is of the year 2001, the parties to cooperate with the proceeding and the learned executing court shall take all steps to decide the case as expeditiously as possible.

19. This appeal is hereby ***disposed of*** in the aforesaid terms.

20. Pending interlocutory application, if any, is closed.

21. Let a copy of this order be communicated to the concerned court through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Dated: 19.09.2025

Mukul/-

Uploaded On: 18.11.2025