

PETITIONER:
SILVERLINE FORUM PVT. LTD.

Vs.

RESPONDENT:
RAJIV TRUST AND ANOTHER

DATE OF JUDGMENT: 31/03/1998

BENCH:
K.T. THOMAS, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Thomas, J.

Special leave granted .

A sub-tenant, who was not party to a decree for eviction, resisted execution of the decree and the court ordered an inquiry under Section 151 of the Code of Civil Procedure ('Code' for short). The High Court of Calcutta upheld that order and that is challenged in this appeal.

The suit property is a flat in "Harrington Mansion" situated on an important road at Calcutta. It was in the ownership of one Arun Kumar Jalan. He tenanted the premises to Rajiv Trust (first respondent) on 15-05-1975, who sublet the building to a company M/s. Accounting and Secretarial Service Private Limited (which will hereinafter be referred to as "the first sub-tenant"). Subsequently the first sub-tenant created another sub-tenancy under it in favour of second respondent M/s. Captain Shipping Estate Private Limited.

Ownership of the building changed from Arun Kumar Jalan and it now vests with the Silverline Forum Private Limited, (the appellant herein) as per registered conveyance deed dated 24-1-1995. Appellant filed a suit for ejectment of the tenant against first respondent under the provisions of West Bengal Premises Tenancy Act, 1956, (hereinafter referred to as the "W.B. Act") on two grounds. First is that the tenant respondent had sublet the building without the consent of the landlord and second is that the tenant used it in such a manner as to impair its condition. A decree for ejectment was passed ex-parte on 12-12-1995. Before appellant set out with execution proceedings second respondent- sub-tenant filed a suit (O.S. No. 2997/95) against appellant and some others for a declaration and consequential injunction orders. Though initially second respondent got an interim order injunction against ejectment it was subsequently vacated on 15-12-1995, but that suit is still pending.

In the meanwhile appellant moved for execution of the decree of ejectment. On 20-3-1996, bailiff of the court went to the premises for effecting delivery of possession, but he was resisted by the representatives of the second respondent and he reported the matter to the court. When he was again

directed by the Court to effect delivery of possession with police help, he was unable to dispossess second respondent as the execution court has stayed dispossession in the meantime. Second respondent filed Miscellaneous Case 556 of 1996 before the execution court quoting order 21 Rule 101 and Section 151 of the Code, raising a contention that the decree was passed without making him a party and alleging that the decree was obtained in collusion between appellant and first respondent Rajiv Trust. Execution court, however, held that second respondent being a third party resistor cannot avail himself of the remedy provided in Order 21 Rule 101. An inquiry to be conducted under Section 151 of the Code into the allegations made by the second respondent, as per its order dated 26-4-1976. Both sides, appellant and second respondent, were aggrieved by that order and hence both of them challenged it in revision before the High Court.

A learned Single Judge of the Calcutta High Court concurred with the view of the execution court that grievances of the second respondent cannot be canalised through Order 21 Rule 101 presumably because the decree-holder has not moved the application for police help to remove the resistance under Order 21 Rule 97 of the Code. Nonetheless, learned Single Judge observed that the application of second respondent could be gone into by the court in accordance with the inherent powers of the court as recognised in Section 51 of the Code. On the said view of the matter both revisions were dismissed by the order which is under challenge now.

Shri Siddhartha Shankar Ray, learned senior counsel who argued for the contesting parties did not choose to defend the view of the learned Single Judge of the High Court regarding non-availability of the remedy under Order 21 Rule 97 of the Code. According to the learned counsel, though he could not agree with that reasoning of the High Court there is no warrant for the stand of the decree-holder that the respondent had no legal right to assail the decree in execution proceedings.

Shri Kapil Sibal, learned senior counsel for the appellant - decree-holder, on the other hand contended that since second respondent has admitted that he is a sub-tenant under the first sub-tenant he cannot even be heard that the decree for ejectment is a nullity or a collusive decree. He pointed out that even the first sub-tenant has never assailed that decree and hence second respondent, who is a sub-tenant under the first sub-tenant, has no competence to question the decree for ejectment.

At the outset, we may observe that it is difficult to agree with the High Court that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by- "any person" in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions arising between the parties to a proceeding on an

application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of property Act.

When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resistor raised it. The questions which executing court is obliged to determine under rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g. if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in order 21 Rule 97(2) of the Code, execution court can decide whether the question raised by a resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

In the above context we may refer to Order 21 Rule 35(1) which reads thus:

"Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or too such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property."

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.

In Bhanwar Lal vs. Satyanarain and anr. [(1995) (1) SCC 6], a three - judge Bench has stated as under:

"A reading of Order 21, Rule 97 CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest de hors the judgment debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The degree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done."

In Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal and another, [1997 (3) SCC 694] this Court, following the aforesaid decision, made the under-quoted observation:

"It is pertinent to note that the resistance and/or obstruction to possession of immovable property as contemplated by Order 21, Rule 97 CPC could have been offered by any person. The words 'any person' as contemplated by Order 21, Rule 97, sub-rule (1) are comprehensive enough to include apart from judgment-debtor or anyone claiming through him even persons claiming independently and who would therefore, be total strangers to the decree.

.....
..... Consequently
it must be held that Respondent 1's application dated 6.5.1991 though seeking only re-issuance of warrant for delivery of possession with aid of armed force in substance sought to bypass the previous resistance and obstruction offered by the appellant on the spot. Thus it was squarely covered by the sweep of Order 21, Rule 97, sub-rule (1) CPC. Once that happened the procedure laid down by sub-rule (2) hereof had to be followed by the executing court. The Court had to proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the said order."

We are in respectful agreement with the aforesaid statement of law.

We, therefore, agree with the contention of Shri Siddhartha Shankar Ray, learned senior counsel for the second respondent that the High Court went wrong in holding that the contention of second respondent cannot be considered under Order 21 Rule 97 of the Code. But the aforesaid finding is not sufficient to dispose of this appeal. Shri Kapil Sibal contended that second respondent being a sub-tenant under the first sub-tenant he is bound by the decree of ejectment albeit his not being made a party to the suit in which the decree was passed. It is quite clear that second respondent is a tenant under the first sub-tenant. This can be gathered from paragraph 6 of the application which second respondent filed in the execution court.

Such a sub-tenant as the second respondent is bound by the decree of ejectment. Section 16 of the W.B. Act deals with "creation and termination of sub-tenancies to be notified." Sub-section (1) of Section 16 relates to sub-tenancies created after the commencement of the W.B. Act. Sub-sections (2) & (3) deal with sub-tenancies created before the commencement of the W.B. Act. As all the sub-tenancies in this case were created after the commencement of the W.B. Act it is not necessary to consider the latter two sub-sections. Hence Section 16(1) alone is extracted below:

"(1) Where after the commencement of this Act, any premises are sub-let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant and every sub-tenant to whom the premises are sub-let shall give notice to the landlord in the prescribed manner of the creation of the sub-tenancy within one month from the date of sub sub-letting and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination."

A reading of the sub-section reveals that three additional requisites are also necessary for a sub-tenant to get wiggled into the contours of the sub-section. They are (1) the sub-tenancy should have been created after the commencement of the W.B. Act; (2) the landlord of the premises should have given written permission to the tenant to create such sub-tenancy; (3) the tenant and the sub-tenancy within one month of such creation. Section 16(2) and 16(3) deal with sub-tenants who got into possession before commencement of the West Bengal Act, and they too are obliged to notify the landlord within the time specified.

The sub-tenants who secure perch in Section 16 are afforded with two advantages during any action which the landlord may launch for eviction of the tenant. Those advantages are incorporated in Section 13(2) of the W.B. Act. One of them is that such sub-tenant is entitled to be made a party to the suit for recovery of the premises by the landlord. Second is that no decree or order for ejectment shall be passed against such subtenant except under certain specified conditions. Thus, sub-section (2) of section 13 and Section 16 of the W.B. Act are inextricable inter-twined with each other.

Sub-section (4) of section 13 of the W.B. Act has no

relevance in the present case as it only deals with the claim of a landlord for eviction on the ground that he reasonably requires the premises either for his own occupation or for the purposed of renovation, re-building etc. Now we may refer to Sub-section (3) of Section 13 of the W.B. Act. It reads thus:

"Save as provided in sub-section (2) and sub-section (4), a decree or order for the delivery of possession of any premises shall be binding on every sub-tenant."

It is the statutory mandate that the decree for ejectment shall be binding on every sub-tenant unless he falls within the ambit of either sub-section (2) or sub-section (4) of Section 13. There is no case for the second respondent that he has given any notice to the landlord before the expiry of the time schedule fixed in Section 16 of the Act. Nor has he a case that he would fall within the purview of the aforesaid two sub-sections in Section 13 of the W.B. Act.

Of course, learned counsel for second respondent contended that the instrument of lease as between Arun Kumar Jalan and M/s. Rajiv Trust contained a term permitting the tenant to create sub-tenancy. Learned counsel for the appellant argued that such permission cannot be over borrowed by sub-tenants to create further sub-tenancies, and he pointed out that even second respondent has no claim that he has notified the landlord as envisaged in Section 16(1) of the W.B. Act.

It is clear from Section 16(1) of the W.B. Act that the previous consent of the landlord contemplated therein can only be availed of by his tenant. In other words, the tenant under the landlord can use that consent to sublet the premises to another person. A lease between the tenant and his sub-tenant would be governed by the terms agreed upon between them and the tenant cannot bind his landlord by any such terms.

In Shantilal Rampuria and ors. vs. M/s Vega Trading Corporation and ors. [1989 (3) SCC 552] two judge Bench of this Court considered the scope of Section 16 of the W.B. Act and held that "previous consent in writing of the landlord with respect to each-letting separately is essential and a general authority to the tenant in this regard will not be sufficient in law." In that case, none of the sub-tenant was impleaded as party, and this Court held that since notice under Section 16 was not serve don the landlord the non-impleadment will not affect validity of the proceedings for eviction. Their Lordships sought support from another two-Judge Bench decision of this Court in M/s. Shalimar Tar Product ltd. vs. H.C. Sharma and ors. [1988 (1) SCC 70], in which similar provision in the Delhi Rent Control act were considered.

In Juthika Mulick and anr. Vs. Dr. Mahendra Yashwant Bal and ors. [1995 (10 SCC 560], provisions of W.B. Act were the subject matter for consideration, but nothing contrary to eh decision in Shantilal Rampuria (supra) has been stated by this Court. Reference was also made to the decision in Mahabir Prasad Verma vs. Dr.Surinder Kaur [1982 (2) SCC 258]. Though it related to the provisions of East Punjab Urban Rent Restriction Act, 1949 , the question considered was whether a sub-tenancy created with the consent of the landlord during the subsistence of the tenancy would continue to be lawful even after the expiry of the period of lease. The answer was in the affirmative. At any rate that decision does not run counter to the view

adopted by the two-judge Bench in *Shantilal Rampuria* (supra).

Thus, without any difficulty, it can be held that consent given by the landlord to his tenant for creation of the sub-tenancy is valid. Only as between the landlord and his tenant. Such consent cannot be used by a sub-tenant to create another sub-tenancy under him so as to bind the landlord.

For the aforementioned reasons, we allow this appeal and set aside the order under challenge. We hold that appellant is entitled to delivery of possession by removing the obstruction/resistance made by the second respondent.

JUDIS