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NOORDUDDIN

v.

DR. K.L. ANAND

OCTOBER 6, 1994

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

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Civil Procedure Code, 1908—Order 21, Rule 97—Scheme under—Execution proceedings—Application under Order 21, Rules 97 & 98—Claim of independent right, title and interest in immovable property under execution—Court enjoined to adjudicate claim and record a finding.

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The applicant's father - N, R and W are brothers. M and B, their cousins migrated to Pakistan. Their properties were declared as evacuee properties. The competent authority passed an order separating the respective shares held by the evacuees as well as the father of the appellant, R and W and allotted specific items to N. A, an auction of the evacuee properties, the respondents was the highest bidder. Properties bearing Khasra Sakni No. 13 and 14 were confirmed in favour of the respondent. R & W challenged the said sales in Delhi High Court contending that the properties sold pursuant to the declaration of those properties being evacuee were not, in fact, correct; they had interest in the sold properties and that, therefore, the sale made in favour of the respondents was illegal. The Writ Petition filed was dismissed and that order had become final. Therein, though N was impleaded as 5th respondent, no relief if any sort was claimed against him. The respondent filed suit against R & W for possession of the properties bearing Khasra Sakni Nos. 13 & 14. The suit was dismissed but on appeal, the Delhi High Court decreed the suit for possession and the decree had become final.

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Resisting the execution and delivery of possession, appellant made an application under Order 21, Rules 97 & 98 r/w S. 151 Civil Procedure Code, contending that his father and members of his family had not migrated to Pakistan though the custodian had declared certain ancestral properties to be evacuee properties which were later sold to the respondent under Khasra Sakni Nos. 13 & 14. It was further alleged that the respondent had obtained collusive decree against others, the land was not demarcated and the land bears Khasra No. 179 and it is in his possession as

owner by virtue of his share in the ancestral property which never vested in the custodian nor it is sold to the respondent. A

The executing Court dismissed the application on the ground that the dispute was already adjudicated by the High Court. On revision, High Court dismissed the revision holding that the controversy was concluded in Writ Petition wherein the applicant's father was arrayed as respondent and that, therefore, he cannot make the objections. This appeal has been filed against the said order of the High Court. B

The question for determination was whether the executing Court and the High Court had properly appreciated the scheme under Order 21, Rule 97 and declined to entertain and adjudicate the claim of the appellant. C

Allowing the appeal, this Court

HELD 1.1. The scheme of the Civil Procedure Code clearly adumbrates that when an application has been made under Order 21, Rule 97, Civil Procedure Code, the Court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was decree subject to right of appeal and not a matter to be agitated by a separate suit. Thus, the scheme of the Code appears to be to put an end to the protection of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution. [332-B-E] D E

1.2. The execution Court is enjoined to adjudicate the claim or the objection or the claim to resistance. Rule 97, enables such a person to make an application which must be independent of the judgment debtor or a person having derivative right from the judgment debtor. The applicant in his own right must be in possession of the property. Admittedly, neither the applicant nor his father was a party to the suit or appeal. Therefore, the decree perforce does not bind him. In the writ proceeding, though his father N was impleaded as 5th respondent, no relief was claimed against him nor a finding adverse to him has been recorded. Thereby, there is no adverse finding recorded either in the suit or in the writ proceeding against the appellant or his father. Under these circumstances, when the appellant has F G H

A been claiming right, title and interest in Khasra No. 179 from which he is now sought to be dispossessed in execution of the decree by the respondent in respect of Khasra Sakni Nos 13 & 14, the executing Court necessarily has to go into the question whether the property in Khasra No. 179 is part of Khasra Sakni Nos. 13 & 14 and if so, whether the respondent while
 B executing the property trespassed into his property and sought to dispossess him. The appellant's possession, pending adjudication, needs to be protected by interim orders. When the appellant claimed independent right, title and interest and resisted the execution the decree holder or the appellant made an application under Rule 97(1), the Court, in that event,
 C is enjoined to adjudicate the claim and record a finding allowing or rejecting the claim. It should be remembered that the Parliament intended to shorten the litigation and to give effect to it, simplified procedure was devised for adjudication. On the basis of fact situation and the nature of the controversy, the claim has to be adjudicated expeditiously in a period not exceeding six months. [333-C-H]

D 13. The Orders of the Courts below are set aside. The matter is remitted to the executing Court to go into the question raised by the appellant. The question of going into the boundaries and the extent of the land covered by sale certificates which have become final cannot arise. The only limited question is whether Khasra No. 179 is part of Khasra Sakni Nos.
 E 13 & 14 and if not, whether in executing the decree the respondent is entitled to take possession of Khasra Survey No. 179. [334-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7466 of 1994.

F From the Judgment and Order dated 11.7.94 of the Delhi High Court in C.R.P. No. 574 of 1994.

B.D. Sharma for the Appellant.

Rajiv Sawhney, Sanjeev Anand, R.P. Wadhvani and Mrs. Kajol Chandra for the Respondent.

G The following Order of the Court was delivered :

Leave granted.

H The appellant's father-Nanu, Rehmatullah and Wazu are brothers. Munshi and Banda were their cousins. Munshi and Banda had migrated to

Pakistan and their properties were declared as evacuee properties. By proceedings dated 12.3.56, the competent authority had passed an order separating the respective shares held by the evacuees, Munshi and Banda as well as the father of the appellant, Rehmatullah and Wazu had allotted specific items to Nadu. At an auction held on April 14, 1967 of the evacuee properties, the respondent-Dr K.L. Anand had become the highest bidder and sale certificates issued on September 26, 1968, are as follows :-

**"CERTIFICATE OF SALE
(FREEHOLD PROPERTIES)
RULE 90(15)**

THIS IS TO CERTIFY that Shri K.L. Anand, s/o Shri Parshotam Dass Anand having given the highest bid of Rs. 4250 (Rupees four thousand two hundred and fifty only) as sale by public auction held in pursuance of the powers conferred upon me under s. 20 of the Displaced Persons (compensation and Rehabilitation) Act, 1954 (44 of 1954) on the 14th day of April 1967 of the property described in the Scheduled and his bid having been accepted and the value thereof having been paid by him in cash/by adjustment of compensation due on his and his associate(s) claim(s) has been declared the purchaser of the said property in shares as mentioned below with effect from 14th day of June 1968.

Given under my hand and seal of my officer this 26th day of September 1968.

SCHEDULE

Property Khasra Sakni No. 13
Village Kalu Sarai, New Delhi.

SHARES

Full

bounded as under :

East : Mosque Gali
West : House of Shri Rehmatullah
North : Khasra Sakni No. 14
South : Gali

Sd/- Signature
Designation
Managing Officer/Asstt.
Custodian, New Delhi.

A Shri K.L. Anand, s/o Sh. Parshotam Dass Anand Shop No. 176,
Vinay Nagar, New Delhi.

Copies to :

1. Sub-Registrar, Kashmeri Gate, Delhi.
2. Asstt. Accounts Officer,
- B 3. Central Board of Revenues, N.D.
4. Municipal Corporation of Delhi.

Signature
Designation."

C

CERTIFICATE OF SALE
(FREEHOLD PROPERTIES)
RULE 90(15)

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THIS IS TO CERTIFY that Shri K.L. Anand, S/o Shri Parshotam Dass having given the highest bid of Rs. 6050 (Rupees six thousand and fifty only) at sale by public auction held in pursuance of the powers conferred upon me under Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act 1954 (44 of 1954) on the 14th day of April 1967 of the property described in the Schedule and his bid having been accepted and the value thereof having been paid by him cash/by adjustment of compensation due on his and his associate(s) claim(s) has been declared the purchaser of the said property in shares as mentioned below with effect from 14th day of June 1968.

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Given under my hand and seal of my office this 26th day of Sept. 1968.

SCHEDULE

SHARES

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Property Khasra Sakni No. 14
Village Kalu Sarai, New Delhi.

Full

bounded as under :

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East : Mosque and Gali

West : House of Shri Wazu
North : Agriculture land
South : Khasra Sakni No. 13.

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Sd/- M.L. Vij
Signature
Designation
26.9.1968

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Managing Officer/Asstt.
Custodian Office of the
Regional Settlement
Commissioner, New Delhi.

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To : Shri K.L. Anand
Shop No. 176
Vinay Nagar, New Delhi."

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No. RSCD(MO)/Auc/PN/Khasra No.13/Kalu Sari/D/5178

Govt. of India,
Min. of Labour Employment and Rehabilitation,
Office of Regional Settlement Commr. (MW),
Jamnagar House, New Delhi.

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CORRIGENDUM

25.10.69

Subject : Regarding Khasra Sakni No.13, Village Kalu Sari,
New Delhi.

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In the certificate of sale executed on 26.9.68 in favour of Shri
K.L. Anand, s/o Shri Parshotam Dass in respect of Khasra Sakni
No. 13, Village Kalu Sari, New Delhi, the boundaries may be read
as under :-

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East : House of Shri Rehmatullah
West : Mosque and Gali
North : Khasra Sakni No. 14
South : Gali.

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A Given under my hand and seal of my office this day 24th October, 1969.

Sd/- M.L. Vij
Managing Officer/Asst. Custodian

B To,

Shri K.L. Anand, son of Shri Parshotam Dass
Shop No. 176, Vinay Nagar, New Delhi.

Copy to : Sub-Registrar, Asaf Ali Road, New Delhi.

C (MANAGING OFFICER)"

No. RSCD/MO(AUC)/PN/Kh. No. 14/Kalu Sari/D/5180

D Govt. of India,
Min. of Labour Employment and Rehabilitation,
Office of Regional Settlement Commr. (MW),
Jamnagar House, New Delhi.

E *CORRIGENDUM* 25.10.69

Sub : Regarding Khasra Sakni No. 14, Village Kalu Sari, New Delhi

F In the certificate of sale executed on 26.9.68 in favour of Shri K.L. Anand son of Shri Parshotam Das in respect of Khasra Sakni No. 14, Village Kalu Sari, New Delhi, the boundaries may be read as under :-

G East : House of Shri Wazu
West : Mosque and Gali
North : Agriculture land.
South : Khasra Sakni No. 13.

Given under my hand and seal of my officer this day 24th October, 1969.

H Sd/- M.L. Vij
Managing Officer

To,

A

Shri K.L. Anand,
Shop No. 176, Vinay Nagar,
New Delhi.

Copy to : Sub-Registrar, Asaf Ali Road, Delhi.

B

(Managing Officer)"

Thus, the properties bearing Khasra Sakni Nos. 13 and 14 were confirmed in favour of the respondent. Rehmatullah and Wazu challenged the said sales in W.P. No. 960/69 in Delhi High Court contending that the properties sold pursuant to the declaration of those properties being evacuee on February 6, 1956 were not, in fact, correct; they had interest in the sold properties and that, therefore, the sale made in favour of the respondent was illegal. The writ petition came to be dismissed by the learned Single Judge which was affirmed by the Division Bench in LPA No. 95/78 by order dated September 14, 1982. That order had become final. Therein, though Nanu was impleaded as 5th respondent, no relief of any sort was claimed against him nor any finding adverse to him in that behalf was recorded. In the meanwhile, the respondent had filed Suit No. 270/70 in the District Court, Delhi, against Rehmatullah and Wazu for possession of the properties bearing Khasra Sakni Nos. 13 and 14 as indicated hereinbefore. Though the suit was dismissed, on appeal in RFA No. 305/86, the Division Bench of the Delhi High Court decreed the suit for possession and the decree had become final.

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Therefore, now in execution, the respondent sought to take possession of the properties in Khasra Sakni Nos. 13 and 14. Resisting the execution and delivery of possession, the appellant made an application under Order 21, Rules 97 and 98 read with Section 151 of CPC contending that his father and members of his family had not migrated to Pakistan though the Custodian had declared certain ancestral properties to be evacuee properties of Munshi and Banda which were later sold to the respondent under Khasra Sakni Nos. 13 and 14; Dr. Anand has obtained collusive decree against others; the land was not demarcated; the land bears Khasra No. 179 and in accordance with the Chijra Akshi, it is in his possession as an owner by virtue of his share in the ancestral property separated by the competent authority which never vested in the custodian

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A nor it is sold to the respondent.

B The executing court dismissed the application on the ground that the dispute was adjudicated by the High Court in RFA No:305/86 and that, therefore, the claim is no longer tenable. On revision, in the impugned order dated 11.7.94, the learned Single Judge dismissed the revision holding that the controversy was concluded in W.P. No. 960/69 wherein the appellant's father was arrayed as respondent and that, therefore, he cannot make the objections. Hence this appeal.

C The question, therefore, is whether the executing court and the High Court had properly appreciated the scheme under Order 21, Rule 97 and declined to entertain and adjudicate the claim of the appellant?

Order 21, Rule 97 provides thus :-

D "*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.

E (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."

F "*Rule 98 - Orders after adjudication* - Upon the determination of the questions referred to in Rule 101, the court shall, in accordance with such determination and subject to the provisions of sub-rule (2):

G (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

H (2) Where, upon such determination, the court is satisfied that the resistance or obstruction was occasioned without any just cause by

the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days."

"Rule 100 - Order to be passed upon application complaining of dispossession - Upon the determination of the questions referred to in Rule 101, the court shall in accordance with such determination -

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such order as, in the circumstances of the case, it may deem fit."

"Rule 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."

"Rule 103. Orders to be treated as decrees - Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as is if it were a decree."

Rule 104. Order under Rule 101 or Rule 103 to be subject to the result of pending suit - Every order made under Rule 101 or Rule 103 shall be subject to the result of any suit that may be pending

A on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or Rule 103 is made has sought to establish a right which he claims to the present possession of the property."

B Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall

C be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding CPC Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By

D necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

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F Adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to meet out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and courts. The rules of procedure has been devised as a channel

G or a means to render substantive or at best substantial justice which is the highest interest of man and almaneter for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice. The court has, therefore, to wisely evolve its

H process to aid expeditious adjudication and would preserve the possession

of the property in the interregnum based on factual situation. Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is *sine qua non* to a finality of the adjudication of the right, title or interest in the immovable property under execution. A

The question is whether the executing court was right in dismissing the application on the ground that the dispute was adjudicated in RFA No. 305/86 or as held by the High Court that the dispute was decided in the writ proceedings referred to earlier. The execution court is enjoined to adjudicate the claim or the objection or the claim to resistance. As seen, Rule 97 enables such a person to make an application which must be independent of the judgment-debtor or a person having derivative right from the judgment-debtor. The applicant in his own right must be in possession of the property. Admittedly, neither the appellant nor his father was a party to the suit or appeal. Therefore, the decree per force does not bind him. In the writ proceedings, though Nanu was impleaded as 5th respondent, no relief was claimed against him nor a finding adverse to him has been recorded. Thereby, there is no adverse finding recorded either in the suit or in the writ proceedings against the appellant or his father. Under these circumstances, when the appellant has been claiming right, title and interest in Khasra No. 179 from which he is now sought to be dispossessed in execution of the decree by the respondent in respect of Khasra Sakni Nos. 13 and 14, the executing court necessarily has to go into the question whether the property in Khasra No. 179 is part of Khasra Sakni Nos. 13 and 14 and if so, whether the respondent while executing the decree trampled into his property and sought to dispossess him. The appellant's possession, pending adjudication, needs to be protected by interim orders. Unfortunately, the Courts below had not adverted to these crucial aspects of the matter. When the appellant claimed independent right, title and interest and resisted the execution, the decree-holder or the appellant should make an application under Rule 97(1) and the court, in that event, is enjoined to adjudicate the claim and record a finding allowing or rejecting the claim. It should be remembered that the Parliament intended to shorten the litigation and to give effect to it, simplified procedure was devised for adjudication. On the basis of fact-situation and the nature of the controversy, the claim has to be adjudicated expeditiously in a period not exceeding six months and preferably on day to day basis by putting an end to the tendentious conduct of prolonging the proceedings by suitable orders. B
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- A** The orders of the courts below are accordingly set aside. The matter is remitted to the executing court to go into the question raised by the appellant. In the nature of the dispute, a Commissioner may be appointed by the court by issuing a warrant to demarcate the respective properties in Khasra Sakni Nos. 13 and 14 and Khasra No. 179 as claimed by the appellant, to find whether Khasra No. 179 is part of the Khasra Sakni Nos. 13 and 14 or independent of the latter. From the averments in the S.L.P. as well as in the petition filed before the executing court, the appellant had not made claim in respect of the Khasra Sakni Nos. 13 and 14. Therefore, the question of going into the boundaries and the extent of the land covered by sale certificates which have become final cannot arise. As stated earlier, the only limited question is whether Khasra No. 179 is part of Khasra Sakni Nos. 13 and 14 and if not, whether in executing the decree the respondent is entitled to take possession of Khasra Survey No. 179.
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- D** In this view, it may be open to the respondent to make an application to the executing court to appoint a Commissioner for demarcating the respective properties and for submitting a report and plan in that behalf according to rules. The executing court is directed to dispose of this application within a period of six months from the date of the receipt of this order.

- E** The appeal is accordingly allowed, but in the circumstances without costs.

A.G.

Appeal allowed.