



Som Nath v. Jaspal Kaur and others (P&H HC)

2024 :PHHC: 119727 = (2024) Law Today Live Doc. Id. 19559

From the Database of www.lawtodaylive.com

PUNJAB AND HARYANA HIGH COURT

Before: Deepak Gupta, J.

SAO No.5 of of 2022 (O&M)

Reserved on: 28.08.2024 Pronounced on: 09.09.2024

Som Nath - Appellant

Versus

Jaspal Kaur and others - Respondents

Code of Civil Procedure, 1908 (V of 1908), Order 7 Rule 11, Order 21, Section 11 -- Rejection of plaint -- Decree for specific performance -- Maintainability of independent suit by person claiming to be in possession -- Limitation -- If the Plaintiff claim to be in possession of the suit land, she could have filed the objections under Order 21 CPC before the Executing Court in the execution filed by the decree holder -- In fact, plaintiff filed the objections before the Executing Court and the same were dismissed by the Executing Court -- Sale deed was executed in September, 1995, whereas the suit filed for seeking declaration and mandatory injunction in July, 2014 -- Plaint is liable to be rejected on account of concealment of material facts about previous litigation and resjudicata and bar of limitation -- Independent suit was not maintainable in view of Order 21 CPC -- Order of Trial Court rejecting the paint restored.

(Para 29, 38-41)

Full text Judgment/ Order with Headnote

Note:

For easy reference of readers, alongwith Headnote, the judgment downloaded from the official website of the Court has been annexed

www.lawtodaylive.com

SAO No.5 of 2022 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No.5 of 2022 (O&M)
Reserved on: 28.08.2024
Pronounced on: 09.09.2024

Som Nath

.....Appellant

Vs.

Jaspal Kaur and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vaibhav Sehgal, Advocate for the appellant.

Mr. Rajat Malhotra, Advocate for respondent No.1.

DEEPAK GUPTA, J.

In civil suit N: 20 of 2014, an application under Order 7 Rule 11 CPC for rejection of the plaint, moved by the defendant No. 6- Som Nath (*appellant herein*), was accepted by Ld. Civil Judge (Jr Divn), Ludhiana vide order dated 09.09.2016. However, the appeal (CA N: 88 of 2017) filed by plaintiff - Jaspal Kaur (*respondent No.1 herein*), has been allowed by the Ld. Addl. District Judge, Ludhiana, by way of the impugned order dated 09.12.2021, thus, dismissing the application under Order 7 Rule 11 CPC. It is against this reversal that defendant N: 6 of the suit has approached this Court by filing the present second appeal against order.

2. The **facts of the case** in brief are as under:-

2.1 In the suit filed by plaintiff – Jaspal Kaur (*respondent No.1*), it was claimed that she was the owner in possession of the suit property detailed in head note of the plaint; that her father Gurdial Singh had purchased the property in dispute from defendant No.1 Balwant Singh (*respondent No.2 herein*) and had paid the entire sale consideration. However, her father had gone to Amarnath Yatra and did not return, due to

**SAO No.5 of 2022 (O&M)**

which, defendant No.1 through defendant No.2 Harchand (*respondent No.3 herein*) executed and got registered sale deed bearing Vasika No.2369 dated 19.09.1995 of the property in question in favour of the plaintiff. However, inadvertently, the name of the vendee was mentioned as Makhan Singh son of Gurdial Singh, instead of Jaspal Kaur wife of Makhan Singh. Taking undue advantage of this wrong entry in the sale deed and in the revenue record, defendant No.3 – Makhan Singh (*respondent No.4 herein*) started threatening the plaintiff to dispose of the property to somebody else. Plaintiff requested the defendants No.1 and 2 to get the sale deed corrected by incorporating her name but they refused. Plaintiff further pleaded that cause of action in her favour arose, when her name was wrongly not mentioned in the sale deed and also later on, when defendants refused to get corrected the sale deed to incorporate her name as vendee of the suit property. This suit was filed by the plaintiff on 15.07.2014 seeking necessary declaration.

2.2 Som Nath (*present appellant*), who was not impleaded as a defendant to the suit, moved an application under Order 1 Rule 10 CPC to implead him as a party. His application was allowed vide order dated 15.12.2014 (*Annexure P5*) and then he was impleaded as defendant N: 6.

2.3.1 He (Somnath) then moved an application under Order 7 Rule 11 CPC (*Annexure P6*) for rejecting the plaint, by pleading that suit had been filed in collusion with defendants No.1 to 3 and by concealing the material facts from the Court. Defendant No.3 – Makhan Singh was none else than the husband of the plaintiff, who being the owner in possession of the suit property, had entered into an agreement to sell dated 02.08.1997 with the applicant- defendant- Som Nath. As said Makhan Singh failed to perform his part of contract, Civil suit No.270 of 1998 for possession by way of specific performance was filed by said applicant. After hotly contesting, the suit was decreed on 10.08.2009 vide judgment *Annexure P1*. In the execution filed by the applicant - decree holder of Civil Suit No.270 of 1998, sale deed bearing Vasika No.24945 dated 11.03. 2013 was executed and

SAO No.5 of 2022 (O&M)

registered in his favour and warrant of possession was issued. Police help was ordered to be provided for delivering the possession, when the applicant along with other family members started creating hindrance in delivering the possession.

2.3.2 Applicant- defendant No. 6- Som Nath further pleaded that earlier plaintiff had filed a Civil Suit No.308 dated 15.12.1998, against defendants No. 2 and 3 [Harchand Singh and Makhan Singh], in which, the present applicant was not impleaded as a party and, therefore, his application under Order 1 Rule 10 CPC to be impleaded as a party was accepted. In that suit filed in 1998 by plaintiff- Jaspal Kaur, defendant - applicant had specifically pleaded about the agreement to sell in his favour but still no action was taken by the plaintiff at that time. That suit was also hotly contested and ultimately, the same was dismissed on 09.11.2009 vide judgment *Annexure P3*. No appeal was filed against that judgment and thus, it attained finality.

2.3.3 It was further pleaded in the application under Order 7 Rule 11 CPC that in the above circumstances, the present suit was barred by law, as matter in controversy raised in the present suit was directly and substantially in issue in the earlier suit and had already been set at rest in the earlier litigation vide judgment & decree dated 09.11.2009 *Annexure P3* and, therefore, that decision was binding upon the plaintiff.

2.4 In reply to the above application, plaintiff did not specifically deny the filing of the previous suit and the dismissal thereof. However, she prayed for dismissal of the application.

3. Learned Civil Judge (Junior Division) Ludhiana, vide order dated 09.09.2016 accepted the application of the appellant- defendant under Order 7 Rule 11 CPC on the ground that the suit was barred by the principle of res-judicata as contained in Section 11 CPC and further held that the suit had been filed with a motive to frustrate the execution petition. The application was accordingly allowed and the plaint was ordered to be

**SAO No.5 of 2022 (O&M)**

rejected.

4. However, the appeal filed by the plaintiff- Jaspal Kaur against the aforesaid order, was allowed by the Appellate Court of learned Additional District Judge, Ludhiana vide impugned order dated 09.12.2021. Learned Additional District Judge referred to the provisions of Order 7 Rule 11 CPC and observed that at the time of deciding an application under Order 7 Rule 11 CPC, the Court was required to look into the averments of the plaint only and not the averments of the written statement. It was observed further that in the present case, the reading of the plaint did not reveal any such material, by which it could be stated that suit was barred by any law. Learned Additional District Judge referred to ***S.S. Ahluwalia Vs. S.P.S. Ahluwalia, 2012 (4) RCR (Civil) 140 and Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors., Civil Appeal No.4665 of 2021*** decided by Hon'ble Supreme Court on 09.08.2021. Thus, accepting the appeal, it was held that application under Order 7 Rule 11 CPC could not be allowed and plaint could not be rejected at this stage.

Contentions of the appellant:

5.1 Assailing the afore-said order by way of present appeal, it is contended by Ld. counsel for the appellant- defendant Somnath that the suit was clearly barred under Order 21 CPC, as whatever objections the plaintiff had, the same could have been decided under Order 21 Rule 101 CPC, as all the questions relating to rights, title or interests in the property arising between the parties out of the proceedings raised by the third party can be disposed of by the Executing Court and not by a separate suit. It is pointed out by learned counsel that in the execution filed by the appellant, objections were in fact filed by the plaintiff, on the same ground that sale deed dated 19.09.1995 was wrongly executed in favour of her husband Makhan Singh and that the sale deed was required to be registered in her name. However, those objections were dismissed by the trial Court on 16.04.2015 vide *Annexure P2* by holding that Jaspal Kaur i.e. plaintiff was

**SAO No.5 of 2022 (O&M)**

not the owner of the suit property.

5.2 It is argued that not only above, even the earlier suit filed by the plaintiff way back in 1998 was also dismissed in 2009 vide *Annexure P3*. Learned Appellate Court failed to observe that issues involved in the present suit are the same as already adjudicated upon by the trial Court not only in Civil Suit No.308 of 1998, dismissed on 09.11.2009 but also in the execution filed by the defendant- appellant.

5.3 Learned counsel further contends that the present suit is even barred under the law of limitation, inasmuch as the sale deed of 1995 has been challenged by the plaintiff in 2014.

5.4 It is also the contention of Id. counsel that a litigant, who is dishonest and has approached the Court with concealment of the material facts, cannot be given any advantage by the Court.

5.5 In order to support his contention, counsel for the appellant has relied upon the following authorities:-

- i. *T. Arivandandam Vs. T.V. Satyapal*, 1978 RLR 17;
- ii. *Sameer Singh and another Vs. Abdul Rab and others*, 2015(1) ALT 27;
- iii. *Yogesh Maini Vs. State of Punjab and others*, CWP-12476-2020 (O&M) decided on 21.09.2020;
- iv. *Holy Health and Educational Society (Regd.) Vs. Delhi Development Authority*, 1993) R.C.R. (Civil) 531;
- v. *K.K. Modi Vs. K.N. Modi and others*, 1998(3) SCC 573;
- vi. *T. Palanisamy Gounder Vs. Sankara Ramanathan and others* 2000(2) MLJ 656;
- vii. *Surender Mohan (deceased) by LR Vs. Baldev Singh and others*, 2019 (3) Law Herald (P&H) 2241; and
- viii. *N. Babu Vs. S. Shanmugam and others*, 2012(51) R.C.R. (Civil) 206

5.6 With all the above submissions, prayer is made for setting aside

SAO No.5 of 2022 (O&M)

the impugned order passed by learned Additional District Judge, Ludhiana and to restore the order of the trial Court, whereby the plaint was rejected by accepting the application under Order 7 Rule 11 CPC.

Contentions of the respondent:

6. Refuting all the afore-said contentions, it is contended by learned counsel for the plaintiff- respondent that learned Appellate Court has rightly allowed the appeal by rejecting the application under Order 7 Rule 11 CPC, as the plea of res-judicata cannot be considered at this stage and for that reason, plaint cannot be rejected. Learned counsel has referred to *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors. (supra)* and *S.S. Ahluwalia Vs. S.P.S. Ahluwalia, 2012 (4) RCR (Civil) 140 (supra)*.

7. This Court has considered submissions of both the sides and have appraised the entire record thoroughly and carefully.

8. On perusal of the paper book and hearing both the sides, the facts in chronological order emerge as under:

- Makhan Singh is the owner of the suit property by virtue of a registered sale deed dated **19.09.1995**.
- Said Makhan Singh executed an agreement to sell dated **02.08.1997** so as to sell the suit property to Somnath (*present appellant*).
- Based upon the agreement to sell dated 02.08.1997, Som Nath filed Civil Suit No.270 on **03.08.1998** against Makhan Singh seeking specific performance of agreement and possession of the suit property.
- After approximately four months, i.e. on **15.12.1998**, Jaspal Kaur, the wife of Makhan Singh, filed separate suit No.308 of 1998, claiming to be owner of the suit property. This suit was filed against her husband – Makhan Singh; and one Harchand Singh Grewal, without

SAO No.5 of 2022 (O&M)

impleading Som Nath as a party. On an application moved under Order 1 Rule 10 CPC, Som Nath was impleaded as defendant No.3 in that suit, who in his written statement referred about the agreement to sell dated 02.08.1997 in his favour executed by Makhan Singh. He further pleaded that it is Makhan Singh, who was owner in possession of the suit property on the dint of sale deed dated 19.09.1995. Said suit filed by Jaspal Kaur was dismissed on **09.11.2009** by specifically holding that it is Makhan Singh, who was the true owner of the suit property on the basis of sale deed dated 19.09.1995 and that he had entered into the agreement to sell the same with Som Nath. **No appeal** against this judgment and decree dated 09.11.2009 (*Annexure P3*) was filed by Jaspal Kaur.

- On the other hand, Civil Suit No.270 of 1998 filed by Som Nath for specific performance was decreed on **10.08.2009**.
- In the execution filed by Somnath on **24.10.2009**, sale deed in his favour was executed on **11.03.2013** pursuant to the order of the Court and warrants of possession was directed to be issued.
- As the judgment debtor- Makhan Singh, his wife Jaspal Kaur (plaintiff of present suit N: 20 of 2014) and other family members created hindrance in delivery of the possession, the Executing Court directed for providing police help for delivering the possession.
- However, it is at this stage that during pendency of the execution, present Civil Suit No.20 of 2014 was filed by Jaspal Kaur on **15.07.2014** again on the ground that she is the owner in possession of the suit property on the basis of sale deed dated 19.09.1995 and that name of Makhan Singh was wrongly incorporated in the sale deed.
- It is very important to notice at this stage itself that in the said suit, Jaspal Kaur did not make even a whisper about the earlier suit

SAO No.5 of 2022 (O&M)

No.308 of 1998 filed by her on the same cause, which had been dismissed on 09.11.2009.

- In this suit filed on 15.07.2014 also, Jaspal Kaur did not implead Somnath as a party and rather, the said suit was filed against Makhan Singh, Balwant Singh, Harchand Singh and two others. As Som Nath came to know about this suit, he filed application under Order 1 Rule 10 CPC, which was allowed on **15.12.2014** (*vide Annexure P5*) and then he moved the application under Order 7 Rule 11 CPC by disclosing the factum regarding the earlier litigation.

Court analysis:

9. With above factual background facts, let us take note of Order 7 Rule 11 CPC, which reads as under:-

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:

—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;**
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be

**SAO No.5 of 2022 (O&M)**

extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

10. As the above provision would reveal that when the plaint is sought to be rejected under Clause (d) of Rule 11 of Order 7 CPC, only this much is to be seen that from the statement in the plaint, the suit is barred by any law. Meaning thereby, at the time of considering the question as to whether the plaint should be rejected under Clause (d), apart from the averments made in the plaint, no contention of the defendant or the averment made by him in the application under Order 7 Rule 11 CPC can be considered.

(A) Rejection of plaint on ground of res-judicata (when there is no concealment of facts) -

11.1 The legal position regarding under Clause (d) of Order 7 Rule 11 CPC and particularly when the plaint is sought to be rejected on the ground of res-judicata, was considered by Hon'ble Supreme Court in ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.(supra)***.

11.2 In that case i.e., ***Srihari Hanumandas Totala (supra)***, the facts were that one Leela Vithal Kamat, was the title holder of the suit property. On her death, the property was mutated in the name of her two legal heirs. Said legal heirs allegedly took a loan from Karnataka State Finance Corporation (KSFC) and mortgaged the suit property as security for repayment of the loan. As loan was not repaid, KSFC auctioned the property. Sale deed dated 8.8.2006 was executed in favour of the highest bidder, i.e. auction purchaser. However, possession was not delivered to him and, therefore, he filed the Civil Suit for delivery of possession on various grounds. In the said suit, one of the legal heirs of Leela Vithal Kamat, filed the written statement alleging that KFSC had no authority to

SAO No.5 of 2022 (O&M)

put the property to sale; that he had not taken any loan from KFSC nor had any transaction with it and that he had no concern with the borrower. Issue was framed in this suit filed by auction purchaser to the effect as the *'whether KFSC had no authority to put the suit property for sale?'*

11.3 Said legal heir also filed an independent suit challenging the sale deed dated 08.08.2006 in favour of the auction purchaser. He also sought partition of the suit property and possession of his share. His contention was the same to the effect that after the death of his mother, suit property was inherited by him and his brother; that it is his brother, who had mortgaged the suit property with KFSC without his consent and that KFSC without investigating the title and verifying the title documents, had accepted the suit property as security and that he was not bound by the said mortgage.

11.4 The suit filed by the auction purchaser was decreed, against which the second brother who claimed to have not taken the loan, filed the appeal. On the other hand, the auction purchaser moved an application under Section 10 CPC in the second suit filed by abovesaid second brother, on the ground that issues involved in both the cases were directly and substantially the same. The trial Judge allowed the application and the proceedings in the subsequent suit were accordingly stayed, against which the said brother who had alleged to have not taken the loan, filed appeal before the High Court. The decree of the previous suit as filed by auction purchaser was upheld by the High Court. Thereafter, the auction purchaser moved an application under Order 7 Rule 11 CPC in the second suit for rejection of the plaint. That application was dismissed by the trial Judge and the order was upheld in revision by the High Court.

11.5 It is against the above rejection of application under Order 7 Rule 11 CPC that the auction purchaser/ his successor-in-interest filed the appeal before the Hon'ble Supreme Court.

11.6 Hon'ble Supreme Court, after referring to the provisions of

SAO No.5 of 2022 (O&M)

Order 7 Rule 11 CPC held as under:-

“16 Order 7 Rule 11(d) [of CPC](#) provides that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. Before proceeding to refer to precedents on the interpretation of Order 7 Rule 11(d) [CPC](#), we find it imperative to refer to [Section 11](#) of CPC, which defines res judicata:

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

17. [Section 11](#) of the CPC enunciates the rule of res judicata : a court shall not try any suit or issue in which the matter that is directly in issue has been directly or indirectly heard and decided in a ‘former suit’. Therefore, for the purpose of adjudicating on the issue of res judicata, it is necessary that the same issue (that is raised in the suit) has been adjudicated in the former suit. It is necessary that we refer to the exercise taken up by this Court while adjudicating on res judicata, before referring to res judicata as a ground for rejection of the plaint under Order 7 Rule 11. Justice R C Lahoti (as the learned Chief Justice then was), speaking for a two Judge bench in [V. Rajeshwari v. T.C. Saravanabava \(2004\) 1 SCC 551](#) discussed the plea of res judicata and the particulars that would be required to prove the plea. The court held that it is necessary to refer to the copies of the pleadings, issues and the judgment of the ‘former suit’ while adjudicating on the plea of res judicata:



“11. The rule of res judicata does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is a rule of estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause.

13. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of res judicata and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in [Syed Mohd. Salie Labbai v. Mohd. Hanifa \[\(1976\) 4 SCC 780\]](#) the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in [Gurbux Singh v. Bhooralal \[AIR 1964 SC 1810 : \(1964\) 7 SCR 831\]](#) placing on a par the plea of res judicata and the plea of estoppel under [Order 2 Rule 2 of the Code of Civil Procedure](#), held that proof of the plaint in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings. Their Lordships of the Privy Council in *Kali Krishna Tagore v. Secy. of State for India in Council [(1887-88) 15 IA 186 : ILR 16 Cal 173]* pointed out that the plea of res judicata cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say,

these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit.”

(emphasis supplied)

18. At this stage, it would be necessary to refer to the decisions that particularly deal with the question whether res judicata can be the basis or ground for rejection of the plaint. In [*Kamala & others v. KT Eshwara Sa, \(2008\) 12 SCC 661*](#), the Trial Judge had allowed an application for rejection of the plaint in a suit for partition and this was affirmed by the High Court. Justice S B Sinha speaking for the two judge bench examined the ambit of Order 7 Rule 11(d) [of the CPC](#) and observed:

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

(emphasis supplied)

The [Court further held](#):

“23. The principles of res judicata, when attracted, would bar another suit in view of [Section 12](#) of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.”

(emphasis supplied)

The above view has been consistently followed in a line of decisions of this Court.

11.7 Hon’ble Supreme Court, after referring to various other precedents on the subject, concluded as under:

20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

- (i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;
- (ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

SAO No.5 of 2022 (O&M)

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused."

11.8 After considering the factual and legal position of the case before Hon'ble Supreme Court, it was then held as under:

"21. In the present case, a meaningful reading of the plaint makes it abundantly clear that when the first respondent instituted the subsequent suit, he had been impleaded as the second defendant to the earlier suit (OS No. 103/2007) that was instituted on 13 March 2007. The first respondent instituted the subsequent suit, OS 138/2008 though he had knowledge of the earlier suit. The plaint in the subsequent suit which was instituted by the first respondent indicates that he was aware of the mortgage executed in favour of KSFC, that KSFC had executed its charge by selling the property for the recovery of its dues and that the property had been sold on 8 August 2006 in favour of the predecessor of the appellant. As a matter of fact, the plaint contains an averment that there was every possibility that the first respondent may suffer a decree for possession in OS 103/2007 which "has forced" the first respondent to institute the suit for challenging the legality of the sale deed. Given the fact that an argument was raised in the previous suit regarding no challenge having been made to the auction and the subsequent sale deed executed by the KFSC, it is possible that the first respondent then decided to exercise his rights and filed the subsequent suit. Be that as it may, on a reading of the plaint, it is evident that the first respondent has not made an attempt to conceal the fact that a suit regarding the property was pending before the civil court at the time. It is also relevant to note that at the time of institution of the suit (OS No. 138/2008) by the first respondent, no decree

SAO No.5 of 2022 (O&M)

had been passed by the civil court in OS No. 103/2007. Thus, the issues raised in OS No. 103/2007, at the time, had not been adjudicated upon. Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the Trial Court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No. 103/2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The Trial court and High Court were correct in rejecting the application under order 7 Rule 11(d)."

12. Two material facts are required to be noted from the afore-said observations and findings of the Hon'ble Supreme Court to the effect that in the subsequent suit, the plaintiff had not concealed any fact regarding the earlier suit. He had disclosed everything about the previous suit and the written statement filed by him and also the mortgage deed executed by his brother on the basis of which the earlier suit had been decreed. Secondly, it was observed by the Hon'ble Supreme Court that at the time, when the second suit was filed, the earlier suit had not been decided and so, the principle of res-judicata was not applicable.

13. It is in the light of the afore-said distinguishable facts that it is required to be seen, as to whether the principles laid down ***Srihari Hanumandas Totala (supra)*** as above, are applicable to the facts of the present case or not.

(B) Whether plaint is to be rejected on ground of res-judicata (when there is concealment of material facts) -

14. In the present case, as has already been noted that earlier Civil Suit No.308 of 1998 filed by plaintiff- Jaspal Kaur was dismissed by the trial Court on 09.11.2009 and that decree had attained finality, as no appeal was filed against it. In the said judgment, it was specifically held that it is Makhan Singh, the husband of the plaintiff, who was the owner of the

**SAO No.5 of 2022 (O&M)**

property and who had executed an agreement to sell in favour of Somnath and thus, Jaspal Kaur was held to be not the owner of the suit property.

15. In the present suit filed in 2014, plaintiff- Jaspal Kaur did not even make a whisper about the earlier instituted suit filed by her and the dismissal thereof.

16. The question is as to whether in the afore-said facts and circumstances, plaintiff should be given any advantage or premium for the concealment of the material facts from this Court. In other words, whether the court should extend its helping hand to a dishonest litigant, who approaches the court by concealing material facts. Thus, court is also confronted with a question in these circumstances. On one hand, there is a litigant, who approaches the court and discloses each and every fact about the previous litigation and result thereof, in his subsequent suit. On the other hand, there is another litigant, who in his subsequent suit, has concealed every fact regarding the previous litigation and the result thereof, and thus, is guilty of the concealment of the material fact. Whether the court should side with such a dishonest litigant.

17. If the contention of Ld. counsel for the respondent is accepted and the reasoning given by the First Appellate Court is allowed, it would mean that in the case of first litigant, who has disclosed everything honestly before the Court, his plaint would be liable to be rejected on the ground of res-judicata, as the same issue had already been decided; whereas on the other hand, in the case of dishonest litigant of the second instance (such as the present case), since he has not disclosed anything about the previous litigation, then his plaint cannot be rejected, as only the averments of the plaint are to be considered and the court cannot know about previous litigation from the plaint.

18. This Court is of the clear view that no premium or advantage can be given to a dishonest litigant, who comes to the Court by concealing all the material facts from the Court. Rather, such a litigant should be

SAO No.5 of 2022 (O&M)

thrown out of the Court with heavy costs so as to deter him to approach the Court again with the vexatious litigation.

19.1 In this regard, it is necessary to notice the provisions of Order 7 Rule 1 CPC which read as under:-

"1. Particulars to be contained in plaint. -The plaint shall contain the following particulars:-

- (a) the name of the Court in which the suit is brought;*
- (b) the name, description and place of residence of the plaintiff;*
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;*
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
- (e) the facts constituting the cause of action and when it arose;*
- (f) the facts showing that the Court has jurisdiction;*
- (g) the relief which the plaintiff claims;*
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and*
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admit."*

19.2 Apart from the above particulars, which are required to be mentioned in the plaint, clause (j) was also inserted by Punjab, Haryana and Chandigarh by way of a notification No. G.S.R. 17/C.S. 5/1908/S.122/78, dated 15.03.1991, which is to the following effect:-

"(j) A statement to the effect that no suit between the same parties, or between parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results."

**SAO No.5 of 2022 (O&M)**

20. It is, thus, clear that in every plaint, plaintiff is required to specifically mention that no suit between the same parties or between the parties under whom they or any of them claim, litigating on the same grounds, has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction and if so, what was the result of that previous lis.

21. As noted earlier that in present case, the plaintiff dishonestly concealed the material fact from the Court about the previous litigation of 1998 instituted by her, which was dismissed in 2009.

(C) Effect of the concealment of material facts in the plaint -

22. What is the effect of the concealment of material facts in the plaint from the court, is required to be considered. In ***K.K. Modi Vs. K.N. Modi and others (supra)***, it has been observed by Hon'ble Supreme Court as under:-

"43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

44. One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a

SAO No.5 of 2022 (O&M)

given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

23. The effect of concealment of the material facts has also been considered by the Division Bench of Madras High Court in **Murugesan v. Sri Kundramadai Ayyanar Koil etc., (1997) 2 L.W 780**, wherein it has been held that it is a settled proposition of law that it is the duty of the person invoking the jurisdiction of the Court to make a full and true disclosure of all relevant facts. He should not suppress any fact. If he makes a statement, which is false, or conceals something from the court, which is relevant, the Court will refuse to go into the matter. It was further held that the suit as well as the injunction application are liable to be dismissed, not only on the ground that there is suppression of material fact but also on the ground that the very basis of the suit does not exist.

24. Thus, as per the settled proposition of law, it is the duty of the person invoking the jurisdiction of the Court to make a full and true disclosure of all relevant facts. He should not suppress any fact. If he makes a statement, which is false, or conceals something from the court, which is relevant, the Court will refuse to go into the matter. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue, which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process

SAO No.5 of 2022 (O&M)

of court. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of court's discretion whether such proceedings should be stopped or not and this discretion has to be exercised with circumspection.

25. On the question, as to whether a plaint can be rejected under Order 7 Rule 11 CPC, when the suit is clearly found to be barred by principle of res-judicata contained in 11 CPC , it has been held by this Court in ***Surender Mohan (deceased) by LR Vs. Baldev Singh and others (supra)*** as under:-

“15. Consequently, I would find no ground to hold that a second suit instituted by the defendant in the first lis was maintainable, raising an issue which had already been decided in the previous lis to which he was a party. Though, undoubtedly, the law settled on the issue is that an application filed under the provisions of Order 7 Rule 11 of the CPC would not normally be rejected on a principle of res judicata being raised, such a plea often being a mixed question of law and fact, however, in the present case, where the second suit is obviously and wholly one seeking a declaration on an issue already clearly settled in the previous lis between the same parties, and the relief claimed in the second suit to that effect is very clearly visible from a plain reading of the plaint itself, then I would hold that the application has to be accepted and the plaint on that ground alone, despite the fact that previous revisions filed by the present petitioner have been dismissed by this court.”

26. Apart from above, in ***T. Arivandandam Vs. T.V. Satyapal (supra)***, Hon'ble Supreme Court considered the question about rejection of a plaint under Order 7 Rule 11 CPC, wherein it was found that it is manifestly fictitious and meritless. It will be apt to reproduce the observations made by Hon'ble Mr. Justice V.R. Krishna Iyer in that case, which are as under:-

“5. We have not the slightest hesitation in condemning the petitioner for the

SAO No.5 of 2022 (O&M)

gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII Rule 11 [C.P.C.](#) taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under [Order X C.P.C.](#) An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

27. It is clear from the legal position explained by Hon'ble Supreme Court as well as this High Court that when it is a clear case of re-litigation and the concealment of material facts from the Court, the Court should strike off the complaint at the earliest instance and the filing of the subsequent suit is a clear abuse of the process of the Court and that should not be allowed.

(D) Bar of limitation & rejection of complaint -

28. Apart from the fact that complaint of the present suit as filed by Jaspal Kaur is liable to be rejected on the ground of res-judicata as the plea raised by her in the second suit was already decided in the first litigation decided in 2009, the said complaint deserves to be rejected on other grounds also. In the complaint *Annexure P4* filed on 15.07.2014, while seeking a decree of declaration to the title of the suit property and seeking injunction to direct the official defendants to make necessary correction in the sale deed dated 19.09.1995, plaintiff- Jaspal Kaur pleaded her cause of action in para

SAO No.5 of 2022 (O&M)

No.7 of the plaint, as under:-

“7. That cause of action arose to the plaintiff against the defendants when the name of the plaintiff was wrongly mentioned in the sale deed as Makhan Singh s/o Gurdial Singh instead of Jaspal Kaur D/o Gurdial Singh and a few days back when the defendant no.1 and 2 refused to get corrected the sale deed to the effect of name of vendees and when the defendant no.3 threatened to alienate the property finally yesterday when the defendants refused to make correction in their respective cause of action.”

29. From the above-said para of the plaint, it is clear that cause of action is stated to have arisen in favour of the plaintiff, when sale deed was executed in favour of Makhan Singh by incorporating his name instead of the name of plaintiff- Jaspal Kaur. The sale deed was executed in September, 1995, whereas the present suit has been filed for seeking declaration and mandatory injunction in July, 2014 and thus, the suit is clearly barred by limitation and on this ground also, the plaint is liable to be rejected in view of Order 7 Rule 1 clause (d) CPC.

[E) Maintainability of suit & rejection of plaint in the light of provisions of Order 21 CPC -

30. Moreover, as noticed earlier that suit for specific performance filed by Som Nath in the year 1999 was decreed on 10.08.2009 and in the execution filed by him, sale deed was executed in his favour on 11.03.2013 pursuant to the order passed by the Court and then warrant of possession was issued, when the judgment debtor – Makhan Singh, his wife Jaspal Kaur and other family members obstructed the delivery of possession and the Court was compelled to order for providing police help.

31. Order 21 Rule 97 of the Code of Civil Procedure deal with the resistance or obstruction to possession of the immoveable property. The decree holder can complain about the said obstruction by moving the necessary application and the appropriate order can be passed by the

SAO No.5 of 2022 (O&M)

Executing Court. Rule 99 further provides that if a person other than the judgment debtor is dispossessed of the immoveable property by the decree holder for possession of his property or where property has been sold in execution by the purchaser thereof, such a person who is being dispossessed may make an application to the Court complaining of such dispossession and such application is to be adjudicated upon by the Court in accordance with the provisions made herein before.

32. Order 21 Rule 101 CPC is very material in this regard, which reads as under:-

“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.”

33. It is, thus, clear that all questions relating to right, title or interest in property, arising between the parties are to be decided by the Executing Court and not by an independent suit.

34. In the present case also, in case the plaintiff- Jaspal Kaur, who was obstructing the delivery of possession had any right whatsoever as claimed by her in the suit property, she could have filed the objections before the Executing Court but cannot be allowed to maintain the independent suit as filed by her and for this reason also, the plaint is liable to be rejected.

35.1 In this regard, reference can be made to **Sameer Singh and another Vs. Abdul Rab and others (supra)** wherein Hon’ble Supreme Court has held as under:-

“13. To appreciate the submissions raised at the Bar, it is necessary to

SAO No.5 of 2022 (O&M)

appreciate the whole gamut of provisions contained in Order XXI, Rules 97 to 103 [of CPC](#) and the fundamental objects behind the same. Rule 97 deals with resistance or obstruction to possession by the holder of a decree for possession or the purchaser of any such property sold in execution of a decree. It empowers such a person to file an application to the Court complaining of such resistance or obstruction and requires the Court under sub-rule (2) to adjudicate upon the application in accordance with the provisions provided therein. Rule 99 deals with dispossession by decree-holder or purchaser. It stipulates that where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. The Court is obliged to adjudicate such an application. ***Thus this rule, as is manifest, includes any person other than the judgment-debtor.*** Rule 101 deals with the questions to be determined. It provides that 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 an application and not by a separate suit and for the said purpose, the executing court has been conferred the jurisdiction to decide the same. Rule 100 deals with orders to be passed upon application complaining of dispossession. It is apt to reproduce the said rule:-

“Rule 100. Order to be passed upon application complaining of dispossession.- Upon the determination of the questions referred 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 possession of the property or dismissing the application; or
- (b) pass such order as, in the circumstances of the case, it may deem fit.”

14. Rule 98 deals with orders after adjudication. Sub-rule (1) provides that upon the determination of questions referred to in Rule 101, the Court in

SAO No.5 of 2022 (O&M)

accordance with determination and subject to provisions of sub-rule (2) therein make an order allowing the application and directing that the applicant be put in possession of the property or dismissing the application or pass such other order, as in the circumstances of the case it may deem fit. As far as sub-rule (2) is concerned, the same is not necessary to be taken note of for the purposes of present case. Rule 103 which is significant reads as follows:-

“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 if it were a decree.”

15. The submission of the learned counsel for the appellants is that if the scheme underlying the said Rules is appositely appreciated, it is clear as crystal that the legislature in order to avoid multiplicity of proceedings has empowered the executing court to conduct necessary enquiry and adjudicate by permitting the parties to adduce evidence, both oral and documentary, and to determine the right, title and interest of the parties and, therefore, such an order has been given the status of a decree. As has been put forth by him, a proceeding in terms of Rule 97 or Rule 99 is in the nature of a suit and the adjudication is similar to that of a suit and when in the case at hand, the Court has declined to embark upon any enquiry by calling for reply, recording evidence and appropriately adjudicating the controversy, the order passed cannot be regarded under Rule 103 of Order XXI as a decree. In this context, the authorities that have been commended to us need to be carefully noticed.”

35.2 Thereafter, Hon'ble Supreme Court referred to the various precedents and then concluded in para No.21 as under:-

“21. 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

SAO No.5 of 2022 (O&M)

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 XXI, 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.”

36. In another case titled ***Ved Kumari (Dead through her Legal Representative) Dr. Vijay Aggarwal Vs. Municipal Corporation of Delhi through its Commissioner, AIR 2023 Supreme Court 4155***, a decree for possession was passed. During execution, judgment debtor stated that suit land was not in his possession, as it had been encroached upon. The execution petition was dismissed on the ground that the encroachers were not party to the suit and, therefore, decree could not be executed. Setting aside the said order, it was held by the Hon'ble Supreme Court that it was the duty of the Executing Court to issue warrant of possession for effecting delivery of the suit land to the decree holder and if any resistance was offered by any stranger to the decree, the same could have been adjudicated in accordance with Order 21 Rule 97 to 101 CPC and that the Executing Court was directed to execute the decree by effecting delivery of physical vacant possession to decree holder in accordance with provisions of Order 21.

37. Hon'ble Supreme Court in yet another case in ***Jini Dhanrajgir and another Vs. Shibu Mathew and another, AIR 2023 Supreme Court 2567***, held as under:-

“17. [Section 47](#) of the CPC, being one of the most important provisions relating to execution of decrees, mandates that the court executing the decree shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit. What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal

SAO No.5 of 2022 (O&M)



of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree. Should there be any resistance offered or obstruction raised impeding due execution of a decree made by a court of competent jurisdiction, the provisions of Rules 97, 101 and 98 of Order XXI enable the executing court to adjudicate the inter se claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits. No wonder, the provisions contained in Rules 97 to 106 of [Order XXI of the CPC](#) under the sub-heading “Resistance to delivery of possession to decree-holder or purchaser” have been held by this Court to be a complete code in itself in [Brahmdeo Chaudhary \(supra\)](#) as well as in a decision of recent origin in [Asgar vs. Mohan Verma, \(2020\) 16 SCC 230](#). In the latter decision, it has been noted that Rules 97 to 103 of Order XXI provide the sole remedy both to parties to a suit as well as to a stranger to the decree put to execution.

18. In [Bhanwar Lal vs. Satyanarain, \(1995\) 1 SCC 6](#), this Court held that when any person, whether claiming derivative title from the judgment-debtor or sets up his own right, title or interest de hors the judgment debtor, the executing court whilst executing the decree, in addition to the power under Rule 35(3), is empowered to conduct an enquiry whether the obstruction by that person is legal or not.

19. This Court in [Noorduiddin v. Dr. K.L. Anand, \(1995\) 1 SCC 242](#), reiterated that the executing court was bound to adjudicate the claim of an obstructionist and to record a finding allowing or rejecting the claim which was laid before the executing court, the person being neither a party to the earlier proceedings nor the decree being passed against him.

20. Yet again, in [Babulal v. Raj Kumar & Ors., \(1996\) 3 SCC 154](#), this Court after setting aside the order impugned held that a determination is required to be conducted under Order XXI Rule 98 before removal of the obstruction caused by the objector and a finding is required to be recorded in that regard. It was also held that the executing court was required to determine the question relating to when the appellants had objected to the execution of the decree as against those appellants who were not parties to the decree for specific performance.

SAO No.5 of 2022 (O&M)

21. The decision in [Brahmdeo Chaudhary \(supra\)](#) cited by Mr. Chitambaresh, is also to the same effect.

22. Considering the scheme of Order XXI Rules 97 to 106, this Court in [Silverline Forum Pvt. Ltd. v. Rajiv Trust & Anr., 17 \(1998\) 3 SCC 723](#), found it difficult to agree with the High Court that resistance or obstruction made by a third party to the decree put to execution cannot be gone into under Order XXI Rule 97. Referring to Rules 97 to 106, this [Court further held](#) that they were intended to deal with every sort of resistance or obstruction raised by any person and that Rule 97(2) made it incumbent on the court to adjudicate upon such complaint in accordance with the procedure laid down. This Court also proceeded to observe:

"It is clear that executing court can decide whether the resistor or obstructer is a person bound by the decree and he refuses 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".

23. The long line of precedents notwithstanding, it is indeed true that in terms of the ordainment of Rule 102 of Order XXI, Rules 98 and 100 thereof would not apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed."

Conclusion:

38. In view of the afore-said legal position, it is held that in case the plaintiff Japsal Kaur claim to be in possession of the suit land, she could have filed the objections under Order 21 CPC before the Executing Court in the execution filed by the decree holder- Som Nath, in whose favour a decree for specific performance has already been passed. In fact, Smt. Jaspal Kaur filed the objections before the Executing Court and the same



SAO No.5 of 2022 (O&M)

were dismissed by the Executing Court and for this reason also, the independent suit filed by her was not maintainable , and for this reason also, the plaint is liable to be rejected.

39. In view of the entire discussion as above, it is found that plaint is liable to be rejected for various reasons – concealment of material facts about previous litigation and the result thereof, res-judicata, bar of limitation and non-maintainability of the suit in view of provisions of Order 21 CPC.

40. As such, it is held that the impugned order passed by learned Additional District Judge, Ludhiana cannot be sustained in the eyes of law. The said order is hereby set aside. The order of the trial Court is hereby restored, whereby the application under Order 7 Rule 11 CPC filed by Som Nath was allowed, rejecting the plaint of Smt. Jaspal Kaur.

41. The present appeal is allowed accordingly.

September 09, 2024

renu

(DEEPAK GUPTA)

JUDGE

Whether Speaking/reasoned Yes
Whether Reportable Yes