2025 INSC 329

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3640-3642 OF 2025
(ARISING OUT OF SLP (C) NOS. 8490-8492 OF 2020)

PERIYAMMAL (DEAD) THROUGH LRS & ORS. ... APPELLANTS

VERSUS

V. RAJAMANI & ANR. ETC. ... RESPONDENTS

J U D G M E N T

J. B. PARDIWALA, J. :

For the convenience of exposition, this judgment is divided into the following parts: -

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1. Leave granted.

2. "*The seeker of justice many a time has to take long circuitous routes, both on account of hierarchy of courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breathes fear of receiving the fruits of that justice for which he has been aspiring to receive. To reach this stage is in itself an achievement and satisfaction as he, by then has passed through a long arduous journey of the procedural law with many hurdles replica of mountain terrain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings, the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of the hierarchy of courts was for a reasonable objective for conferring greater satisfaction to the parties that errors, if any, by any of the lower courts under the scrutiny of a higher court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seeker in his journey to justice. But this obviously is one of the causes of delay in justice. Of course, under this pattern the party wrongfully gaining within permissible*

limits also stretches the litigation as much as possible. Thus, this has been the cause of anxiety and concern of various authorities, legislators and courts. How to eliminate such a long consuming justice? We must confess that we have still to go a long way before true satisfaction in this regard is received. Even after one reaches the stage of final decree, he has to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice.

The courts within their limitation have been interpreting the procedural laws so as to conclude all possible disputes pertaining to the decretal property, which is within its fold in an execution proceeding, i.e., including what may be raised later by way of another bout of litigations through a fresh suit. Similarly, legislatures equally are also endeavouring by amendments to achieve the same objective. The present case is one in this regard. Keeping this in view, we now proceed to examine the present case.

In interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted. The procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice

is not to be followed." **[*Shreenath & Anr. v. Rajesh & Ors*** reported in **(1998) 4 SCC 543]**

3. We are tempted to preface our judgment with the above quoted observations of this Court made almost three decades back, as the situation remains the same even today. It is said that the woes for the litigants in this country start once they are able to obtain a decree in their favour and are unable to execute and reap its fruits for years together.

4. These appeals arise from a common judgment and order passed by the High Court of Judicature at Madras dated 18.12.2019 in Civil Revision Petition (NPD) No. 4311 of 2011 ("**first revision petition**") and Civil Revision Petition (NPD) No. 2151 of 2015 ("**second revision petition**") filed by the appellants herein under Section 115 of the Code of Civil Procedure, 1908 (the "**CPC**") by which the High Court rejected the revision petitions and thereby affirmed the orders passed by the Additional Subordinate Judge, Salem ("**ASJ**") one allowing the application filed by the respondent Nos. 1 and 2 herein, respectively, under Section 47 of the CPC and rejecting the application filed by the appellants herein seeking amendment in the execution petition.

A. FACTUAL MATRIX

5. One Ayyavoo Udayar, the father of the appellants herein entered into an agreement of sale dated 30.06.1980 with Ramanujan and Jagadeesan, the respondent nos. 3 and 4 herein (the "**vendors**") respectively, whereby the respondents agreed to sell the property under dispute (the "**suit property**") for Rs. 67,000/-. An earnest money of Rs. 10,000/- was paid by Ayyavoo Udayar while entering the agreement of sale. It was agreed between the parties that the balance of Rs. 57,000/- would be paid on or before 15.11.1980 upon receipt of which, the vendors would execute the sale deed.

6. On 15.11.1980, Ayyavoo Udayar issued a telegram to the vendors requesting that they should receive the balance consideration and execute the sale deed. The vendors sent a reply stating that they would execute the sale deed on 20.11.1980, however, no sale deed was executed even on the said date. Since the vendors did not come forward to execute the sale deed despite notice and talks of settlement, Ayyavoo Udayar was compelled to file the O.S. No. 514 of 1983 before the Subordinate Judge, Salem praying for specific performance of agreement of sale i.e. the execution and registration of the sale deed in respect of the suit properties and delivery of actual physical

possession of the same. The relief prayed for in the plaint by the original plaintiff Ayyavoo Udayar is reproduced below:

> *"Therefore the plaintiff prays that this Honourable Court may be pleased to pass a decree for specific performance.*
> *(a) Directing the defendants 1 and 2 to execute and register the sale deed in respect of the entire suit properties for the sum of Rs. 67,000/- and deliver actual possession of the entire suit properties to the plaintiff, and if the defendants 1 and 2 fail to execute the sale deed;*
> *(b) The Court may be pleased to execute and register the sale deed in respect of the entire suit properties for Rs. 67,000/- in favour of the plaintiff and order delivery of possession of the suit properties to the plaintiff;*
> *(c) Directing the defendants 1 and 2 to pay the costs of the suit;*
> *(d) Directing the defendants 1 and 2 to deduct the value of the trees cut by them after the date of the suit agreement;*
> *(e) Granting such other relief or reliefs as the court may deem fit and necessary under the circumstances of the case and thus render justice."*

7. Ayyavoo Udayar impleaded the respondent Nos. 1 and 2 respectively herein in the O.S. No. 514 of 1983 along with the vendors. The respondent nos. 1 and 2 herein are the sons of the vendors' sister and were inducted into the suit properties to give an appearance that they were in possession of the said properties. Ayyavoo Udayar impleaded the respondent nos. 1 and 2 in order

to avoid any possible obstruction by them and to enable the appellants herein to take delivery of possession of the suit properties without multiplicity of proceedings. However, the respondent Nos. 1 and 2 herein thought fit not to contest suit and allowed the suit to proceed *ex parte* against them. The relevant portion of the plaint is reproduced below:

> "*10. Now that the time for filing the suit is likely to expire the plaintiff has been for the past one month requesting the mediators and the defendants 1 an 2 to see that the sale deed is executed and property delivered to the plaintiff after completing the registration formalities. But the defendants 1 and 2 would not heed to the words of the plaintiff nor to that of the mediators like Muthusami Udayar son of Arunachala Udayar of Masinaickampatti and Chinnasami Udayar of Ayothiapattinam.* ***On the other hand the 1st defendant seems to have inducted the defendants 2 and 3 into the suit properties to make it appear that they (defendants 3 and 4) are in possession of the suit properties. The defendants 3 and 4 are the 1st defendant's sister's sons. They are obliged to the defendants 1 and 2.*** *All the defendants are now, for the past one week giving out in the village by they would not on any account allow the plaintiff to have the sale deed executed in his favour or to enter into the suit property by any means. Hence the plaintiff is constrained to file this suit for specific performance.* ***The defendants 3 and 4 are added in order to avoid any possible obstruction by them and to enable the plaintiff to take delivery of possession without multiplicity of proceedings.*** *"*
>
> (Emphasis supplied)

8. The Additional Subordinate Judge, Salem on 02.04.1986 decreed the original suit as prayed for and directed the vendors to execute the sale deed within one month of the passing of the decree, failing which the court would execute the sale deed. Aggrieved by the said judgment and decree, the vendors preferred an appeal before the High Court. A single judge partly allowed the appeal and modified the decree to some extent. The respondent Nos. 1 and 2 did not appear in the appeal proceedings as well.

9. The second appeal preferred by the vendors before a division bench of the High Court was also dismissed on 19.03.2004 subject to the condition that the appellants herein would deposit a further sum of Rs. 67,000/- as consideration within a period of one month from the date of the order. Though the respondent Nos. 1 and 2 herein were parties to the second appeal yet they did not participate during the course of the hearing. Pursuant to the High Court's direction, the appellants deposited a sum of Rs. 67,000/- on 19.04.2004.

10. Thereafter, the vendors filed a special leave petition before this Court challenging the judgment of the High Court dated 19.03.2004, which came to be dismissed on 20.01.2006. The vendors thereafter preferred a review

petition against the said order which also came to be dismissed by this Court on 18.04.2006.

11. In the meantime, the appellants filed R.E.P. No. 237 of 2004 for execution of the sale deed in respect of the suit properties and for delivery of possession thereof. All the respondents herein were impleaded in the said execution petition and the vendors were named as the persons against whom the execution of the decree was sought. The said petition was dismissed on 03.12.2004 by the ASJ on the ground that a special leave petition filed by the vendors before this Court remained pending.

12. The appellants, aggrieved by the dismissal of the execution petition, filed Civil Revision Petition (NPD) No. 2032 of 2005 before the High Court and simultaneously filed another R.E.P. No. 244 of 2005 for getting the sale deed executed in respect of the suit properties and for delivery of possession thereof. The High Court *vide* its order dated 21.02.2006 allowed the CRP (NPD) No. 2032 of 2005 observing that the ASJ had provided no reason for dismissing the execution petition of the appellants except that the special leave petition filed by the respondents herein remained pending. Since the special leave petition before this Court came to be disposed on 20.01.2006, the order of the ASJ dated 03.12.2004 was set aside.

13. Consequent to the order of the High Court dated 20.01.2006, the proceedings in respect of the R.E.P. No. 237 of 2004 were restored and the appellants withdrew the R.E.P. No. 244 of 2005.

14. Thereafter, the vendors filed Civil Revision Petition (NPD) No. 1865 of 2007 before the High Court challenging the order of the ASJ accepting the deposit of Rs. 67,000/- made by the appellants on 19.04.2004 on the ground that such deposit was not made within a period of thirty days as per the order dated 19.03.2004 of the High Court. This revision petition came to be dismissed by the High Court on 10.07.2007 and it was observed that the appellants herein were late by one day in depositing the amount of Rs. 67,000/- because 18.04.2004 was the last day to deposit the amount and it was a holiday. Since the appellants had deposited the amount on the next working day, the deposit was considered as well within time.

15. On 17.08.2007, the Executing Court executed a registered sale deed in favour of the appellants on behalf of all the respondents to the original suit including the respondent Nos. 1 and 2 herein who were in possession of the property but did not hold any title in respect thereof.

16. Aggrieved by the inclusion of the names of respondent Nos. 1 and 2 in the sale deed, the vendors filed the Civil Revision Petition (NPD) No. 3916 of 2007 before the High Court for deletion of the names of the respondent Nos. 1 and 2 herein. The appellants also filed a memo in this regard and agreed to the deletion of the names of the respondent Nos. 1 and 2 from the sale deed. The High Court, by way of its order dated 08.01.2008 allowed the deletion of the names of the two respondents and directed the Executing Court to carry out the requisite rectifications to the sale deed in this regard. Accordingly, a rectification deed dated 25.01.2008 came to be executed removing the names of the respondent Nos. 1 and 2 herein as the vendors from the sale deed.

17. On 12.02.2008, the Executing Court passed an order for delivery of possession of the suit property to the appellants herein. Pursuant to the said order, the appellants along with the Village Administrative Officer, Surveyor and Court Amin reached at the site of the property to give effect to the order for delivery of possession. However, the handing over of the possession of the property was obstructed by the respondent No. 1 herein who threatened to self immolate himself if anybody dared to enter the property. As the

delivery of possession could not be effected, a delivery warrant and obstruction report were filed before the ASJ on 20.02.2008.

18. Subsequently, the respondent Nos. 1 and 2 herein filed an application dated 12.03.2008 under Section 47 of the CPC ("**R.E.A. 163 of 2011**") before the ASJ on the following grounds:

    (1) no notice regarding execution of the sale deed and delivery of possession was served upon them due to which they were unable to avail a fair chance of putting forth their objections;

    (2) since their names were deleted from the sale deed so executed, the same was not binding upon them and the executing court had illegally added their names in the list of parties in the order for delivery of possession;

    (3) the appellants herein had acted fraudulently.

    An interim relief was also prayed for by the respondent Nos. 1 and 2 herein to stay the operation of the execution order, which directed delivery of possession of the suit property to the appellants.

19. After filing the execution application, the respondent Nos. 1 and 2 herein filed a petition before the Tehsildar, Vazhapadi for inclusion of their names in the cultivation account for the suit property retrospectively from 1974

submitting that they were in possession of the same since 1967. The series of orders delivered in this regard are detailed below:

a) The Tehsildar, Vazhapadi *vide* order dated 18.10.2008 held that the respondent Nos. 1 and 2 herein were in possession of the suit property and ordered that their names be entered in the cultivation account of the same. The Tehsildar, however, gave no finding regarding inclusion of the respondents' names retrospectively from 1974.

b) The respondent Nos. 1 and 2 herein, aggrieved by the order dated 18.10.2008, filed W.P. No. 5032/09 before the Telsildar, Vazhapadi to get their names registered in the cultivation account in respect of the suit property from 1974 onwards. While the hearing of the writ petition was going on, the vendors, whose names were registered as pattadharars for the suit property, gave a statement that the respondent Nos. 1 and 2 had been in possession of the said land for a long time and that the vendors did not have any objection to the inclusion of their names in the cultivation account of the suit property. Upon examination of relevant documents and the Village Administrative Officer, the Tehsildar recorded that as the respondent Nos. 1 and 2 had been in enjoyment of the suit property for a long time, the inclusion of their

names in the cultivation account for the year 2008 was correct. However, their names cannot be entered in the cultivation account as persons being in possession of the suit property from 1974 onwards.

c) Aggrieved by the non-inclusion of their names in the cultivation account for the suit property retrospectively from 1974, the respondent Nos. 1 and 2 herein appealed to the Revenue Divisional Officer. It was held by the Revenue Divisional Officer *vide* order dated 29.10.2009 that there is no provision in law to enter the names of the respondent Nos. 1 and 2 in the cultivation accounts retrospectively from 1974 as such accounts had already been closed and hence, no alteration could be made therein. The respondents were granted leave to file an application before the Tehsildar for issuance of a certificate that they were in possession of the suit property since 1974.

20. The R.E.A. No. 163 of 2011 was initially rejected by the ASJ. Consequently, the respondent Nos. 1 and 2 herein filed Civil Revision Petition (NPD) No. 2354 of 2008 before the High Court. The High Court *vide* order dated 25.04.2011 set aside the ASJ's order, which rejected the execution application and observed that the same was not passed on merits. The High Court directed the lower court to dispose of the Execution Application filed

under Section 47 of the CPC read with Section 151 thereof and pass appropriate orders within the time specified in the order.

21. Pursuant to the directions of the High Court, the ASJ *vide* order dated 12.08.2011 allowed R.E.A. No. 163/2011 of the respondent Nos. 1 and 2 herein and held as follows:

a) The High Court, while executing the sale deed, ordered for deletion of the names of the respondent Nos. 1 and 2 herein as they were not the vendors who had title to sell the suit property.

b) The respondent Nos. 1 and 2 by way of oral and documentary evidence have established that they were in possession of the suit property. On the other hand, the appellants herein did not examine any independent witnesses to establish that the respondent Nos. 1 and 2 were not in possession of the suit property.

c) Further, in both the execution petitions namely R.E.P. No. 237 of 2004 and R.E.P. No. 244 of 2005, the appellants did not seek any relief for delivery of possession from the respondent Nos. 1 and 2.

d) The appellants can take over possession only after taking appropriate legal steps/proceedings.

22. Aggrieved by the order of the ASJ, the appellants filed Civil Revision Petition (NPD) No. 4311 of 2011 (hereinafter referred to as the "**first revision petition**") before the High Court. The grounds taken in the said petition are summarized below:

a) The order of the ASJ dated 12.08.2011 rejecting the appellants' prayer on the ground that no notice of execution of the sale deed by the court was served to the respondent Nos. 1 and 2, was erroneous since notice to show cause against execution is necessary only in certain circumstances as laid down in Order XXI Rule 22 of the CPC. It was submitted that no notice was mandatory in the case on hand as the execution petition was filed by the decree-holder within two years of the confirmation of the decree by the High Court.

b) The Executing Court failed to consider that the respondent Nos. 1 and 2 were impleaded as defendants in O.S. No. 514 of 1983 and were aware of the decree passed against them therein on 02.04.1986. Further, the respondent Nos. 1 and 2, by their own admission, were fully aware of the decree for delivery of possession passed against them and as such the allegations that they were not aware of the events subsequent thereto

cannot be a ground to obstruct the execution of decree by way of a petition under Section 47 of the CPC.

c) Subsequent to the execution of agreement to sell between the appellants and vendors, the respondent no. 1 herein had filed an O.S. No. 1384 of 1980 for permanent injunction against Ayyavoo Udayar, the vendors, respondent no. 2 herein as well as his father, Venkatasamy Naidu. The said suit was subsequently dismissed. However, such actions of the respondent No. 1 would indicate that the contesting respondents herein were aware about the agreement to sell before the institution of the suit for specific performance in which they were parties. Therefore, the respondent Nos. 1 and 2 had no good reason to contend that they were not aware of the proceedings especially when they continued to remain parties to the dispute in the original suit till it attained finality by way of a judgment of this Court.

d) The Executing Court also did not take into consideration the fact that the execution application of the respondent Nos. 1 and 2 could not have been allowed because a sale deed had already been executed by the ASJ in favour of the appellants and against the vendors. The prayer for delivery of possession was a consequential relief. The rejection of the

said prayer by the Executing Court based on hyper technical objections raised by the respondent Nos. 1 and 2, could have been cured by amending the prayer in R.E.P. No. 237 of 2004.

23. A week after the first revision petition i.e. on 08.11.2011, the appellants filed the R.E.A. No. 14 of 2012 under Order VI Rule 17 read with Section 151 of the CPC for amendments in the R.E.P. No. 237 of 2004. The appellants sought to record that the respondents' SLP and Review Petition pursuant to the proceedings in the original suit for specific performance, came to be dismissed by this Court. Further, the appellants sought amendment of the prayer made in the execution petition asking for execution of the sale deed on behalf of the vendors and delivery of possession against all the respondents. The vendors in their counter-statement alleged that the said execution application was preferred by the appellants with a *mala fide* intention and seeking amendment to the array of parties against whom execution was prayed for, after a lapse of seven and a half years was legally untenable.

24. The appellants, on 10.04.2013, sought for one another amendment by way of R.E.A. No. 145 of 2013 seeking to disclose about the other execution petitions filed after R.E.P. No. 237 of 2004. The vendors filed a counter-

statement to the same alleging that said amendment application was filed with an ulterior motive of delaying the execution proceedings. The respondent Nos. 1 and 2 herein also filed a counter submitting that they were not parties to the R.E.P. No. 237 of 2004 as they were not issued notice regarding the same. They came into knowledge of the execution proceedings only after the court Amin visited the property to deliver possession of the property to the appellants.

25. The ASJ *vide* two separate orders dated 24.04.2015 allowed the execution petition on the ground that the appellants had not made any prayer in the execution petition against the respondent Nos. 1 and 2 and since the respondent Nos. 1 and 2 had proved their possession of the suit property, the appellants could take possession only after taking necessary legal steps. It was held that since the appellants had not preferred any appeal or revision against the order dated 12.08.2011, the same had become final and binding on the parties. As a result, the orders allowing R.E.P. 237 of 2004 would have no effect and therefore, the question of amendment of the same did not arise. The appellants challenged the order dated 24.04.2015 by way of Civil Revision Petition (NPD) No. 2151 of 2015 (hereinafter referred to as the "**second revision petition**").

Impugned Order of the High Court

26. The High Court vide its common order (the "**impugned order**") held as follows:

a) The ASJ's order allowing the respondents' execution application under Section 47 was correct on the aspect of serving of notice. The appellants although were aware of the fact that the respondent Nos. 1 and 2 were in possession of the suit property yet they did not ask the court to serve notice to the said respondents. Since no notice was provided to the respondent Nos. 1 and 2, the court could not have passed a direction for delivery of possession.

b) The appellants did not take any steps to amend the execution petition R.E.P. No. 237 of 2004 till the disposal of the respondents' execution application R.E.A. No. 163 of 2011 under Section 47 of the CPC. Once the said application was allowed, there remained no execution proceedings pending so far as the respondent Nos. 1 and 2 were concerned. Therefore, the amendment applications filed in R.E.A. No. 14 of 2012 and R.E.A. No. 145 of 2015 were held to be non-maintainable.

c) The appellants did not prefer any appeal against the order of the ASJ dated 12.08.2011 allowing the application under Section 47 of the CPC, till 2015 and no reasons were assigned by the appellants for such delay.

d) Thus, the High Court held that there was no material irregularity in the orders of the ASJ dated 12.08.2011 and 24.04.2015 respectively and upheld the same.

B. SUBMISSIONS OF THE APPELLANTS

27. Mr. Senthil Jagadeesan, the learned senior counsel appearing on behalf of the appellants submitted that the High Court could be said to have committed a serious error in passing the impugned order for the following reasons:

a. The appellants had not filed any appeal or revision against the order of the ASJ allowing the application under Section 47 of the CPC, till 2015. However, the appellants had challenged the said order by preferring the first revision petition as early as 31.10.2011 and the same was decided by the High Court by way of the impugned order.

b. The appellants had filed the execution petition on 19.07.2004 that is, after four months of confirmation of the decree in the original suit by the High Court. The learned counsel invited our attention to the

provision in Order 21 Rule 22 of the CPC, which stipulates that a notice to show cause against execution is required to be served compulsorily only if the application for such execution is made, *inter alia*, more than two years after the date of the decree. He submitted that in view of the said provision, no separate notice was required to be issued to the judgment debtors in the case on hand as the execution petition was filed well within the time period of two years.

c. The contention of the respondent Nos. 1 and 2 that they were not aware about the execution petition was erroneously accepted by the High Court. The High Court failed to notice that the respondent Nos. 1 and 2 had appeared through their counsel in CRP No. 2032 of 2005 by way of which the R.E.P. No. 237 of 2004 was restored. Therefore, the respondents were fully aware about the resumption of proceedings before the Executing Court but still chose not to participate therein. Though served with the summons in the original suit proceedings, yet they chose not to appear, contest or challenge the decree therein as well.

d. The appellants' application for amending the execution petition was squarely within the framework of the decree and ought to have been allowed by the High Court in light of the judgments of this Court in

State of Bihar & Ors. v. Bihar Rajya Bhumi Vikas Bank Samiti reported in **(2018) 9 SCC 472** and ***Salem Advocate Bar Association v. Union of India*** reported in **(2005) 6 SCC 344**. It has been held in these decisions that rules of procedure are made to advance the cause of justice and not to defeat it. The courts ought to adopt such construction of rules or procedure that prevents miscarriage of justice.

28. Mr. Jagadeesan further submitted that a clear case of collusion between the vendors and the respondent Nos. 1 and 2 is made out. The attempt is to frustrate the decree and thereby deprive the appellants of its fruits. The same is evident from the following facts:

    a. The names of the respondent Nos. 1 and 2 were deleted from the sale deed executed by the Executing Court at the behest of the vendors, who facilitated the filing of objections by respondent Nos. 1 and 2 by getting their names removed from the sale deed.

    b. The respondent Nos. 1 and 2 applied for registration of their names in the cultivation account of the suit property only in 2008 that is, four years after the confirmation of the decree by the High Court. Though they had prayed for inclusion of their names in the revenue records from 1974 onwards, yet the revenue authorities allowed for such inclusion

only from 2008 onwards. Further, their names were included in the revenue records solely because of the "no objection" from the vendors and not because of any independent right that they possessed.

C. SUBMISSIONS OF THE RESPONDENT NOS. 1 & 2

29. Mr. Rahul Jain, the learned counsel appearing on behalf of the respondent Nos. 1 and 2 addressed himself on the following points:

    i. The decree travelled beyond the judgment,

    ii. No effective proceedings were instituted by the appellants against the respondent Nos. 1 and 2 herein,

    iii. The respondent Nos. 1 and 2 have a lawful title and have been in lawful and uninterrupted possession of the suit properties since 1967,

    iv. The appellants had not instituted any suit for recovery of possession, and

    v. The civil courts inherently lacked jurisdiction to decide the question of possession as the respondent Nos. 1 and 2 were cultivating tenants.

30. The learned counsel submitted that the original suit was for specific performance of the agreement of sale of the suit property and respondent Nos. 1 and 2 were not parties to the said agreement. They were impleaded in

the original suit stating that they were in possession of the suit property. Even though the appellants were aware of the said fact, yet they did not pray for dispossession of the respondent Nos. 1 and 2 and no pleadings were made against them.

31. Further, the trial court's order dated 02.04.1986, having considered the issue of possession, decreed the suit "as prayed for". The decree of the trial court dated 02.04.1986 is reproduced below:

> *"This suit coming on 21.3.1986 for final hearing before me in the presence of Thiru. A. Duraisami, Counsel for the plaintiff and of G. Perumal counsel for the defendants and having stood over till this day for consideration this court doth order and decree as follows:-*
>
> 1. *that the defendants 1 and 2 do execute the sale deed for Rs. 67000/- in favour of the plaintiff in respect of the entire suit properties described hereunder within one month from this date and register the same;*
> 2. *that the plaintiff to deposit the balance of Rs. 57000/- into court to perform the sale agreement;*
> 3. *that the defendants 1 and 2 are at liberty to withdraw the said sum from the court: after executing the sale deed and register it in favour of the plaintiff.*
> 4. *<u>that the defendants do deliver possession of the suit properties to the plaintiff</u>; (...)"*

32. The learned counsel submitted that while Clause 4 of the decree directed that "*the defendants do deliver possession of the suit properties to the plaintiff*",

such general language should be read within the context of the wordings in the other directions issued by the decree, the reasoning of the trial court in its judgment, and the specific prayer sought in the original plaint, as the suit was for specific performance.

33. Mr. Jain relied on the decision of this Court in ***Rajinder Kumar v. Kuldeep Singh*** reported in **(2014) 15 SCC 529** to submit that the question of alternative reliefs does not arise in case of a suit for specific performance, when it is decreed as prayed for. The relevant portion of the judgment relied upon is reproduced below:

> *"21. If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to the alternative relief would arise. Therefore, there is no question of any ambiguity. As held by this Court in Topanmal Chhotamal v. Kundomal Gangaram and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties."*

34. As regards the question whether the appellants had instituted an effective proceeding against the respondent Nos. 1 and 2, the learned counsel submitted that:

a. The respondents were not a necessary party to the original suit for specific performance as they were neither parties to the agreement of sale nor *lis pendens* purchasers of the suit properties. The appellants sought no relief of possession against the respondent Nos. 1 and 2 in the original suit despite impleading them as parties because they were in actual physical possession of the suit properties.

b. In R.E.P. 237 of 2004, the appellants sought relief only against the vendors and not against the respondent Nos. 1 and 2 despite impleading them in the execution petition. Further, no notice was served to the said respondents and as a result, the respondents were not afforded an opportunity to be heard by the Executing Court.

c. The respondent Nos. 1 and 2 were also not parties to the sale deed registered by the Executing Court and their names were deleted therefrom without any objection by the appellants.

35. The learned counsel, with a view to establish that the respondent Nos. 1 and 2 were in lawful and uninterrupted possession of the suit properties since 1967, submitted as follows:

    a. The respondent Nos. 1 and 2 stated that their father was in possession of the suit property since 1967 and was cultivating the land. After his demise in 1983, the respondents have been in continuous possession of the suit property.

    b. Further, the order of the Revenue Divisional Officer dated 29.10.2009 held that the respondent Nos. 1 and 2 have been in enjoyment of suit property for over 40 years and the certificate of possession issued in this regard recognizes the same.

36. On the question whether the appellants were supposed to bring a separate suit for recovery of possession, Mr. Jain submitted that:

    a. The appellants, despite being aware that the respondent Nos. 1 and 2 were in possession of the suit property, brought no suit for recovery of possession against them. The onus was on the appellants to establish that they had a better title to the suit property as against the continuous possession claimed by the respondent Nos. 1 and 2.

b. The learned counsel relied on this Court's decision in ***Smriti Debbarma v. Prabha Ranjan Debbarma*** reported in **2023 SCC OnLine SC 9** to contend that the appellants could not have claimed possession by way of mere execution proceedings without first establishing a better title to the properties in question. The relevant portion of the judgment relied upon is reproduced below:

> "*(...) The defendants cannot be dispossessed unless the plaintiff has established a better title and rights over the Schedule 'A' property. A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner. A decree of possession cannot be passed in favour of the plaintiff on the ground that defendant nos. 1 to 12 have not been able to fully establish their right, title and interest in the Schedule 'A' property. The defendants, being in possession, would be entitled to protect and save their possession, unless the person who seeks to dispossess them has a better legal right in the form of ownership or entitlement to possession.*"

c. Further, the appellants, being the decree holders, failed to file an application to seek recovery of possession under Order XXI Rule 97, after having been obstructed by the respondents. Such process could not have been circumvented by the appellants by seeking an amendment to

their execution petition, especially after the respondents' Section 47 application had already been allowed by the Executing Court.

37. Mr. Jain further submitted that the respondent Nos. 1 and 2 are cultivating tenants in continuous possession of the suit property and accordingly are protected under Sections 3 and 6 of the Tamil Nadu Cultivating Tenants' Protection Act, 1955 respectively which imposes a bar on the jurisdiction of the civil courts in matters of eviction of cultivating tenants.

38. The learned counsel relied on this Court's decision in ***Sunder Dass v. Ram Prakash*** reported in **(1977) 2 SCC 662** to submit that a challenge to the validity of a decree can be set up even at the stage of execution proceedings, in cases where the civil court inherently lacks jurisdiction. The relevant portion of the judgment relied upon is reproduced below:

> "*3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral*

proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh v. Chaman Paswan [AIR 1954 SC 340 : (1955) 1 SCR 117] and Seth Hiralal Patni v. Sri Kali Nath [AIR 1962 SC 199 : (1962) 2 SCR 747]. It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent."

39. In the last, the learned counsel submitted that the Executing Court and High Court were correct in allowing the application under Section 47 to afford the respondent Nos. 1 and 2 to prove their long and continuous possession of the suit property as cultivating tenants.

D. ISSUES TO BE DETERMINED

40. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

(i) Whether the courts below committed any error in upholding the objections raised by the respondent nos. 1 and 2 herein against execution of the decree on the claim of being in possession of the suit property in their capacity as cultivating tenants?

(ii) Whether the respondent Nos. 1 and 2 are entitled to the protection of the Tamil Nadu Cultivating Tenants' Protection Act, 1955 and could the Executing Court have decided the question of validity of the decree on this ground?

E. ANALYSIS

(i) Relevant statutory provisions

41. Before adverting to the rival submissions canvassed on either side, we must refer to few relevant provisions of the CPC, which read thus :-

Section 47 reads as follows:

> *"**47. Questions to be determined by the Court executing decree.***
>
> *(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation 1.-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

Order XXI, Rule 35 reads as follows:

*"**35. Decree for immovable property**.-*
(1) 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 to 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.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum,

or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession."

Order XXI, Rule 97 reads as follows:

*"**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.
2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate the upon the application in accordance with the provisions herein contained."

Order XXI, Rule 98 reads as follows:

*"**98. Orders after adjudication**.*
(1) 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),-

(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 other order as, in the circumstances of the case, it may deem fit.

(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."

Order XXI, Rule 99 reads as follows:

*"**99. Dispossession by decree-holder or purchaser** :-*
(1) 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.
(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

Order XXI, Rule 100 reads as follows:

*"**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 other order as, in the circumstances of the case, it may deem fit."

Order XXI, Rule 101 reads as follows:

*"**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."

Order XXI, Rule 103 reads as follows:

*"**103**. **Orders to be treated as decrees.***
Where any application has been adjudicated upon under rule 98 or rule 100 the other 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."

(ii) Nature of application under Order XXI Rule 97

42. It is a settled position of law that an application under Order XXI Rule 97 may be made in respect of obstruction raised by any person in obtaining possession of the decretal property. The courts adjudicating such application have to do so in accordance with Rule 101 and hold a full-fledged inquiry to determine all questions including questions relating to right, title or interest in the property arising between the parties.

43. This Court in ***Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*** reported in (**1997) 3 SCC 697**, has held that :-

> "*4. (...) A conjoint reading of Order XXI Rules 97, 98, 99 and 101 projects the following picture:*
>
> *(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order XXI Rule 35, then the decree-holder has to move an application under Order XXI Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the Court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order XXI Rule 98 sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a*

decree under Order XXI Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order XXI Rule 99, CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order XXI Rule 98 sub-rule (1) CPC the Executing Court can direct the stranger applicant under Order XXI Rule 99 to be put in possession of the property of if his application is found to be substanceless it has to be dismissed. Such an order passed by the Executing Court disposing of the application one way or the other under Order XXI Rule 98 sub-rule (1) would be deemed to be a decree as laid down by Order XXI Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order XXI Rule 101.

5. In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree- holder against such an obstructionist in only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on

re- issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI Rule 99. Order XXI Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order

XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him With respect the High Court has totally ignored the scheme of Order XXI Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order XXI Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard or merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non- compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree- holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that

multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI Rules 97 and 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.

***6.**(...) **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 dehors 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 decree-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. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person** (...)"*

(Emphasis supplied)

44. In ***Shreenath (supra)***, the application under Order XXI Rule 97 was filed by the tenants who were not parties to the suit. The question was whether the tenants could maintain an application under Order XXI Rule 97. This Court while interpreting the words 'any person' held that any person includes even persons not bound by the decree. Paragraphs 10 and 11 read thus :-

"10. Under sub-clause 1 order 21, Rule 35, the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by he decree. Order 21, Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the Court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21, rule 99 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by " any person". this may be either by the person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree holder, in such case, may make an application to the Executing Court complaining such resistance, for delivery of possession of the property. ***Sub-clause (2) after 1976 substitution empowers the executing Courts when such claim is made to proceed to adjudicate upon the applicants claim in accordance with provisions contained hereinafter. This refers to Order 21, Rule 101 (As amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21, Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit, By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstructed by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening***

the scope of power so that the Executing court could adjudicate the claim made in any such application under order 21, Rule 97. Thus by the use of the words 'any person' it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.

11. So, under Order 21, Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to relegate itself to the long drawn out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that order 21, Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21, Rule 36 only symbolic possession is given where tenant is in actual possession. Order 21, rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. 'Any person' , as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including stranger."

(Emphasis supplied)

45. In ***Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr.*** reported in **1998 (3) SCC 723**, a three Judge Bench of this Court has observed that a third party to the decree including the transferee pendente lite can offer resistance or

obstruction and his right has to be adjudicated under Order XXI Rule 97 of CPC. The relevant portion of the said judgment is reproduced below:

> *"9. 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.*
>
> *10.* ***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.

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14. ***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.*** *"*

(Emphasis supplied)

46. This Court, in ***NSS Narayan Sarma & Ors. v. Goldstone Exports (P) Ltd. & Ors***., reported in **(2002) 1 SCC 662**, has held as under:-

"15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy.

Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree holder entitled to possession of the property encounters obstruction from any person. From the provisions in these rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with all issues relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared 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 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. ***On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This***

clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting the relevant issues arising in the case.

--xxx--

19. From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree."

(Emphasis supplied)

47. In ***Samir Singh and Anr. vs. Abdul Rab***, reported in **(2015) 1 SCC 379**, this Court, after considering its previous judgment in ***Brahmadeo Chaudhary (supra)*** has held thus:-

"26. The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. ***It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property.*** *The self-contained Code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order 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. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different. (...)"*
>
> (Emphasis supplied)

48. A conjoint reading of the relevant provisions and the principles laid down by this Court makes it clear that in execution of decree for possession of immovable property, the executing court delivers actual physical possession of the decretal land to the decree holder. Rule 35 confers jurisdiction on the executing Court to remove any person, who is bound by the decree and who refuses to vacate the property. The words "any person who is bound by the decree", clearly mandate that removal can only be of a person who is bound by the decree. Rules 97 to 101 deal with situation when execution is obstructed or resisted by "any person" claiming right, title or interest in the property. The words "any person" include even a stranger to a decree resisting the decree of possession as not being bound by a decree or by claiming independent right, title or interest to the property.

49. Thus, Rule 97 not only provides remedy to a decree holder in obtaining possession of an immovable property but also to a stranger who obstructs or resists delivery of possession of the property by claiming derivative title from the judgment debtor or independent right, title or interest in the decretal property. Whereas, Rule 99 gives right to a third party claiming right, title or interest in the property to seek restoration of the decretal property. Suffice it to say that the remedy under Rule 99 is available when a person claiming right to the decretal property is already dispossessed.

50. Rule 101 enjoins upon the executing Court dealing with application under Rule 97 or 99 to determine all questions including questions relating to right, title or interest in the property, arising between the parties and relevant to the adjudication of the application. As held by this Court in ***Silverline Forum (supra)*** the question that the executing court is obliged to determine under Rule 101 must possess to adjuncts viz. (i) that such question should have legally arisen between the parties and (ii) such question must be relevant for consideration and determination between the parties. Upon adjudication of such questions, the executing court is under an obligation to pass appropriate order as contemplated under Rule 98 or 100, as the case may be. When eventually such order is passed, it would be treated as decree

and no separate Suit would lie against such order. It therefore follows that the only remedy is to prefer an appeal before the appropriate court against such deemed decree.

(iii) Section 47 of the CPC vis-à-vis Order XXI Rule 97 of the CPC

51. Under Section 47 of the CPC, questions arising between the parties to the suit relating to the execution, discharge or satisfaction of the decree are covered whereas under Order XXI, Rule 97 read with rule 101 of the CPC, questions including those relating to right, title or interest in the property arising between the parties to the proceeding on an application under Rule 97 or Rule 99 of Order XXI are to be determined by the executing court. The language of Rule 97 provides that where the holder of a decree for possession of immovable property 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. The language used is "obstructed by any person". It may be by the judgment-debtor or by a third person. Sub-rule (2) of the said Rule 97 further provides that where an application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions thereunder contained.

Sub-rule (2) of Rule 98 of Order XXI, further provides that 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, he shall direct that the applicant be put into, possession of the property. Rule 101 of Order XXI provides 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."*

52. Thus the cumulative effect of all these rights read together is that if an application under Order XXI, Rule 97 is made, then its determination will be under Rule 101 and then Rule 103 further provides that where any application has been adjudicated upon under Rules 98 or 100, the order made thereon shall have the same force and will be subject to the same conditions as to an appeal or otherwise as if it were a decree. Under Section 47 of the CPC all questions relating to the execution, discharge or satisfaction of the

decree, have to be determined by the executing court whereas under Rule 101 all questions including question relating to right, title or interest in the property arising between the parties to the proceedings have to be determined by the executing court. Section 47 is a general provision whereas Order XXI Rules 97 and 101 deal with a specific situation. Moreover, Section 47 deals with executions of all kinds of decrees whereas Order XXI, Rules 97 and 101 deal only with execution of decree for possession. Apart from that, earlier, i.e., prior to the amendment, every order falling under Section 47 was appealable (as the terms 'decree" included the order under Section 47 of the CPC) whereas now only certain orders as provided for under Order XXI have been made appealable.

53. In such circumstances referred to above the application of the respondents No. 1 and 2 under Section 47 of the CPC bearing R.E.A. No. 163 of 2011 was in substance an application for determination of their possessory rights under Order XXI Rule 97.

54. This Court in ***Bhanwar Lal v. Satyanarain***, reported in **(1995) 1 SCC 6**, has held that even an application filed under Section 47 would be treated as an application under Order XXI Rule 97 and an adjudication is required to be conducted under Rule 98. Dispossession of the applicant from the property

is not a condition for declining to entertain the application. The relevant portion of the judgment is reproduced below:

> "***5.*** *The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102.* ***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 dehors 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 decree-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.*** *Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.*
>
> ***6.*** *When the appellant had made the application on 25-5-1979 against Satyanarain, in law it must be only the application made under Order 21, Rule 97(1) of CPC.* ***The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule.*** *On technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of res judicata which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost.*

> ***7.*** *In the above view we have taken, the High Court has committed grievous error of jurisdiction and also patent illegality in treating the application filed by the appellant as barred by limitation and the third one on res judicata.* ***Once the application, dated 25-5-1979 was made, the Court should have treated it to be one filed under Order 21, Rule 97(1) CPC.*** *The question of res judicata for filing the second and third applications does not arise. Under these circumstances the appellate court, though for different reasons was justified in directing an enquiry to be conducted for removal of the obstruction or resistance caused by Satyanarain under Order 21 Rules 35(3) and 97(2) and Order 21, Rules 101 and 102 of CPC."*
>
> (Emphasis supplied)

55. Before we proceed further, we must look into some part of the reasonings of the Executing Court as well as the High Court.

56. The Executing Court in its order dated 12.08.2011 observed as under:

> *"1. The petition is filed by the petitioners against the respondents under Section 47 CPC stating that they are in possession of the suit properties; that their objections should be enquired into and that the execution petition should be dismissed.*
>
> *2. Gist of the Petition:*
> *The petitioners are defendants, in O.S.No.514/83. It was decided against the petitioners. The petitioners are not aware of anything that has happened after the judgement dated 2.4.86. On 20.2.08 the Court Amin, Respondents, the Village Administrative Officers and few others came to the suit property, tried to vacate the petitioners and take*

possession. In E.P.No.237/04, the petitioners were not served with any notice. When they approached their Advocate and stated the details, he told that the E.P. was filed against Ramanujam and Jagadeesan.

Thereafter, the petitioners have filed this petition of objection. The respondents have filed R.E.P.No.237/04 praying for execution of the Sale Deed for the suit property. The petitioners are added for namesake and no notice is served upon the petitioners. Having impleaded these petitioners in the execution petition, not sending notice to them is legally unsustainable. The respondents have filed E.P.No.244/05 adding the petitioners as parties. But notice is not sent to the petitioners. The E.P. was closed as not pressed.

On the basis of C.R.P.No.2032/05, E.P.No.237 /04 is taken on file. Vihen the Revision is pending before the High Court, the respondents have filed an execution petition. The respondents have not approached the court with clean hands. Even after E.P.No.237 /04 is taken on file, no notice was sent to the petitioners. A sale deed dated 17.8.2007 was executed on behalf of the petitioners also. Thereafter, another deed was written on 25.1.08 by removing the names of the petitioners. The sale deed will not bind the petitioners. To show that the suit properties are in the possession and enjoyment of the petitioners from 1967 till date, the Adangal register is filed. The petitioners will be put to irreparable loss if delivery is ordered. The petition is to be allowed.

3. The gist of the Counter Statement filed by the 7th respondent adopted by the respondents 1 to 6 and 8 is as follows:

The petition filed by the petitioners is not maintainable. The petitioners are parties to O.S.No.514/83 and also the subsequent proceedings thereafter. The petitioners are the 1st defendant Ramanujam's sister's sons. The 1st petitioners filed a suit in O.S.No.1384/1980 against Ayyavu Udayar, Ramanujam and others for permanent injunction. In the said suit, Ramanujam objected the claim of the petitioners and the suit was dismissed on 29.7.1982. As the petitioners were continuously troubling the father of the respondents, they were added as defendants 3 and 4 in the suit O.S.No.514/83. The defendants 1 and 2 filed an appeal A.S.No.469/86 before the High Court adding the petitioners also as parties. After the death of Ayyavu Udayar, these respondents were added as respondents 4 to 11 therein. On 29.9.2000, the column 6 of the decree in O.S.No.514/83 was removed and the appeal was dismissed. During the pendency of the appeal, the 1st respondent and his son entered into an agreement with Arivazhagan to sell the property.

Against the dismissal of the appeal, the defendants 1 and 2 filed LP.A. No.62/2001 against the petitioners and the respondents. As per the Order in LPA, the respondents deposited a further sum of Rs.67,000/- before the Court on 19.4.04. During the pendency of E.P.No.237/04, the defendants 1 & 2 filed SLP No.18184/2004 before the Supreme Court against the petitioners and the legal heirs of Ayyavu Udayar. when a Memo was filed before this Court about the pendency of the SLP, this Court dismissed

the E.P. After the High Court Order, the execution petition 237 / 04 was taken on file, on endorsement E.P.No.244/05 was dismissed as not pressed. The LPA was dismissed on 20.1.2006. The defendants 1 & 2 filed a review petition No.359/06 and the same was dismissed on 18.4.06. The petitioners are aware of all the proceedings upto the Supreme Court arid they were also parties in the proceedings. The 1st petitioner Rajamani entered into an agreement with one P.R. Jayakumar, Advocate. O.S.No.197/87 is now pending as 327/10. The petitioners do not have rights over the suit properties. They do not have any rights w object delivery of possession. The petitioners are not in possession of title suit properties. The petition is to be dismissed.

4. Whether the petition is bound to be allowed?

5. On the side of the petitioners, PW-1 was examined and Exhibits P-1 to P-11 were marked. On the side of the respondents, R- 1 was examined and Exhibits R-1 to R-16 were marked.

6. <u>ORDER</u>:

Both the sides argued their case on the basis of the petition and the reply filed by them. The case records were considered. Stating that the petitioners are in possession of the suit properties of O.S.No.514/83, on the side of the petitioners, the 2nd petitioner Ethirajulu was examined as PW-1 and 11 documents were marked. The order passed by the Tahsildar and RDO and six cultivation accounts are there.

On the side of the respondents, the Jill respondent was examined as RW-1and16 documents were marked.

On the side of the petitioners, it was argued that the petitioners are in possession and enjoyment of the suit properties and that Ramanujam & Jagadeesan are not in possession of the same. The petitioners have filed the cultivation account and the orders passed by the orders passed by the RDO and stated that they are in possession of the properties. The documents filed by the petitioners confirm the same. The petitioners have also stated that they are in possession of the properties from 1967.

On the side of the respondents, the arguments by the petitioners were vehemently opposed and it was stated that the petitioners do not have any right to object and oppose the delivery of possession. The Ld. Counsel for the petitioners argued that Ihe respondents have filed two execution petitions viz., E.P.No.237 /04 and E.P.No.244/05. On perusal of the court records, it is seen that the respondents filed E.P.No.237 /04 in 2004, got the sale deed and for delivery of possession of property made prayer only against Ramanujam and Jagadeesan. and that the petitioners are simply added as parties therein. When Ramanujam and Jagadeesan filed a Memo before this Court that SLP is pending, E.P.No.237 /04 was dismissed by this court. Challenging that order, the respondents filed Revision Petition for restoration of E.P.No.237 /04. In the meantime, the respondents filed the second execution petition E.P.No.244/05 against Ramanujam and Jagadeesan. A prayer which is made in E.P.No.237 /04 is also made in the second execution petition. In both the petitions, even though the names of Rajamani and Ethirajulu are stated, the prayer is made only against Ramanujam and Jagadeesan alone. The Senior Counsel appearing for the respondents has also accepted the same. A perusal of the records also show that it is true that no relief is claimed against the petitioners in column 9 of the E.P. and that prayer is made in column 9 only against Ramanujam and Jagadeesan as accepted by the Senior Advocate.

The Learned Counsel for the petitioners argued that no notice was sent to the petitioners herein in the E.P. and that notice was sent only to Ramanujam and Jagadeesan. A perusal of the court records also shows that notice is sent from the court in the execution petition only to Ramanujam and Jagadeesan. Even though the petitioners are shown as respondents 3 & 4 in the execution petition, no notice was sent to them, as no prayer was made against them. The Senior Advocate for foe respondents has not denied the same. In E.P. No.237/04, the court has executed the sale deed on behalf of Ramanujam, Jagadeesan, Ethirajulu and Rajamani. Challenging the said order, Ramanujam and Jagadeesan filed a revision before the Hon'ble High Court. The Hon'ble High Court has also directed that the names of Rajamani and Ethirajulu may be removed and this court has also executed a rectification deed removing the names of the petitioners. The RW-1 has also accepted this fact in the cross examination. The 1st respondent has also accepted in the cross examination that Ramanujam and Jagadeesan filed C.R.P. before the High Court stating that it is not proper to execute the sale deed on behalf of all the 4 persons; that it is ordered by the High Court to remove the names of Rajamani and Ethirajulu and execute the sale deed and that as the names of Rajamani and Ethirajulu are removed, the sale deed is not binding so far as Rajamani and Ethirajulu are concerned. It is accepted on the side of the respondents that the order and the sale deed will not bind the petitioners. During the course of the course of the argument by both sides, it was stated that O.S.No.52/ 11 is pending before this court; that O.S.No.608/08 was filed before the District Munsif Court and that on transfer, the same is pending as O.S.No.52/ 11. It is accepted by the respondents that a suit for partition in respect of 3.60 acres, which is one item of the suit property. So it is clear that the respondents have filed claiming half share in the undivided 3 acres and 60 cents.

When PW-1 was cross-examined on the side of the respondents, questions were asked about O.S.No.326/ 10, 327/10 and 328/10. No details were asked for about O.S.No.52/ 11. The petitioners by oral and documentary evidences have proved that they are in possession of the suit properties. The Senior Advocate on the side of the respondents has also admitted that when delivery was to be taken, the petitioners were m possession and that prevented the effecting of delivery, the petitioners stated that they will set fire to themselves by pouring kerosene. On the side of the respondents, no favourable answers were obtained by addressing detailed questions to PW-1. On perusal of foe records, it is seen that the petitioners were added in all foe proceedings only nominally and no specific prayer is made in the execution petition against the petitioners. While cross-examining PW 1 on the side of the respondents, suggestion was made that he is giving false evidence only to prevent the effecting of delivery and to drag on the proceedings and the PW-1 has denied the same. In RW 1's evidence, it is seen that the High Court has removed the names of Rajamani and Ethirajulu and as Rajamani and Ethirajulu are nominally added, it will not affect their rights. The judgement in O.S.No.514/83 win not bind the petitioners. In E.P. also, no Bhatta was paid for sending notice to the petitioners. In E.P.No.237/04 and E.P.No.214/05, relief is claimed in column 9 only against Ramanujam and Jagadeesan.

On the side of the respondents, it is proved that the possession of the suit property is wit.li Ramanujam and Jagadeesan. It is not stated in their reply that the possession of the suit property is with Ramanujam and Jagadeesan. No independent witness was examined to show that Rajamani and Ethirajulu are not in possession and that Ramanujam and Jagadeesan are in possession of the suit property. In both the execution petitions, no prayer is made against the petitioners for delivery of possession. The petitioners have proved that they are in possession.

> *The respondents have not produced the records relating to the proceedings in prior litigations. It is not proved that the possession of the property is with Ramanujam and Jagadeesan. As the respondents have not asked for any prayer in the execution petition against the petitioners herein to prove that the petitioners are in possession, as no acceptable reason is stated for not making any prayer against foe petitioners, which affects the case of the respondents, when the petitioners have proved their possessory rights over the suit properties and also as the respondents can take possession only after taking legal steps/ proceedings and also as the objections raised by the petitioners are acceptable, this court holds that in the interest of justice, the petition is to be allowed."*

57. Thus, according to the Executing Court, although the respondent nos. 1 and 2 herein were impleaded as parties in the execution petition filed by the appellants herein yet no notice was sent to them as there was no prayer made against them. Secondly, according to the Executing Court the respondent nos. 1 and 2 have been able to establish that they are in possession of the suit properties. In such circumstances, the objections raised by the respondent Nos. 1 and 2 herein under Section 47 of the CPC were upheld.

58. The High Court while affirming the order passed by the Executing Court proceeded altogether on a different footing. The High Court held as under:

> *"25. Even after knowing the possession of the respondents 3 and 4 / defendants, in the earlier occasion, after so many years, the decree holders, purposely did not ask the Court to send notice to respondents 3 and 4 / defendants. In fact*

the decree has also been passed against the respondents 3 and 4 / defendants, in which the respondents 3 and 4 /defendants, are directed to hand over possession to the decree holders. Only taking into consideration of the same, the learned First Additional Subordinate Judge, Salem, had allowed the REA No. 163 of 2011 vi de order dated 12.08.2011, by holding that since, no notice is served to respondents 3 and 4/ defendants, the Court cannot pass any order directing the respondents 3 and 4/ defendants, to deliver possession and thereby their right of possession, is no way effected. Therefore, this Court is of the considered view that the said proposition taken by the court below do not have any material irregularity.

26. However, it is the duty of the Court below to dismiss the REP No.237 of 2004, after allowing the application filed in REA No. 163 of 2011 (47 CPC). But the learned First Additional Subordinate Judge, Salem, without following the consequential procedure, allowed the revision petitioners/decree holders to file applications for amending the execution petition. Since the right of the respondents 3 and 4/ defendants are determined in REA No. 163 of 2011, the question of subsequent amendment in the same EP (REP No.237 of 2004) in Column No. 10 virtually does not arise on the date. So far as respondents 3 and 4 are concerned, no execution petition was pending. Under the said circumstances, amendment petitions are not maintainable. Therefore, this Court is of the firm view that the amendment applications filed in REA Nos. 14 of 2012 and 145 of 2013, are not maintainable in liminie.

27.The decree holders should have taken steps to amend the execution petition atleast after seeing the defence set up by the respondents 3 and 4/defendants in the REA No. 163 of 2011. But they have not taken any steps to amend the execution petition till the disposal of application filed under Section 47 CPC. More than that, the decree holder / revision petitioners, after knowing the result of REA No.

163 of 2011 in the year 2011, till 2015 they have not preferred any appeal against the order passed in the petition filed under Section 47 CPC. The reason for not filing the appeal or revision, immediately, is not explained on the side of the revision petitioners/decree holders. Though the procedure is meant to advance cause of justice, it is for the litigants to watch the proceedings, then and there, without any delay, with care and vigil.

28. Therefore, in the light, of the above discussions, this Court is of the opinion that the impugned order passed in the petition filed under Section 47 CPC is not having any material irregularity and thereby, the order dated 12.08.2011 made in REA No.163 of 2011 in REP No.237 of 2004 in OS No.514 of 1983, is sustained and CRP No.4311 of 2011, is dismissed.

29. Further, as already observed, after allowing the application filed under Section 47 CPC, the Execution Petition has to be closed. But for the reasons best known, the execution petition filed by the revision petitioners/ decree holders was kept alive and thereafter, the revision petitioners/ decree holders took the applications for amendment. In fact, the same is not maintainable. Therefore, the orders dated 24.04.2015 made in REA Nos.14 of 2012 and 145 of 2013 in REP No.237 of 2004 in OS No.514 of 1983, are also sustained and CRP Nos.2150 & 2151 of 2015, are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed."

59. It appears that the Courts below proceeded absolutely on a wrong footing. What the courts below should have considered is the simple fact whether the obstruction at the end of the respondent nos. 1 and 2 of the execution of the decree of specific performance and possession of the suit property could

be said to be bona fide and genuine. In other words, the consideration at the end of both the courts should have been whether the respondent nos. 1 and 2 herein being nephews of the original venders are acting in collusion with each other only with a view to frustrate and defeat the decree.

60. We are of the view that the Courts below failed to consider the following:

a. The respondent Nos. 1 and 2 respectively are nephews of the vendors and claim to have come into possession of the suit property in the year 1983 when the suit was first instituted by the appellants before the ASJ. They were impleaded in the original suit as the defendant Nos. 3 and 4 respectively.

b. The decree in favour of the appellants granting specific performance with possession was affirmed by the High Court on 19.03.2004 and the SLP against the order of the High Court stood dismissed on 20.01.2006. The respondent Nos. 1 and 2 respectively chose not to contest the original suit before the ASJ. They did not appear even before the High Court and this Court in the appeals filed by the vendors (judgment debtors).

c. The respondent Nos. 1 and 2 were also impleaded in the execution petition bearing R.E.P. No. 237 of 2004 and the order of the High Court

dated 21.02.2006 indicates that they had appeared through their advocate and were aware about the said execution petition.

d. The Executing Court executed the sale deed on 17.08.2007 and ordered for delivery of possession of the suit property to the appellants. When such order was sought to be effected by the appellants along with the Village Administrative Officer, the respondent no. 1 obstructed the delivery of possession.

e. Thereafter, the respondent Nos. 1 and 2 respectively filed an execution application R.E.A. No. 163 of 2011 on 12.03.2008 alleging fraud on the part of the appellants saying that they were not aware about the execution proceedings. At this stage, the respondent no. 2 brought onto the record for the first time that he along with the respondent no. 1 were cultivating the land constituting the suit property.

f. The respondent Nos. 1 and 2 respectively, after seven months i.e. on 18.10.2008 filed a petition before the revenue authorities for inclusion of their names in the cultivation account of the suit property and prayed that the same be done retrospectively from the year 1974. Though, the revenue authorities only allowed for inclusion of their names from 2008 onwards yet they were granted certificate that they were in possession

of the suit property from 1974 onwards. Such certificate was provided to them on the basis of the "no objection" given by the vendors (judgment debtors) as they were considered to be title holders of the said property. From the facts on record, it can be discerned that the revenue authorities were not made aware of the sale deed executed in favour of the appellants herein and that the title of the suit property stood transferred to them.

61. It further appears that the respondent Nos. 1 and 2 respectively, claiming to be cultivating tenants, had contended before the courts below that the civil court lacked jurisdiction to adjudicate on matters pertaining to possession of the suit property and eviction therefrom. The respondents submitted that the decree passed in the original suit was a nullity and therefore, the validity of the decree could be challenged even during the execution proceedings.

62. A harmonious reading of Section 47 with Order XXI Rule 101 implies that questions relating to right, title or interest in a decretal property must be related to the execution, discharge or satisfaction of the decree. The import of such a reading of the provisions is that only matters arising subsequent to the passing of the decree can be determined by an executing court under Section 47 and Order XXI Rule 101. Such reasoning is reinforced by the

decisions of this Court in ***C.F. Angadi v. Y.S. Hirannayya*** reported in **(1972) 1 SCC 191** and ***Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*** reported in **(1970) 1 SCC 670**, wherein it has been held that while determining a question under Section 47, an executing court cannot go behind the decree and question the correctness of the same.

63. What flows from the position of law, as afore stated, is that the issues that ought to have been raised by the parties during the adjudication of the original suit cannot be determined by the executing court as such adjudication may undermine the decree itself. This Court in ***Rahul S. Shah v. Jinendra Kumar Gandhi*** reported in **(2021) 6 SCC 418** has held that the benefit of Section 47 cannot be availed to conduct a retrial causing failure of realisation of fruits of the decree. The relevant portion of the judgment is reproduced below:

> "***24.*** *In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC.* ***Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind.*** *Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the*

decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. *The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.*

27. This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. *Order 1 and Order 2 which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that*

common questions of law and facts could be decided at one go."

(Emphasis supplied)

64. In the present case, the appellants have pleaded in their plaint that the respondent Nos. 1 and 2 respectively were impleaded therein as defendants as they were in possession of the suit property. However, the respondent Nos. 1 and 2 chose not to contest the suit despite being aware of the prayer of the appellant for delivery of possession of the suit properties. They could have filed a joint written statement stating that they are cultivating tenants at the stage of the original suit itself, but rather raised the said issue in the form of objections at the stage of execution.

65. Furthermore, the respondent Nos. 1 and 2 failed to produce any documentary evidence as regards their claim of being cultivating tenants, even at the stage of their Section 47 application. Instead, they filed for registration of their names in the cultivation account of the suit property only in 2008 and prayed for retrospective inclusion of their names from 1974. While the Revenue authorities declined the retrospective inclusion of the respondents' names as cultivating tenants from 1974, it allowed for their inclusion in the cultivation account of the suit property starting from 2008 onwards. The revenue

authorities also ordered for grant of certificate to the respondent Nos. 1 and 2 certifying that they were in possession of the suit property from 1974 on the strength of the "no objection" provided by the vendors.

66. The respondent Nos. 1 and 2 are asserting their independent right to remain in possession of the suit land and consequent protection under the Tamil Nadu Cultivating Tenants' Protection Act, 1955, owing to their status of being cultivating tenants granted in 2008 by the Revenue authorities.

67. It is worthwhile to revisit the facts that the High Court and this Court had affirmed the decree of specific performance with possession in favour of the appellants in the year 2004 and 2006 respectively. Subsequently, the sale deed was executed by the Executing Court on 17.08.2007 thereby transferring title of the suit property to the appellants. Despite such confirmation of the decree and transfer of title in favour of the appellants, it is incomprehensible why a notice was sent to the vendors by the revenue authorities in 2008. Further, the vendors gave "no objection" to the grant of certificate of possession to the respondent Nos. 1 and 2 from 1974 despite not having any authority to do so in light of the sale deed dated 17.08.2007.

68. In our considered view, the aforesaid by no stretch of imagination can be construed to be a legal right of possession existing independently from the title of the vendors which has now stood transferred to the appellants. It is nothing but a case of apparent collusion between the vendors and the respondent Nos. 1 and 2 to deprive the appellants from availing the fruits of the decree in their favour.

69. Even otherwise, the respondent Nos. 1 and 2 cannot claim protection of the special legislation of 1955 for the period during which they were not registered as tenants cultivating the suit properties. In our view, the certificate that they are in possession of the suit properties since 1974 does not come to their aid. We say so, because the said certificate does not establish any independent right of possession in favour of the respondent Nos. 1 and 2. Further, the certificate itself appears to have been obtained in collusion with the vendors who at the time of giving "no objection" had ceased to be the owners of the suit property.

70. In such circumstances referred to above, we find it extremely difficult to accept that the respondent Nos. 1 and 2 are *bona fide* cultivating tenants of the suit property and thus, the determination of the question of them being in possession of the same must necessarily go against them and in favour of the

appellants. Therefore, there is no question of deciding the validity of the decree on the ground of being a nullity due to lack of jurisdiction of the civil court to evict cultivating tenants.

71. In such circumstances referred to above, we have reached the conclusion that the High Court committed an egregious error in passing the impugned order. We must now ensure that the appellants are able to reap the fruits of the decree. We are also of the view that the rejection by the High Court of the amendments to the execution petition filed by the appellants, was erroneous and deserves to be set aside.

72. Before we close this matter, we firmly believe that we should say something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.

73. It is worthwhile to revisit the observations in ***Rahul S. Shah (supra)*** wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:

> "***42.*** *All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:*
>
> ***42.1.*** *In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in*

relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

42.2. *In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.*

42.3. *After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.*

42.4. *Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.*

42.5. ***The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.***

42.6. *In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.*

42.7. *In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in*

appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. *The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. *Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.*

42.12. The executing court must dispose of the execution proceedings within six months from the date

> ***<u>of filing, which may be extended only by recording reasons in writing for such delay.</u>***
>
> ***42.13.*** *The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.*
>
> ***42.14.*** *The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."*
>
> (Emphasis supplied)

74. The mandatory direction contained in Para 42.12 of ***Rahul S. Shah (supra)*** requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in ***Bhoj Raj Garg v. Goyal Education and Welfare Society & Ors.***, Special Leave Petition (C) Nos. 19654 of 2022.

75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by

each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.

76. Registry is directed to forward one copy each of this judgment to all the High Courts at the earliest.

77. The Registry shall notify this matter once again after seven months only for the purpose of reporting compliance of the directions issued by us referred to above.

F. CONCLUSION

78. In the result, the appeals succeed and are hereby allowed. The impugned judgment passed by the High Court is hereby set aside. The order passed by the Executing Court is also hereby set aside.

79. The Executing Court shall now proceed to ensure that vacant and peaceful possession of the suit property is handed over to the appellants in their capacity as decree holders and if necessary, with the aid of police. This exercise shall be completed within a period of two months from today without fail.

80. Pending applications, if any, shall stand disposed of.

……J.
(J. B. PARDIWALA)

……J.
(PANKAJ MITHAL)

New Delhi.
6th March 2025.