

**(2008) 12 JH CK 0029**

**Jharkhand High Court**

**Case No:** Writ Petition (C) No. 629 of 2008

Vol Builders Private Limited and  
Another

APPELLANT

Vs

Janab Salim Saheb and Another

RESPONDENT

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**Date of Decision:** Dec. 17, 2008

**Acts Referred:**

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 11(1)
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 101, Order 21 Rule 103, Order 21 Rule 104, Order 21 Rule 11, Order 21 Rule 97

**Citation:** AIR 2009 Jhar 84 : (2009) 57 BLJR 680 : (2009) 1 JCR 318

**Hon'ble Judges:** Dabbiru Ganeshrao Patnaik, J

**Bench:** Single Bench

**Advocate:** A.K. Sahani and Ajit Kumar, for the Appellant; Indrajit Sinha, Afroz and Gouri Devi, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.

Challenge in this application is to the order dated 24.8.2007 passed by the learned Munsif, Ranchi in an Execution Proceeding vide Misc. Case No. 25 of 2007, whereby and whereunder the petition filed by the respondent No. 1 under Order 21 Order 97(i)(ii) read with Section 151 of the CPC was admitted and a direction was issued to the parties to adduce evidence for deciding upon the claim of right, title and interest of the respondent No. 2 over the suit premises.

2. Facts of the case in brief is that the petitioner/plaintiff filed a suit for eviction of the respondent No. 2 from the suit premises under the provisions of Section 11(1)(d) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982. The suit was decreed in favour of the petitioner / plaintiff by order dated 5.8.2006.

3. The petitioner thereafter filed an application before the Court below under Order 21 Rule 11 CPC for execution of the decree. The application was registered as Execution Case No. 17 of 2006. After the Executing Court had issued writ of delivery of possession for executing the decree and when the decree was about to be executed, the respondent No. 1 filed an application before the Court below on 16.4.2007 under Order 21 Rule 97(i)(ii) read with Section 151 of the Code of Civil Procedure, resisting the execution of the decree. The ground stated by the respondent No. 1 against the execution of the decree was based on his independent claim of right and title over the suit premises. On receiving the application, a separate miscellaneous proceeding vide Misc. Case No. 25 of 2007 was registered.

4. The plea taken by the objector / respondent No. 1 was that the original owner of the suit property namely, Ranu Preeti Mukherjee had entered into an agreement for sale of the suit property with him way back on 14.6.1986 and pursuant to the agreement, she had delivered the possession of the suit premises to the objector and had also vested in him an authority by virtue of a power of attorney, authorizing him to deal with the suit property and also to realize rents from the occupiers of the suit premises whom the erstwhile owner had inducted in the building as tenants. The objector had further informed that he had filed a Title Suit No. 35 of 1990 before the court of Munsif, Ranchi for a decree for declaring his right, title and interest over the suit property on the basis of the agreement for sale. Another Title Suit for injunction against the petitioner vide Title Suit No. 333 of 2006 is also pending before the Sub Ordinate Judge-I, Ranchi. In both the suits as well as in the application filed before the Court below, the objector had challenged the status of the petitioner claiming that the petitioner is a stranger to the suit property and also alleging that in collusion with the respondent No. 2, the petitioner had obtained a collusive decree in his favour in the Eviction Suit.

5. By the impugned order, the learned court below while staying the further proceeding of Execution Case No. 17 of 2006, directed both the parties to adduce evidence in respect of their respective claims for deciding the disputed claims of right, title and interest of the parties over the suit premises.

6. Assailing the impugned order, Shri A.K. Sahani, learned Counsel for the petitioner, submits that by admitting the application of the respondent No. 1 / objector, and by allowing the objector to adduce evidence in support of his independent claim of right, title and interest over the suit property, the learned court below has acted without jurisdiction and against the provisions of Order 21 Rule 97 as also against the provisions of Order 21 Rule 104 CPC. Learned Counsel explains that the objector / respondent No. 1 had falsely claimed to be in possession of the suit property, although the fact is that he does not exercise any manner of possession over any portion of the suit property and the persons who are presently in occupation of the suit property are those tenants whose names were declared by the petitioner in his original plaint in the Eviction Suit. It is further explained that the objector had

admitted in his application before the court below that he had already preferred a Title Suit No. 35 of 1990 before the Court of Munsif, Ranchi for declaration of his right, title and interest over the suit premises on the very same grounds, as raised by him in the present application. Admittedly, the said suit was dismissed by the learned Munsif, on the ground that the respondent No. 1 did not acquire any manner of right, title and interest over the suit property in view of the fact that agreement of sale purported to have been executed in his favour, was not a valid agreement since, the said vendor herself did not have any better title over the suit property, nor was she competent to execute any agreement for sale or power of attorney authorizing the respondent No. 1 to function as a caretaker of the suit property.

7. Learned Counsel argues further that the other suit which was admittedly filed by the respondent No. 1, as mentioned in his present application, is still sub-judice in the court of Sub Ordinate Judge, Ranchi. Under such circumstances, the court below could not have embarked upon conducting a separate detailed inquiry on the rival claims of the parties by calling upon the parties to adduce evidence and by so doing, the learned court below appears to have arrogated to itself the jurisdiction of the Sub Ordinate Judge before whom the same issues are pending adjudication.

8. A counter-affidavit has been filed on behalf of the respondents including the respondent No. 1. The averments made in the counter-affidavit of the respondent No. 1 are virtually repetitions of the stand taken by him in his objection petition filed before the court below. His claim, as reiterated, is that the erstwhile owner Ranu Preeti Mukherjee had entered into an agreement of sale of the suit property in June 1986 with him and pending execution of the sale deed in his favour, the vendor had issued a letter of authority in his favour authorizing him to function as a caretaker of the property and had also delivered possession of the suit property to him. After taking possession, he had entered into separate agreements of tenancy with the tenants who were already in possession of the different portions of the suit property as tenants. When the sale deed was not executed in his favour, he had filed a Title Suit No. 35 of 1990 before the Court of Munsif, Ranchi claiming his right, title and interest over the suit property on the basis of the agreement for sale. The suit having been dismissed, he has preferred an appeal against the judgment of dismissal which is presently pending in the court of Additional Judicial Commissioner, Ranchi vide Title Appeal No. 112 of 2008.

9. Counsel for the respondent No. 1 would argue that the impugned order is strictly in accordance with the provisions under Order 21 Rule 97 CPC and there is no illegality or impropriety in the order and the mere pendency of the earlier title suits, would not take away the right of the learned court below to decide the issues on its own.

10. From the rival submissions of the parties, the question, which arises for consideration, is,

1. Whether on an application filed under Order 21 Rule 97 CPC by a stranger to the decree claiming independent right, title and interest over the suit property, and who has already filed a separate suit for declaration of his right and title over the same suit property, the court executing the decree can embark upon conducting a separate inquiry or investigation by calling upon the parties to adduce evidence in respect of their rival claims of title over the suit property?

11. Order 21 Rule 97(i)(ii) CPC has been introduced by way of amendment in the Code of Civil Procedure. The Provision has been introduced basically for the purpose of ensuring that on the objection raised by a stranger to the decree claiming title over the suit property, the claims should be heard and decided by the Executing Court itself before proceeding to execute the decree and such objector should not be compelled to file separate suits. The provision thus seeks to prevent multiplicity of suits over the same subject matter of dispute.

12. It is manifest from the above provision that when an application under Order 21 Rule 97 of the CPC is made, it contemplates an investigation into the claim made in the application, in accordance with the provisions contained in Rule 98 and Rules following thereafter.

13. However, the provisions of Order 21 Rule 97 CPC do not relate to the situation where the objector has already preferred a separate suit for declaration of his independent right, title and interest over the same suit property and the same is already pending much prior to the date on which the objection under Order 21 Rule 97 CPC against the execution of the decree has been filed by him.

14. In the special facts and circumstances of the instant case, admittedly, two separate title suits were filed one by the objector / respondent No. 1 before the court of Munsif, Ranchi seeking adjudication of his claim of right, title and interest over the suit property. Admittedly, this suit bearing Title Suit No. 35 of 1990, was dismissed by the learned court below on the ground that the petitioner in the aforesaid suit did not acquire any right, title and interest over the suit property on the basis of the agreement for sale purportedly executed in his favour by person who herself did not have any authority to sell. The objector has preferred an appeal against the judgment of dismissal of his suit and the same is sub-judice before the court of Additional Judicial Commissioner, Ranchi. The other suit relating to the same property, and also involving similar dispute, which is also sub-judice.

15. Rule 104 of Order 21 CPC lays down that every order made under Rule 101 or Rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which an Order under Rule 97, 98, 101 and 103 is sought to be made.

16. As rightly pointed out by the learned Counsel for the petitioner, despite knowing that two separate suits are already pending and are sub-judice in which the same issues of right and title, as raised by the objector, is involved, the learned court

below cannot proceed to embark upon a separate inquiry on its own on the issues raised since, such action on the part of the learned Executing Court would amount to arrogating to itself the powers and jurisdiction of the superior court before whom the same dispute is sub-judice.

17. For the reasons stated above, this application succeeds and is hereby allowed. The impugned order dated 24.8.2007 passed by the Munsif, Ranchi in Misc. Case No. 25 of 2007 in the Execution Proceeding before it, is hereby set aside.