

of cotton seeds to registered dealers on their furnishing declaration in Form S.T. XXII articulating that the goods were being purchased for re-sale from its taxable turnover. We answer the question referred. in the affirmative.

S.C.K.

Before Ujagar Singh, J.

JOGINDER KAUR,—Petitioner.

versus

YASHODA DEVI AND ANOTHER,—Respondents.

Civil Revision No. 3392 of 1983

April 6, 1989.

Code of Civil Procedure (V of 1908)—O. 21 Rl. 97—Decree holder seeking possession in execution of eviction order—Ballif reporting 3rd person in possession—Such person filing objection to execution—Competency of such objections.

Held, that if the objector wanted to file objections claiming the disputed property to be her own, she could do so under rule 97 of O. 21 of the Civil Procedure Code, 1908 and that, too, only when an application is made by the decree-holder under sub-rule (1) of R. 97 of O. 21 of the Code and the Court proceeds to adjudicate upon the application in accordance with the provisions contained in the subsequent rules. Sub-rule (1) of R. 97 is attracted only when the holder of a decree for possession of immovable property or purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property and he makes an application to the Court, complaining of such resistance or obstruction. In this case, there is no report that the delivery of possession was resisted or obstructed. (Para 5)

Petition under Section 115 CPC for revision of the order of the court of Shri J. K. Goel, P.C.S. Senior Sub Judge, Ferozepur, dated 23rd August, 1983 dismissing the execution application.

CLAIM: Objection petition U/O 21, rule 58 C.P.C.

CLAIM IN REVISION: For reversal of the order of the lower court.

Sudhir Aggarwal Advocate for Arun Jain, Advocate, for the petitioner.

Munishwar Puri, Advocate, for respondent No. 1.

A. K. Sood, Advocate, for respondent No. 2.

Joginder Kaur v. Yashoda Devi and another (Ujagar Singh, J.)

ORDER

Ujagar Singh, J.

(1) The landlord-revision-petitioner obtained an ejectment order against Manmohan Singh respondent No. 2, tenant in respect of the shop in question on 4th August, 1981. Execution petition was filed for delivery of possession on 31st March, 1982 and warrants of possession were duly issued. Bailiff went to the spot and reported on 8th June, 1982 that the judgment-debtor was not in possession of the demised premises and it was Smt. Yashoda Devi respondent No. 1 who was in possession thereof. Smt. Yashoda Devi respondent No. 1 filed an objection-petition on the next day, alleging that the eviction order obtained by the decree-holder was a collusive one and that she was in possession of the premises as an owner and was, thus, not bound by the eviction order. The decree-holder filed a reply that earlier respondent No. 1 had filed a suit regarding the property in dispute and that suit was ultimately dismissed by the Additional District Judge on 28th October, 1980. Out of the pleading of the parties, the following issues were framed by the executing Court :

1. Whether Yashoda Devi is the owner in possession of the property in dispute? OP Objector
2. Whether the objection-petition is maintainable? OP Objector
3. Whether the earlier suit by the objector has already been dismissed? If so, to what effect? OP DH

(2) Issues 1 and 3 were discussed together. The executing Court came to the conclusion that no evidence had been led either by the objector or the decree-holder if the shop in question was a part of either property unit No. 268 or 269½. It was further found that there was no other evidence to prove the ownership of Smt. Yashoda Devi. Both the issues were, therefore, decided against the objector. Issue No. 1 concerned with the maintainability of the execution petition. The executing Court held that Smt. Yashoda Devi was found to be in possession of the demised premises and she could not be dispossessed therefrom under the impugned eviction order to which she was not a party. Thus, the objection-petition was accepted and it was held that the decree-holder was not entitled to get possession from the objector under the present ejectment order.

(3) The landlord-decree-holder has challenged the order of the executing Court,—*vide* this revision petition.

(4) The learned counsel for the revision-petitioner has argued that no objection was maintainable against delivery of possession of the property for which ejection order had been passed against the judgment-debtor. It has further been argued that possession of the objection-petitioner respondent No. 1 was not admitted by the decree-holder.

(5) The objection-petition was filed under order 21 rule 58 of the Code of Civil Procedure, but this rule is applicable only when the property it sought to be attached in execution of a decree and the ground of objection is that such property is not liable to attachment. In such a situation, the executing Court is called upon to adjudicate upon the claim or objection in accordance with the provisions contained therein. Any order passed under O. 21R 58 has the same force and is subject to the same conditions as to appeal or otherwise as if it were a decree. There was no question of attachment in this case and therefore, this objection-petition u/o 21 R. 58 of the Code of Civil Procedure was not maintainable. If at all the objector-respondent No. 1 wanted to file objections, claiming the disputed property to be her own, she could do so u/r 97 of O. 21 of the Code of Civil Procedure and that, too, only when an application is made by the decree-holder under sub-rule (1) of R. 97 of O. 21 of the Code of Civil Procedure and the Court proceeds to adjudicate upon the application in accordance with the provisions contained in the subsequent rules. Sub-rule (1) of R. 97 is attracted only when the holder of a decree for possession of immovable property or purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property and he makes an application to the Court, complaining of such resistance or obstruction. In this case, there is no report that the delivery of possession was resisted or obstructed. There is the only report of the bailiff that Smt. Yashoda Devi was in possession and the judgment debtor was not in possession of the demised premises.

(6) In this view of the matter, this revision petition is accepted and the order of the executing Court is set aside. The parties to bear their own costs. The executing Court is directed to proceed with the execution petition according to law.

S.C.K.