

TAMIL NADU STATE JUDICIAL ACADEMY

Two days refresher course for Civil Judges (Junior
Division)

Saturday, 10th July 2010

Topic:-

Interlocutory Applications in particular ABJ, Section 47
CPC and execution applications under order 21 CPC

By

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The natural and logical meaning of an interlocutory order is an order which does not terminate the proceedings or finally decide the rights of the parties. In other words they are stated to be orders, which only decides a particular aspect or a particular issue or a particular matter in a proceedings, suit or trial but does not however conclude the trial. (V.C.Shukla Vs. State AIR 1980 SC 962 @ 976, 977-78)

There are several provisions under the Code of Civil Procedure, which deals with powers of Court to make such Interlocutory orders of which the following would be of relevance in the discharge of your day to day Judicial work.

1) Section 10 CPC - Stay of suit:-

The object of this provision is to prevent Courts of concurrent jurisdiction from trying two parallel suits in respect of the same matter in

issue. The following conditions are required to be satisfied:-

- a) Matter in issue should be substantially the same in two suits.
- b) Previously instituted suit should be pending in the same Court in which the subsequent suit is brought or in another Court, in India having jurisdiction to grant relief claimed.
- c) Two suits should be between same parties or their representatives and these parties should be litigating in two suits under the same title.

“Directly and substantially in issue” is used in contradiction to “incidentally or collaterally in issue.” Requirement therefore is whole of the subject matter in both the proceedings is identical not one of the many issues.

Application under section 10 can be filed even prior to filing of the suit
Section 10 cannot be invoked to prevent passing of interlocutory orders.
[2002 (2) CTC 213] See Rule 32 of Civil Rules of Practice.

2. Section 39 - Transfer of Decree:-

The code does not prescribe any particular form for an application for transmission of decree, under Sub-Section (2) of Section 39 the Court can ever suo-moto send the decree for execution to another Court (AIR 1953 SC 65).

3. Section 47 – Questions to be determined by Court executing decree:-

- Executing Court shall determine any question between the parties or their representatives relating to the discharge or satisfaction of the decree.
- Identification of property to be delivered to the decree holder could be decided under Section 47(1).
- Powers of the Court under Section 47 are quite different and made narrower than its powers of appeal, revision or review.

- The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing Court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void abinito and nullity, apart from the ground that decree is not capable of execution under law either because the same was passed in ignorance of such a provisions of law or the law was promulgated making a decree in executable after its passing.
- The object of section 47 is that the Court having the parties already before it, should decide all questions relating to execution, etc., arising between them, in place of allowing one or the other of them to put his adversary to the delay and cost of a separate suit in cases in which but for this section it might be possible for him to do so.
- The general power of deciding questions relating to execution, discharge or satisfaction of decree under Section 47 can thus be exercised subject to the restriction placed by Order XXI, Rule 2, including sub-rule (3) which contains special provisions regulating payment of money due under a decree outside the Court in any other manner adjusting the decree. The general provision under Section 47 has, therefore, to yield to that extent to the special provisions contained in Order XXI, Rule 2, which have been enacted to prevent a judgment-debtor from setting up false, or cooked-up pleas so as to prolong or delay the execution proceedings.
- The opportunity to object to executability of the decree could be taken only once and repeated applications are liable for rejection.
- Section 47 being a special provision cannot be extended to persons who are not parties to the suit. Only option to third parties is to file a separate suit.

- The expression “party” used in Section 47 includes the purchaser of property in execution.
- The principle is also well established that ordinarily the executing Court cannot go behind the decree. But it is within the competence of the executing Court to interpret decree ought to be executed and for doing so the Court can refer to reliefs sought in the plaint and discussion in the judgment to ascertain the true import of the decree.
- The words “ all questions arising” mean all questions which could properly arise, or which could properly have been raised in the execution proceedings between the parties to the suit or their representatives.
- The conditions necessary for application under Section 47 are; (i)The question must relate to the execution or discharge or satisfaction of the decree; (ii) It must arise between the parties to the suit in which the decree was passed or their representatives; and (iii) it must be for determination of such questions by the Court executing the decree.
- Where the controversy between the parties relates not to the share of each of them but to the question whether one party alone or both parties are legal representatives of a party, the case is clearly covered by Section 47.
- The Court in executing a decree is entitled to go into such matters as waste committed whichever side has happened to be in possession since the date of the decree sought to be executed. (T.S.Ramanatha Ayyar V. S.Abdul Salam Sahib, A.I.R. 1945 Mad. 179 at p.180).
- The expression “relating to the execution of the decree” covers the question of executability or non-executability of decree. In other words, if the decree be a void decree being a decree passed by a Court without jurisdiction or a decree not in conformity with or in violation of certain mandatory provisions of law or barred by certain statutory

provisions it cannot be executed and if an objection is taken by the judgment-debtor to that effect the executing Court shall have to decide it under Section 47.

- As and when the objection are filed to the execution of a decree the executing Court is not bound to frame the issues and allow the parties to lead the evidence unless it comes to the conclusion that there is some triable issues.
- The executing Court cannot go beyond the decree is the settled principle of law which flows from Section 38, C.P.C. In other words it means that the executing Court has to execute the decree as it stands. It can, however, in exceptional cases refuse to execute the decree, for illustration it can refuse to execute a decree, if it is passed against a dead person. In that event the decree itself will be a nullity. It can also refuse to execute a decree if the Court passing a decree had no inherent jurisdiction to pass a decree. It can only decide the matters which relate to the execution, discharge or satisfaction of the decree under Section 47 of the Civil Procedure Code.
- Executing Court may look into the proceedings to find out the correct meaning of the decree and consequently may provide some clarity to the decree and may construe the decree to effectively implement the decree (*Bhavan Vaja V. Solanki Hanjuji Khodaji Mansang AIR 1972 SC 1371*). But the executing Court cannot entertain an objection that decree is incorrect in law or in fact. (*Vasudev Dhanjibhai Modi Vs. Raja bhai Abdul Rehman, A.I.R. 1970 SC 1475*)
- The safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objections; if he can waive it, it amounts to any irregularity if he cannot, it is nullity (*Dhivendra Nath Govai Vs. Sudhir Chandra Gosh A.I.R. 1964 SC 1300*)

- The respondent cannot take the plea, which he can take in the suit. Section 47, petition cannot be an alternative to an appeal.
- Bar of limitation is not a ground to entertain an application under Section 47 (2001-1-TLNJ 374)
- 3 Conditions necessary for Section 47
 - (i) Question must relate to execution/discharge/satisfaction of a decree.
 - (ii) Must arise between parties to suit or their representatives.
 - (iii) Must be for determination of such questions by Court executing decree.
- To decide all issues relating to the executability are to be tried under Section 47 itself – not by separate suit [2009(9) SCC 28]
- Decided Case:- Suit for specific performance decreed after some defendants contested and others having remained ex-parte-plaintiff – Decree executed – Attempt by defendants, who remained ex-parte to set aside the ex-parte decree failed – cannot be allowed to invoke Section 47 [2004 (3) CTC 266]
- Cannot go behind the decree:-

In a case arising under the Land Acquisition Act, 1894 – Executing Court cannot go into the question as to whether a reference Court was correct in passing an order amending a decree or not [2005 (9) SCC 123].
- Expression:- “Relating to the execution of the decree”
 - (i) Executability
 - (ii) Non-executability

- No need to frame issues, while deciding application under Section 47 – unless there is a triable issue.
- Test :- What is irregularity/Nullity
 - If the objection can be waived – irregularly
 - If objection cannot be waived - Nullity

4. Section 60 - Property liable to attachment and sale in execution of decree:-

- All saleable property belonging to over which the Judgment-debtor has a disposing power should become liable to attachment and sale.
- Subsistence allowance payable to person under suspension till it is in the hand of employer was held exempted. (Velraz vs. Muthaiah, AIR 2008 Madras 239).
- An order of attachment of shares cannot have the effect of depriving the holder of the shares of his title to the shares. (Balkrishna Gupta and others vs. Swadeshi Polytex Ltd (1985) 2 SCC 167)
- Privy purse to ex-ruler of former Indian states is in the nature of political pension. It is not liable in attachment on execution.

Section 60 (1)(g) – Properties or amounts not liable for attachments – Gratuity, Provident Fund and Leave salary payable to deceased employee and kept in trust by employer are not liable for attachments [2004 2 CTC 129 PSDJ]

5. Section 148 – Enlargement of time:-

- ❖ Power not to be invoked unless bonafides are shown.
- ❖ Section 148 of the Code, in terms, allows extension of time, even if the

original period fixed has expired, and Section 149 is equally liberal. A *fortiori*, those sections could be invoked by the applicant, when the time had not actually expired.

- ❖ There can be many cases where non-grant of extension beyond 30 days would amount to failure of justice. The object of the Code is not to promote failure of justice. Section 148, therefore, deserves to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the Court would have inherent power to extend time beyond 30 days. (Salem Advocate Bar Association, Tamil Nadu V. Union of India, AIR 2005 SC 3353)
- ❖ When enlargement can be granted:-
 - 1) Delay was due to formalities to be completed with for raising loan from institution.
 - 2) Caveat period expired during summer vacation.

Section 148:- Object of the code is not to promote failure of justice.

6. Order 1 Rule 8 CPC – One person may sue or defend on behalf of all in same interest:-

- The essential conditions for application of this rule are – (i) the parties are numerous, (ii) they have same interest, (iii) necessary permission be obtained and (iv) notice must be given or published as mentioned in the rule. The Rule 8 applies only to the representative suits.
- Option given under the rule is not only to sue but also to defend.
- Provision under Order I, Rule 8, CPC are mandatory and non-compliance with, would vitiate the subsequent proceedings including the disposal of the suit.
- Similarly, allottees of Housing Board may bring an action in

representative capacity against the demand made by Board from its allottees.

- Word “numerous” does not mean ‘numberless’ or ‘innumerable’. What number of persons can be taken numerous, depends on facts and circumstances of each case.
- When the Court has permitted one or more definite number of persons to sue or be sued in the representative capacity, a notice must be given to the persons having the interest in suit so that they may know by whom they are represented and if they are not satisfied then they may file objections or may get themselves impleaded.
- Where one of the several plaintiffs or one of several defendants representing the interest of others in a suit covered under Rule 8, dies, the suit does not abate. (Foukes v. Suppan, AIR 1951 Mad 296)
- Conditions to be satisfied :-
 - (i) Parties are numerous.
 - (ii) They have same interest.
 - (iii) Necessary permission be obtained
 - (iv) Notice to be published as mentioned in Rule.
- This Provision is in public interest to avoid multiplicity of litigation.
- Notice is very crucial – form of notice important.
- Intersion of notice – to know that they are represented – can object or implead themselves.

7. Order 1 Rule 10 – Suit in name of wrong plaintiff:-

- Amendment to bring the necessary parties on record, even though delayed, ought to be generally allowed unless it changes the cause of action. (Kumarasami Pillai V. Palani, AIR 1992 Mad 218).
- From impleadment of necessary party it is clear that the plaintiff is

dominus litis of the suit is not an absolute rule. The law intends and has actually provided for exceptions. In the present case, if the applicants are not impleaded as parties specially when they satisfies the condition aforestated, would only lead to multiplicity of litigation which is neither the object nor legislative intent of any procedural or substantive law.

- The third party who as stranger to the contract and not concerned with the claim which was made by the petitioner in suit for specific performance, is not a necessary party to the suit. (Saivasamy Thevar V. Rajase Karan, AIR 2008 NOC 2753 (Mad).
- In claim petition, the driver is not a necessary party but even if he is required to be impleaded as a party. (M.K.Kasar V. D.s.Mylarappa, AIR 2008 SC 2545)
- The question to be considered is whether right of the party shall be affected if he is not added as a party.
- In a suit filed by one tenant against another, their some landlord is proper party but not necessary.
- Supreme Court in AIR 2005 SC 2813 has laid down the following tests whether a party is a necessary party:-
 - (i) These must be a right to some relief against such party in respect of the contrary in the suit.

- (ii) No effective decree can be passed in the absence of such party.

(OR)

- (i) When he ought to have been joined as plaintiff/defendant, and is not joined
- (ii) When, without his presence, the questions in the suit cannot be completed decided. [2010 (3) CTC 276]

- Official Receiver can be impleaded as a necessary party if one party has to be declared insolvent [2004 (2) CTC 145]
- Two out of 4 Trustees in a Temple suit died pending suit. Trustees on record enough to represent grievance. No need to implead new trustees.
- Petitioner purchased property during pendency of proceedings – Transaction hit by his – Pendency – Petitioner not a necessary or proper party. (Under Section 52 of TPAN)

8. Order 6 Rule 16 - Striking out pleadings :-

It provides that the Court may, at any stage of the proceedings, order striking out of the pleadings which may be (a) unnecessary, scandalous, frivolous or vexatious; or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or (c) which is otherwise an abuse of the process of the Court.

Inconsistent plea in the additional written statement than what was raised in the original written statement – cannot be described as unnecessary, scandalous, frivolous or vexatious – validity to be decided at the time of trial of suit, [2004 (5) CTC 644]

9. Order 6 Rule 17 – Amendment of Pleadings:-

- The expression “at any stage” of the proceedings is far more elastic than the stage contemplated in Order IX, Rule 7 which specifies in no uncertain terms as to at what stage it will be attracted. Whereas the expression “at any stage” used in Order VI, Rule 17 is not circumscribed or limited by any condition.
- Amendment in plaint sought, not changing basic structure of suit for declaration, can be allowed for just decision of case.
- Amendment of plaint sought, not material to resolve real questions in controversy between contesting parties, cannot be allowed.

- Where amendment of plaint sought was necessary for purpose of determining real controversy between parties, therefore, it has to be allowed provided it does not cause prejudice to other side. (*Rajesh Kumar Agarwal v. K.K.Modi, AIR 2006 SC 1647*).
- It can be allowed when it does not change the nature of suit and is necessary to adjudicate the matter in controversy. (*M.C.Agrawal HUF v. M/s.Sahara India, AIR 2008 SC 288*).
- Where amendment sought was necessary to determine real question in controversy over disputed property, such amendment could be allowed to meet ends of justice, specially when nature of suit does not get changed and no prejudice is caused to defendants. (*Shanmugham v. Perumal, AIR 2009 NOC 1185 (Mad)*).
- Amendment of plaint in a suit for injunction restraining defendants from entering into suit property. Amendment sought for incorporating Additional Survey Number for proper description of boundaries of suit property as per patta obtained under sale deed. Defendant are not being caused a prejudice hence amendment is allowed. (*Apruthamary Prakasa v. Murugesu Nadar, AIR 2009 NOC 1773 (Mad)*).
- In an amendment suit in partition matter such amendment sought after commencement of trial to correct description of properties in plaint, plaintiff being *dominus litis* should be afforded sufficient opportunity to prove his case. By doing so no prejudice would be caused to defendant. In these circumstances an amendment should be granted. (*Lakshmi V. Perumal AIR 2009 NOC 1765 (Mad)*).
- Amendment sought, not altering structure of suit property since plaintiff was given full boundary of suit property, can be allowed. (*Raja v. Kunju Krishnan, AIR 2007 NOC 1814 (Mad)*).
- The Court should adopt the liberal view in allowing the amendment application but, injury caused from such amendment to the party must also be bear in mind while allowing so. (*Chand Kanta Bansal v.*

Rajinder Singh, AIR 2008 SC 2234)

- Sought to convert suit for injunction to specific performance suit. Amendment allowed. Again amendment sought to include important allegation regarding readiness and willingness – Does not change nature of suit – Amendment ordered. Supreme Court in Rajkumar Vs. Depender Kaur Sethi 2004 5 CTC 685.
- Amendment of plaint during pendency of second appeal to include additional relief – Mesne Profit – Amendment ordered. [2002 (4) CTC 257]

10. Order 7 Rule 11 CPC – Rejection of plaint:-

- ❖ Under Order VII, Rule 11, the plaint can be rejected where it does not disclose a cause of action or where the suit appears from the statement made in the plaint to be barred by any law. For the purpose of deciding that the plaint “does not disclose a cause of action” the Courts generally look only at the plaint. However, there is a rider to this rule, that when the plaint is based on a document, the same can also be looked into.
- ❖ While deciding the application under Order VII, Rule 11, CPC, the Court is only to look into the averments made in the plaint and the documents annexed therewith. It cannot, for the determination of this application look into the defence set up by the defendants.
- ❖ Case Law:- Plaintiff filed suit for direction to 1st defendant to renew case in favour of plaintiff. 2nd and 3rd Defendant original lessors. They sold the property to 1st defendant. Trial Court – Rejected plaint even without numbering – Set aside by High Court by stating that 1st defendant has stepped into shoes of 2nd and 3rd defendant and hence has to be heard. [2002 (1) CTC 742].

- ❖ Look only into the plaint & document.
- ❖ If by clever drafting, the plaintiff creates an illusion of a cause of action, the Court is bound to nip it in the bud. To find out if it is just a case of clever drafting, the Court has to read the plaint, not formally, but in a meaningful manner [(1977) 4 SCC 467, 1997 (3) CTC 746 (SC)]

11. Order 13 Rule 6 – Judgment on admissions:-

Admission must be clear, it is well established principle that a statement to be read as an admission of a party, it must be definite, clear and specific and must specifically refer to and relate point or fact in dispute, otherwise it is not an admission nor can be treated to be the admission.

12. Order 38 Rule 5 – Attachment before Judgment:-

- ❑ Court while exercising its jurisdiction under Order XXXVIII, Rule 5 of CPC is required to form a *prima facie* opinion at that stage. (*Rajendran v. Shankar Sundaram, AIR 2008 SC 1170*)
- ❑ Right, title and interest of a partner in the firm, being a saleable movable property was open to attachment before judgment. (*Raja Theatre, Coimbatore, M/s.V.M/s.Selvam Financiers and others, AIR 1992 Mad 227*)
- ❑ Before exercising jurisdiction under this rule and passing orders for attachment of properties before judgment, the Court should satisfy itself of the practical certainty of plaintiff's success and of existence of grave danger and real fear that the dishonest defendant, undoubtedly is making away with the probable fruit of the judgment. The remedy provided under Order XXXVIII, Rule 5 is a harsh one and judicial discretion should not be exercised until a clear case has been made

out, the Court can order to furnish security if it is satisfied.

- It is necessary for applicant to establish that respondent is about to dispose of his property with an intent to obstruct or delay execution of any decree that may be passed against him. The applicant with unclear, unambiguous allegations attempting to dispose property of respondent cannot obtain any prohibitory order. (*S.V.Sagar Mills Ltd. v M/s.Transworld Logistics Pvt. Ltd., AIR 2009 NOC 1770 (Mad)*).
- While passing an order of attachment before judgment Court has to follow sub-section (1) of Rule 5.
- The Court has to give an option to the respondent either to give security or to deposit money.
- The Court has to satisfy that there is a likelihood of dispossessing the property with a sole view of deprive the plaintiff from getting the relief.
- The respondent will have to issue a notice as to why the attachment will not be made absolute.
- Court while passing orders should follow Sub Rule (1) of Rule 5.

13. Order 21 – Execution of Decrees and Orders:-

- Order 21 of Civil Procedure Code lays down an elaborate system of implementation of the decrees.
- The numerous rules of Order XXI of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors, as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the Civil Court. The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available

under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better.

In Executable Decree:-

Wife & child filed suit for main tenants – Decreed – They sought attachment of 2 properties – Attachment ordered – Property sold prior to attachment purchaser filed – Application to release attachment released – Husband and wife lived together after suit was decreed. Decree inexecutable – worked in favour of purchaser. [2004(2)CTC 732]

14. Order 21 Rule 1 & 2 – Modes of paying money under decree and payment out of Court to decree holder:-

- If payment is made by judgment-debtor to decree-holder outside the Court then it could not be recognized in absence of same being recorded under Rule 2.
- It was also held in this case that the judgment-debtor may set up a false case of compromise if it takes place outside the Court or decree is executed outside the Court. It is in order to prevent such judgment-debtor that Order XXI, Rule 2 has been enacted so that if such compromise or creation of fresh tenancy has not been recorded, the judgment-debtor be not encouraged to initiate another round of litigation under Section 47, Cr. PC.
- Pendency of an application for insolvency by itself will not result in stay of execution proceedings.

15. Order 21 Rule 37 – Arrest and detention in civil prison :-

- Where judgment-debtor was not having any means to clear off his debts, he cannot be arrested. (*Dharmaligam v. Paval Kodi, AIR 2005 NOC 42 (Mad)*).
- Merely because decree-holder makes an application under Order XXI, Rule 37 of Code, it is not for executing Court to automatically order arrest of judgment-debtor without issuing show-cause notice or

conducting enquiry.

- For issuance of warrant it must be show that the judgment debtor has the sufficient means but even then avoided the payment.
- Order 21 Rule 37 means enquiry is must.

16. Order 21 Rule 50 – Execution of decrees against firm :-

A decree against a firm can be executed (i) against the property of the partnership, (ii) against any person who has appeared in the suit individually in his own name and has been served with a notice under Rule 6 or 7 of Order XXX of CPC, (iii) against a person who has admitted on the pleadings that he is or has been adjudged a partner, or (iv) against any person who has been served with notice individually as a partner but has failed to appear. The decree against the firm can be executed against the personal property of such persons. (*Topanmqal Chhotamal v. M/s. Kundomal Gangaram and others, AIR 1960 SC 388*)
[*Ashutosh vs. State of Rajasthan and others – 2005 (4) CTC 408*]

17. Order 21 Rule 58 – Adjudication of claims and objections:-

- ❖ Objection filed against the execution must not be disposed of without granting any opportunity to lead evidence.
- ❖ Word adjudicate in Order XXI, Rule 58, CPC is much wider, as it includes recording of evidence as well.
- ❖ One can file the objection against the attachment of the property event after sale of the property is done by way of auction. (*K.Laxmiinarayana v. M.Shyamala, AIR 2008 SC 2069*)

18. Order 21 Rule 89 – Application to set aside sale on deposit:-

Before a sale can be set aside under Order XXI, Rule 89, Civil Procedure Code, it is incumbent on the part of the judgment-debtor to prove that there was material irregularity or fraud in publishing or conducting the sale and that the such irregularity of fraud. Mere irregularity or fraud in publishing or

conducting the sale will not entitle the Court to set it aside unless upon the facts proved, the Court is satisfied that the Judgment-debtor has been sustained substantial injury by reason of such irregularity or fraud.

Order 21 Rule 89 and Article 127 of Limitation Act:-

Time, during which decree which is sought to be executed is stayed by order of Court, is to be excluded while computing period of limitation to file petition under Order 21 Rule 89 – Fact that Judgment-debtor did not get stay but third party obtained stay does not alter portion. [2010 (2) CTC 861 (SC)]

Twin Tests:-

Material irregularity.

Substantial Injury.

19. Order 21 Rule 90 – Application to set aside sale on ground of irregularity or fraud.

- Auction sale cannot be quashed on ground of inadequacy of consideration, unless substantial injury is caused to the judgment-debtor.
- Auction sale sought to be set aside. Absence of any ground to declare sale invalid was made. Auction sale by Court cannot be set aside merely on ground of insufficient fetching of price. In absence of any allegation and proof of framed illegality, irregularity in auction sale, mere insufficiency of price fetched by auction sale is not a ground to set a sale aside. (*Rajendra Singh v. Ramdhar Singh, AIR 2001 SC 2220*)
- Clause (b) of the proviso confers on Court considerable discretion. It is left to the Court to decide the quantum of deposit to be made

subject to the maximum prescribed therein. The Court is also conferred with the power to dispense with the requirements of making a deposit, for reason to be recorded. From the language of the proviso, it is clear that the power conferred on the Court is a discretionary power. It is expected that the Court would ordinarily give an opportunity to the applicant to comply with Clause (b) of the proviso and could reject the application if the same were still not complied with.

- Discretionary power of Court Insufficiency of price is no ground to set aside sale.

20. Order 21 Rule 97 – Resistance or obstruction to possession of immovable property :-

- ❖ Rule 97 deals with a state prior to actual execution of decree for possession. Separate suit is barred and right of obstructionists are to be adjudicated only in such proceedings and same will bind parties to proceedings. (Mansoor Deen, M.S. v.Fathimuthu Beevi, 2009 (4) CTC 489 (Mad)).
- ❖ It is the duty of an executing Court to consider the averments in petition and consider the applicability of the relevant rule. Where the executing Court dismissed the second and third application filed by the decree-holder under this rule as barred by limitation and by rule of *res judicata* respectively, such dismissal order was erroneous. (*Bhanwar Lal v. Satyanarain, AIR 1995 SC 388*).
- ❖ When a decree holder complains of resistance of a decree it is incumbent on the execution Court to adjudicate upon it. But while making adjudication, the Court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such question may be relevant to the

adjudication of the complaint. (*Silverline Forum Pvt. Ltd. v. Rajeev Trust, AIR 1998 SC 1754 (1757)@1998) 3 SCC 723*).

- ❖ A person in joint possession is competent to maintain an application under this rule but nevertheless it is necessary that that person must have been actually in possession before he could apply under this rule.
- ❖ In interpreting the provisions of Order XXI, Rule 97 of the Code and the other provisions in the said order, the aims and objects for introducing amendment to the Code cannot be lost sight of. Under the unamended Code, third parties adversely affected or dispossessed from the property involved, were required to file independent suits for claiming title and possession. The Legislature purposely amended provisions in Order XXI to enable the third parties to seek adjudication of their rights in execution proceedings themselves with a view to curtail the prolongation of litigation and arrest delay caused in execution of decrees. [*Ashan Devi V. Phulwasi Devi, AIR 2004 SC 511 at p. 516*].
- ❖ Third party aggrieved by dispossession in execution of a decree may make application to the Court – The bar against filing of a separate suit would apply only if there was an application under Rule 99 but not otherwise. The third party aggrieved by dispossession in execution of a decree, may make an application to the Court complaining such dispossession. If he makes such an application all questions including questions relating to right, title and possession in the properties shall be decided in that application as if it were a fullfledged suit for title and possession and no separate suit would lie for this purpose.
