CASE NO.:
Appeal (civil) 1998 of 2008

PETITIONER:
USHA SINHA

RESPONDENT:
DINA RAM & ORS

DATE OF JUDGMENT: 14/03/2008

BENCH:
C.K. THAKKER & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1998 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 15315 OF 2006

C.K. THAKKER, J.

1. Leave granted.
2. The present appeal is filed by the appellant herein obstructionist ('appellant' for short) against the judgment and order dated July 4, 2006 passed by the High Court of judicature at Patna in Civil Revision No. 113 of 2004. By the said order, the High Court allowed the Revision filed by respondent No. 1 herein decree-holder ('respondent' for short) and set aside the order passed by the Sub-Judge VI, Purnia.
3. Short facts of the case are that the respondent filed a suit being Title Suit No. 140 of 1999 on April 10, 1999 against (1) Arun Choudhary, (2) Poonam Choudhary, (3) Sukhdeo Singh, (4) Shambhu Prasad, and (5) Binod Kumar in the Court of Sub-Judge VI, Purnia. During the pendency of the said suit, defendant No. 4-Shambhu Prasad and defendant No.5-Binod Kumar sold their share in the property in respect of which the suit was pending, to the appellant by a registered sale deed dated February 15, 2000. On May 24, 2001, ex-parte decree was passed against the defendants in Title Suit No. 140 of 1991. In the judgment rendered by Sub-Judge VI, Purnia, it was observed that though the defendants were duly served with the summons and there was publication of summons also in daily newspaper, the defendants did not appear. The case was fixed for ex-parte hearing vide an order dated April 10, 2001. The plaintiff and his witnesses were examined and on the basis of the said evidence, the suit was decreed. It was held that plaintiff had right and title over the suit land and he was entitled for recovery of possession of land shown in Schedule B.
4. The appellant, Binay Kumar Sinha, Pawan Kumar Choudhary and Ratandeo Prasad Choudhary filed Title Suit No. 226 of 2001 in the Court

of Sub-Judge I, Purnia against respondent-Dina Ram and others. It was asserted in the plaint that the appellant (Usha Sinha) had purchased the property and was the absolute owner thereof. It was further stated that the respondent (plaintiff of Title Suit No. 140 of 1999) had wrongfully and illegally filed a suit for recovery of possession of property. No notice was served to the defendants, or to the appellant (purchaser of property) and the decree was illegal, inexecutable and null and void. It was also fraudulent, collusive and was obtained by suppressing true and real facts. It was, therefore, prayed that the decree passed in Title Suit No. 140 of 1999 be declared as null and void, being fraudulent, collusive and without jurisdiction holding that the plaintiff of Title Suit No. 140 of 1999 had no right, title or interest in the property.

5. A written statement was filed by the respondent contending that the suit was not maintainable, there was no cause of action against the defendant-respondent and the decree passed in the Title Suit No. 140 of 1999 was legal and valid.

6. It may be stated that for execution of decree passed in Title Suit No. 140 of 1999, a petition, being Execution Case No. 10 of 2002 was filed by the respondent-plaintiff who was the decree holder. The present appellant filed an application for injunction under Order 39, Rules 1 and 2, Order 21, Rule 29 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code) against the respondent-decree holder, inter alia, contending that the ex-parte decree passed in Title Suit No. 140 of 1999 was not legal and valid and could not be executed against her. It was further stated that a substantive suit was filed by the appellant being Title Suit No. 226 of 2001 and till that suit is finally decided, execution should be stayed and the decree-holder should be restrained from interfering with the possession of the appellant (plaintiff of Title Suit No. 226 of 2001). The respondent contested the application contending that no such application could lie under Order XXI, Rule 29 of the Code. The application came to be rejected by the Court on August 16, 2003. In view of rejection of the application, the appellant moved the Executing Court in which Execution Case No. 10 of 2002 was pending. The application was registered as Misc. Case No. 13 of 2003. In the application, it was stated by the appellant that she had purchased the property by a registered sale deed dated February 15, 2000; that she had also filed Title Suit No. 226 of 2001 for setting aside ex-parte decree in Title Suit No. 140 of 1999 which was pending; if during the pendency of the substantive suit filed by her, ex-parte decree is executed, irreparable loss and injury would be caused to her. The Executing Court, vide an order dated November 20, 2003, allowed the application and

stayed further proceedings in Execution Case No. 10 of 2002 till the disposal of Misc. Case No. 13 of 2003. Being aggrieved by the said order, the respondent approached the High Court by filing Revision Petition. The High Court allowed the Revision and set aside the order of the Executing Court which has been challenged by the appellant by invoking Article 136 of the Constitution.

7. We have heard learned counsel for the parties.

8. The learned counsel for the appellant contended that the High Court was wholly in error in allowing the revision filed by the respondent and in setting aside the order passed by the Executing Court granting stay of proceedings in Execution Case. It was submitted that the Executing Court was right in relying on the circumstance that when a substantive suit is filed by the appellant to set aside ex-parte decree passed in favour of the respondent in Title Suit No. 140 of 1999, during the pendency of such suit, execution proceedings ought to be stayed. The Executing Court passed an order in the light of the fact that a suit filed by the appellant was pending final disposal which was a relevant consideration and the said order should not have been interfered with by the High Court. It was also submitted that the High Court was wrong in invoking Rule 102 of Order XXI of the Code and in holding that the appellant had no right to seek protection. The counsel also relied upon Rule 29 of Order XXI of the Code which deals with the situation where a substantive suit is filed by the judgment-debtor against the decree-holder and execution proceedings are pending before a Court. Till the suit is finally decided, execution proceedings should not be allowed to continue further resulting in virtual dismissal of the suit. It was, therefore, submitted that the order passed by the High Court deserves to be set aside by restoring the order passed by the Executing Court.

9. The learned counsel for the respondent, on the other hand, supported the order passed by the High Court. It was submitted that the Executing Court was wholly wrong in entertaining application filed by the appellant particularly after rejection of similar application under Order XXI, Rule 29 of the Code and by granting relief of injunction till the disposal of Title Suit No. 226 of 2001 filed by her. It was submitted that admittedly Title Suit No. 140 of 1999 was filed by the respondent on April 10, 1999 and so called registered sale deed was entered into between defendant Nos. 4 and 5 on one hand and the appellant on the other hand on February 15, 2000 i.e. during the pendency of the suit. The doctrine of lis pendens, hence, applies to such sale. Rule 102 of Order XXI of the Code immediately gets attracted to such sale. The said provision expressly enacts that nothing in

Rules 98 and 100 of Order XXI shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed. It was, therefore, submitted that the appeal deserves to be dismissed.

10. Before we consider the legality or otherwise of the decision impugned in the present appeal, it may be appropriate if we note the relevant provisions of law. Rules 97 to 106 of Order XXI of the Code deal with "Resistance or obstruction to delivery of possession to decree holder or purchaser". Rule 97 enables the decree holder or auction purchaser to complain to Executing Court if he/she is resisted or obstructed in obtaining possession of such property by 'any person'. The Court on receipt of such application will proceed to adjudicate it. Rule 101 requires the Court to make full fledged inquiry and determine all questions relating to right, title and interest in the property arising between the parties to the proceeding or their representatives. The Court will then pass an order upon such adjudication (Rule 98). Rule 99 permits any person other than the judgment debtor who is dispossessed by the decree holder or auction purchaser to make an application to Executing Court complaining such dispossession. The Court, on receipt of such application, will proceed to adjudicate it (Rule 100). Rule 103 declares that an order made under Rule 98 or Rule 100 shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

11. Rule 102 clarifies that Rules 98 and 100 of Order XXI of the Code do not apply to transferee pendente lite. That rule is relevant and material and may be quoted in extenso;

102. Rules not applicable to transferee pendente lite

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

12. Bare reading of the rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law. He should be careful before he purchases the property which is the subject matter of litigation. It recognizes the doctrine of lis pendens recognized by Section 52 of the Transfer of Property Act, 1882?. Rule 102 of Order XXI of the Code thus takes into account the ground reality and refuses to extend helping hand to

purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree holder will never be able to realize the fruits of his decree. Every time the decree holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the rule has been enacted.

13. Before one and half century, in Bellamy v. Sabine, (1857) 1 DG & J 566 : 44 ER 847, Lord Cranwoth, L.C. proclaimed that where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the Court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.

14. Keeping in view the avowed object, the expression 'transferee from the judgment debtor' has been interpreted to mean the 'transferee from a transferee from the judgment-debtor [vide Vijayalakshmi Leather Industries (P) Ltd. Vs. K. Narayanan, Lalitha, AIR 2003 Mad 203].

15. In Vijayalakshmi Leather Industries, it was urged that the provisions of Rules 98 and 100 of Order XXI of the Code had limited application to the transferee of the judgment-debtor and could not extend to 'a chain of transactions' where the transferee of the judgment-debtor had transferred his interest.

16. Referring to statutory provisions and case law, the Court negatived the contention, stating\027

> If such contention of the learned senior counsel for the appellant is to be accepted, then we are closing our eyes regarding the intention of the statute. It is obvious while interpreting the provisions of the statute, the court must give due weight to the intention of the statute in order to give effect to the provisions. If any narrow interpretation is given and thereby the purpose of the statute is being defeated, the courts must be careful to avoid such interpretations. If we look at Section 52 of the Transfer of Property Act and Rule 102 of Order 21 C.P.C, it is very clear that the intention of the Parliament with which the statute had been enacted is that the rights of one of the parties to the proceeding pending before the court cannot be prejudiced or taken

away or adversely affected by the action of the other party to the same proceeding. In the absence of such restriction one party to the proceeding, just to prejudice the other party, may dispose of the properties which is the subject matter of the litigation or put any third party in possession and keep away from the court. By such actions of the party to the litigation the other party will be put to more hardship and only to avoid such prejudicial acts by a party to the litigation these provisions are in existence. When in spite of such statutory restrictions, for the transfer of the properties, which are the subject matter of litigation by a party to the proceeding, the courts are duty bound to give effect to the provisions of the statute.

17. The above observations, in our opinion, lay down correct proposition of law.

18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.

19. In Silverline Forum Pvt. Ltd. v. Rajiv Trust, (1998) 3 SCC 723, this Court held that where the resistance is caused or obstruction is offered by a transferee pendente lite, the scope of adjudication is confined to a question whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the affirmative, the Executing Court must hold that he had no right to resist or obstruct and such person cannot seek protection from the Executing Court.

20. The Court stated;

"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." (emphasis supplied) [See also Sarvinder Singh v. Dalip Singh, (1996) 5 SCC 539]

21. We are in respectful agreement with the proposition of law laid down by this Court in Silverline Forum. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.

22. For invoking Rule 102, it is enough for the decree holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order XXI.

23. So far as the present case is concerned, the facts are no more in dispute. As already noted earlier, Title Suit No. 140 of 1999 was instituted by the respondent-plaintiff on April 10, 1999. Thus, the litigation was pending in respect of the property and the matter was sub-judice. The appellant thereafter purchased the property from original defendant Nos. 4 and 5 by a registered sale deed on February 15, 2000 i.e. during the pendency of the suit. It is also not in dispute that ex-parte decree came to be passed against the defendants on May 24, 2001. In the situation, in our considered opinion, the doctrine of lis pendens would apply to the transaction in question, and the High Court was wholly right in holding that the case was covered by Rule 102 of Order XXI of the Code. The appellant

could not seek protection of pendency of suit instituted by her. The Executing Court was not justified in granting stay of execution proceedings. The High Court was, hence, right in setting aside the order of the Executing Court.

24. Rule 29 of Order XXI of the Code deals with cases wherein a suit has been instituted by the judgment-debtor against the decree-holder and has no relevance to cases of lis pendens wherein transfer of property has been effected by the judgment debtor to a third party during the pendency of proceedings. The High Court, in our opinion, rightly held that the appellant could not be said to be a 'stranger' to the suit inasmuch as she was claiming right, title and interest through defendant Nos. 4 and 5 against whom the suit was pending. She must, therefore, be presumed to be aware of the litigation which was before a competent Court in the form of Title Suit No. 140 of 1999 instituted by the present respondent against the predecessor of the appellant. As held in Bellamy, the fact that the purchaser of the property during the pendency of the proceedings had no knowledge about the suit, appeal or other proceeding is wholly immaterial and he/she cannot resist execution of decree on that ground. As observed in Silverline Forum, a limited inquiry in such cases is whether the transferee is claiming his right through the judgment-debtor. In our judgment, the High Court was also right in observing that if the appellant succeeds in the suit and decree is passed in her favour, she can take appropriate proceedings in accordance with law and apply for restitution. That, however, does not preclude the decree holder from executing the decree obtained by him. Since the appellant is a purchaser pendente lite and as she has no right to offer resistance or cause obstruction and as her rights have not been crystallized in a decree, Rule 102 of Order 21 of the Code comes into operation. Hence, she cannot resist execution during the pendency of the suit instituted by her. The order passed by the High Court, therefore, cannot be said to be illegal, unlawful or otherwise contrary to law.

25. For the aforesaid reasons, the appeal deserves to be dismissed and is accordingly dismissed. On the facts and in the circumstances of the case, however, there shall be no order as to costs.