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(2009) 76 ALR 625 : (2009) 2 ARC 530 : (2010) 1 CivCC 574 : (2009) **27 LCD 759** :  
(2009) 108 RD 239

**ALLAHABAD HIGH COURT**

SINGLE BENCH

VINOD KUMAR MISHRA AND ANOTHER — Appellant

Vs.

ADDITIONAL DISTRICT JUDGE, FAIZABAD AND OTHERS —  
Respondent

( Before : Narayan Shukla, J )

Writ Petition (M/S) No. 1559 of 2009

Decided on : 25-03-2009

**A. Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97 & 99 — Resistance or obstruction to possession of immovable property — Adjudication on merit — Application by petitioners as "strangers to the proceedings" alleging possession and resisting dispossession under an execution order — Ancestors of petitioners had contested the suit and execution proceedings unsuccessfully — Executing Court rejected petitioners' application on the ground that as successors of the unsuccessful parties, they had no right to resist dispossession — High Court held that an application under Order 21 Rule 97, requires adjudication on merit regarding the right to possession, even if the applicants are successors of parties who lost the original suit — The fact that petitioners' ancestors had contested and lost does not automatically negate their claim under Rule 97 — Matter remanded for fresh decision on merits after hearing parties, with a direction for expeditious disposal given the long pendency of litigation. (Paras 4, 5, 8, 9, 10, 11)**

**Counsel for Appearing Parties**

*Vimal Mishra, for the Appellant; Badrish Tripathi, for the Respondent*

Final Result : Allowed

## JUDGMENT

Narayan Shukla, J.—Heard Mr. Vimal Mishra, Learned Counsel for the petitioners as well as Mr. Awadhesh Shukla, learned Advocate holding brief of Mr. Badrish Tripathi, Learned Counsel for the opposite parties 3 and 4.

2. I am informed that opposite party No. 5 is the father of the petitioners. Accordingly he is proforma party and there is no need to issue notice to him.

3. The petitioners are aggrieved with the orders dated 24th of February, 2009 passed by the Civil judge. Junior Division, Havali, Faizabad in Case No. 23 of 2009 as well as the order dated 17th of March, 2009, passed by the Revisional Court in Revision No. 20 of 2009, upholding the order passed by the Civil Court.

4. The Learned Counsel for the petitioners submits that for the house in question the ancestors of the petitioners as well as the opposite parties contested their right to the appellate stage. Ultimately, the opposite parties succeeded and for execution of the order passed by the Court, they moved an application before the Executing Court for implementation of the order, wherein the objection was filed by the predecessors of the petitioners and that too terminated in favour of the opposite parties and the order for delivery of possession to the opposite parties was issued on 22.01.2009 by the Executing Court. Thereafter on 13th of February, 2009 the petitioners in their personal capacity moved an application under Order XXI, Rules 97 and 99 in the form of objection being in possession over the house in question as strangers to the proceedings. Their application was contested by the opposite parties and the Courts below have rejected the same, on the ground that they are the legal heirs of the persons who had contested the case before the Civil Court on merit and ultimately they became unsuccessful. Now the petitioners, who are their successors, have no right to take a fresh plea before the Executing Court just to linger on the proceeding.

5. The petitioners have come with the application under Order XXI, Rules 97 and 99 stating therein that they are strangers of the proceeding as they were minor during the course of litigation and when on 29th of January, 2009 at the first time the police officer came on spot to dispossesses them under the order of the Executing Court they rushed to the Executing Court and moved the said application, therefore, their application instead of rejecting on technical ground should have been dealt within merit on the basis of their claim of possession and an appropriate order should have been passed by the Executing Court and on this ground the petitioners have challenged the orders impugned before this Court.

6. On the other hand Mr. Awadhesh Shukla, Learned Counsel for the contesting opposite parties 3 and 4 submitted that once the predecessors of the petitioners, who have been their ancestors, have contested the matter at the stages and lost their right, to maintain the title and possession over the house in question as also before the Executing Court, now at this

stage the petitioners, who are the descendants of those persons have no right to protest their dispossession on the ground that they are in possession over the property in dispute and he further submitted that the opposite parties are dragging on into the litigation since 1973 and now they are in 2009 without any fruit, even after being succeeded at all stages. In the aforesaid background he submits that the writ petition deserves to be dismissed.

7. Order XXI, Rule 97 the benefit of which is being claimed by the petitioners, is reproduced hereunder:

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 upon the application in accordance with the provisions herein contained.

8. Upon perusal of the facts of the case, it is apparent that the provisions of Rule 97 permits any person to resist or obstruct the execution of a decree of possession of the property by moving an application before the Court concerned, which shall be adjudicated upon in accordance with law.

9. After perusal of the orders impugned, I find that the Executing Court without adjudicating the right of the possession of the petitioners and the validity of claim of the petitioners to maintain the possession over the house in question even after decree of suit in favour of the opposite parties, have rejected the application only on the ground that since they have been parties through their predecessors, now they have no right to resist their dispossession, at this stage. However, the application moved under Order XXI, Rule 97 requires adjudication on merit.

10. Therefore, without entering into the merit of the case as well as on the right of the petitioners to raise their resistance against the decree of possession over the house in question, I hereby dispose of the writ petition finally with the direction to the Executing Court to decide their application on merit and pass a fresh order after providing opportunity of hearing to the parties concerned. The Executing Court shall take care that the opposite parties are in litigation since 1973 and shall proceed with the case expeditiously without giving any adjournments unless some cogent reasons are there.

11. The orders impugned dated 24th of February, 2009 passed by the Civil Judge, Junior Division, Havali, Faizabad in Case No. 23 of 2009 as well as the order dated 17th March, 2009, passed by the Revisional Court in Revision No. 20 of 2009, upholding the order passed by the Civil Court are hereby quashed.

12. With the aforesaid observations/directions the writ petition is allowed.