



2025:DHC:2015



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IN THE HIGH COURT OF DELHI AT NEW DELHI**BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

+ **EX.F.A. 43/2023 and CM APPL. 53531/2023,**
CMAPPL.62252/2023, CM APPL. 4739/2024, CM APPL.
4933/2024

M/S HOTLINE FASHION INDIA PVT. LTD.
REGD. OFFICE: 106, GULAB BUILDING, 237,
PD'MELLO ROAD, FORTH,
MUMBAI-400001.

....APPELLANT

(Through: Mr.Kanwal Chaudhary, Mr. B.K. Singh, Mr. Bimlesh Kumar Singh, Mr. Sudip and Mr. AnkitKumar, Advocates., Advocates.)

Versus

1. M/S SENTINEL CONSULTANTS PVT. LTD. &ORS.
REGD. OFFICE AT: 1006, SECTOR 7-C
FARIDABAD – 121006

2. SHRI SUDHIR MALHOTRA
S/O LATE SHRI CHAMN LAL MALHOTRA
R/O 10, CIVIL LINES, MORADABAD (U.P.)

3. M/S BUILDMORE INDIA LTD.
REGD. OFFICE AT: 8/25,
WEST PATEL NAGAR,
NEW DELHI-110008

....RESPONDENTS

(Through: Mr. Y. K. Kapur, Advocate for R-1.)

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Reserved on: 28.01.2025

Pronounced on: 25.03.2025



JUDGMENT

The present appeal has been preferred by the appellant-objector against the order dated 08.07.2023, passed by the Learned Additional District Judge, South East District, Saket Courts, New Delhi, in Execution Petition No. 127/2017, whereby, an application under Order XXI Rule 97 read with Section 151 of the Code of Civil Procedure, has been dismissed.

2. The case of the appellant-objector is that, the impugned judgment and decree, as well as the corresponding sale deed executed in favor of the respondent no.1-decree holder, are illegal, null, and *void ab initio* to the extent they pertain to the “*rear basement*” of the suit property, being No. A-249, Defence Colony, New Delhi. From the record, the following matrix of parties emerges:-

Name of Party	CS(OS) 1571/1998	Execution Case 127/2017	Execution First Appeal 43/2023
M/S Sentinel Consultants Pvt Ltd.	Plaintiff	Decree Holder	Respondent No.1
Mr. Sudhir Malhotra	Defendant 1 (owner of Suit property)	Judgment Debtor -1	Respondent No.2
M/S Buildmore India Ltd.	Defendant 2 (builder)	Judgment Debtor -2	Respondent No.3
M/S Hotline Fashion Pvt Ltd.	Not a party	Objector	Appellant

Brief Facts

3. The relevant facts culminating in the institution of the present appeal are that, on 10.12.1996, a Collaboration Agreement came to be executed between respondent no. 2 herein, the original owner of the suit property, and



respondent no. 3, herein, the builder. Under the terms of the said agreement, respondent no. 3 was entrusted with the obligation to demolish the existing structure standing on the suit premises and to raise construction of a new building comprising a basement, ground floor, first floor, and second floor.

4. Pursuant thereto, on 27.03.1997, a Tripartite Agreement to Sell was executed among respondent no. 1-decree holder, and respondents no. 2 and 3, the judgment debtors, whereby, it was mutually agreed that the basement would be constructed to the maximum permissible extent and would thereafter be sold to respondent no. 1. The record indicates that respondent no. 1 was the tenant in the suit property from the year 1994, and such tenancy continued uninterrupted until the execution of the Tripartite Agreement to Sell.

5. On 19.06.1997, the building plan for the suit property was sanctioned, and a basement was constructed. Owing to the non-performance of the obligations arising under the Tripartite Agreement to Sell, respondent no. 1 – decree holder, instituted a suit for specific performance, being CS(OS) No. 1571/1998, against respondents no. 2 and 3 – judgment debtors, on 30.07.1998. Consequent to the institution of the said suit, this Court, *vide* order dated 03.08.1998, directed the parties to maintain *status quo* in respect of the ground and basement floors of the suit property. In parallel, *vide* order dated 05.08.1998, a Local Commissioner was appointed to inspect the premises, who submitted a report dated 06.08.1998, affirming that, as on that date, only a basement approximately measuring 14 x 20 sq. ft., existed. Thereafter, on 10.11.1998, upon an application being filed by respondents no. 2 and 3 in CS(OS) No. 1571/1998, the Court modified the earlier *status*



quo order and confined it exclusively to the basement, in consonance with the admitted position between the parties that the subject matter of the *lis* in CS(OS) No. 1571/1998 related solely to the basement of the suit property, as contemplated in the Tripartite Agreement to Sell.

6. On 28.01.2003, respondent no. 2 – judgment debtor, purportedly in violation of the subsisting *status quo* order, executed a sale deed in favour of M/s ESSEMM Realtors, thereby, purporting to alienate a portion of the basement. It is pertinent to note that the said sale deed records that, on 20.01.2003, an area admeasuring 450 sq. ft. out of the total 490 sq. ft. constructed in the basement had been sold.

7. Subsequently, *vide* judgment and decree dated 21.10.2011 passed in CS(OS) No. 1571/1998, the suit was decreed in favour of respondent no. 1 – decree holder, granting relief in respect of the entire basement measuring 1172 sq. ft. While doing so, the Court categorically held that the sale deed executed in favour of M/s ESSEMM Realtors and their representatives, being defendants no. 3 and 4 in the suit, was in breach of the injunction order of the Court and, therefore, void and *non est* in law. The relevant portion of the judgment reads as under:-

“13 ...It would thus be seen that as per this document, the basement constructed initially on Property No. A-249 Defence Colony was 290 sq. ft, which is contrary to the plea taken in the written statement, where the constructed area of basement is stated to be 251.25 sq. ft. This sale deed clearly shows that as on 20th January, 2003 as much as 890 sq. feet of the basement had been constructed on Property No. 249, Defence Colony, out of which area measuring 450 sq. ft. was sold by defendant No. 1 to Mr. Sanjay Sharma and Mr. Manoj Kain for a consideration of Rs 1 lac. Since under the agreement dated 27 March 1997, the defendants had to construct basement to the extent of maximum permissible coverage, which would mean about 1172 sq. ft., it is difficult to dispute that the plaintiff is entitled to specific



performance of the agreement dated 27th March, 1997 at least to the extent of the whole of the basement which presently stands constructed on Property No. A-249, Defence Colony. Even if only 251.25 or 290 sq. ft of the basement was constructed initially and the rest was constructed later as stated in the sale deed Ex.CW-2/PX- 1, that would make no difference to the case of the plaintiff since it is entitled to the whole of the basement which would have been legally constructed on this property. It would be pertinent to note here that it is the Building Byelaws, 1983 which were in force at the time the agreement to sell was executed and the permissible area of the basement under 7 those byelaws comes to about 1172 sq. ft.

19...Thus, the lease deed and the sale deed executed by defendant No. 1 in favour of Mr. Sanjay Sharma and Mr. Manoj Kain being in violation of the injunction order passed by this Court have to be treated as a nullity and non est in the eyes of law. The plaintiff therefore needs not seek cancellation of these documents in order to claim specific performance of the agreement to sell dated 27th March, 1997.”

8. However, pursuant to the judgment and decree dated 21.10.2011 passed in CS(OS) No. 1571/1998, a revised judgment and decree dated 10.10.2012 came to be passed, modifying the operative directions in view of the directions passed earlier in I.A. No. 5530/2004. As per the modified decree, the amount deposited by the decree holder was directed to be paid to judgment debtors no. 3 and no. 4 after judgment debtor no. 1 executed the sale deed in favour of the decree holder.

9. Aggrieved thereby, judgment debtors no. 3 and no. 4 preferred an appeal, RFA(OS) No. 20/2012, which was dismissed by the Division Bench *vide* order dated 21.05.2012. The Court affirmed the judgment of the learned Single Judge, upholding the view that the sale deed executed in favour of judgment debtors no. 3 and 4 during the pendency of the suit, and in breach of the *status quo* order, was hit by the doctrine enshrined in Section 52 of the Transfer of Property Act, 1882 [TPA]. Nevertheless, the Court directed that a sum of Rs. 2,00,000/- deposited by the decree holder be paid to judgment



debtors no. 3 and 4 therein. Thereafter, the decree holder instituted Execution Petition No. 127/2017 in CS(OS) No. 1571/1998 on 03.10.2012.

10. The judgment debtors no. 3 and no. 4 further carried the matter to the Supreme Court by way of a Special Leave Petition, which also came to be dismissed. Consequently, the finding that the sale deed in favour of judgment debtors no. 3 and 4 was executed during the pendency of the suit and in violation of the subsisting interim injunction, rendering it voidable at the option of the decree holder, has attained finality and is no longer open to challenge.

11. Thereafter, having exhausted their remedies, judgment debtors no. 3 and 4 instituted a fresh suit, being Civil Suit No. 39 of 2016 before the learned District Judge, South District, Saket Courts, alleging that the decree dated 21.10.2011 was obtained by way of collusion. This suit also came to be dismissed by the Court *vide* order dated 27.09.2016.

12. As noted earlier, on 03.10.2012, Execution Petition No. 127/2017 in CS(OS) 1571/1998 was filed by the respondent no.1-decree holder. On 31.10.2018, a Bailiff, executing warrants of possession, visited the property, including the rear basement, which was in the possession of the appellant-objector herein. Upon becoming aware of the proceedings, on 19.12.2018, the appellant-objector inspected the records of the Court and thereafter, filed an application under Order XXI Rule 97 CPC, challenging the execution of the judgement and decree with respect to the rear basement.

13. On 08.07.2023, the Executing Court dismissed the objection application under Order XXI Rule 97 CPC. Aggrieved by the said dismissal,



on 27.09.2023, the appellant-objector filed the present appeal challenging the order of the Executing Court.

Submissions on behalf of the Appellant-Objector:

14. Mr. Kanwal Chaudhary, learned counsel appearing on behalf of the appellant-objector, has made the following broad submissions:-

- i. At the outset, learned counsel submits that the appellant-objector is the sole, absolute, and registered owner of the *rear basement* of suit property, admeasuring approximately 600 sq. ft. According to him, the said ownership is established *vide* a registered sale deed dated 07.08.2000, bearing Registration No. 7449, Addl. Book No. 2, Vol. No. 200, executed before the Sub-Registrar, New Delhi. Learned counsel further submits that the appellant-objector has been in continuous and uninterrupted possession of the rear basement since the year 2000.
- ii. He further submits that, in terms of Notification dated 27.11.1998 being *No. K-12016/5/79-DDII2A/IB* issued under the Building Bye-Laws, basements in plotted developments were not included in the Floor Area Ratio [FAR]. He contends that the respondent-judgment debtor undertook the construction of the portion of the basement, currently in possession of the appellant-objector, only after the amendment to the bye-laws. Consequently, the appellant-objector purchased the said portion in the year 2000, subsequent to the amendment. Thus, he contends that he has acquired the lawful ownership and possession of the rear basement in accordance with the prevailing regulatory framework.



- iii. Elaborating on the layout of the property and the chronology of its construction, learned counsel submits that the basement of the property in question consists of two distinct portions, i.e. the *Front Basement* and the *Rear Basement*. The *Front Basement*, admeasuring 251 sq. ft., was constructed alongside the main building during 1997-98 as per the originally approved sanctioned plan.
- iv. The said *Front Basement* admeasuring 251 sq. ft. was the sole subject matter of CS (OS) No. 1571/1998, the suit for specific performance, which was instituted on 30.07.1998 by the respondent no.1-decree holder against the respondents no.2 and no.3-judgment debtors. At the time of institution of the suit for specific performance, the *Rear Basement* neither existed nor was permissible under the prevailing building regulations.
- v. According to learned counsel, only upon the amendment in the by-laws through Notification No. K-12016/5/79-DDII2A/IB dated 27.11.1998, the basements in plotted developments came to be excluded from the Floor Area Ratio [FAR] and therefore, the *Rear Basement* became permissible and was subsequently constructed by the respondent no.1-decree holders.
- vi. He further submits that on 31.10.2018, the bailiff visited the suit property with warrants of possession issued by the Executing Court in Execution Petition No. 127/2017 in CS(OS) No. 1571/1998 and sought to inspect the rear basement for the purpose of taking possession.



- vii. He contends that the Executing Court erroneously attached the entire basement floor of the property without being apprised that the basement consisted of two distinct portions. He submits that the bailiff, at the time of execution, neither possessed a site plan nor had any measurement of the basement portions. According to him, the same led to an erroneous assumption that the entire basement was covered under the decree passed by the Court in CS(OS) No. 1571/1998. Learned counsel further contends that the plaintiff-decree holder had deliberately concealed these material facts from the Executing Court, resulting in the impugned order being passed without due consideration of the actual layout and ownership of the basement portions.
- viii. Learned counsel submits that the appellant-objector had no involvement in the underlying suit and was neither impleaded as a party nor made aware of the decree passed, therein, or the subsequent execution proceedings until the bailiff came to the suit property to attach the rear basement. He asserts that he possesses an independent right and title to the rear basement and, therefore, the impugned decree cannot be enforced against him.
- ix. In light of the same, the appellant-objector has raised objections under Order XXI Rule 97 CPC, challenging the validity of the judgment and decree dated 21.10.2011, as well as the revised decree dated 10.10.2012, passed in CS (OS) No. 1571/1998, before the Executing Court.



- x. He submits that the Executing Court, *vide* impugned order dated 08.07.2023, dismissed the objections of the appellant without any inquiry into his independent right and title over the rear basement. According to him, the Executing Court erroneously held that the sale deed in favour of the appellant was of no consequence and, this, according to him, resulted in grave injustice to the appellant-objector.
- xi. According to learned counsel, the case of the respondent no.1-decree holder in the suit for specific performance therein was that as per the agreement, he was to be handed over the *maximum permissible covered area* of the basement in the said building. However, the respondent no.1-decree holder contends that the respondents no.2 and no.3-judgment debtors had constructed a significantly truncated and abridged basement, thereby engaging in fraud.
- xii. Learned counsel emphasizes that the respondent no.1-decree holder, at no stage in the suit, disclosed or specified what constituted the *maximum permissible covered area* of the basement at the relevant time. Furthermore, it was not brought on record whether the basement was constructed in accordance with the sanctioned building plan. This, according to the appellant-objector, caused certain ambiguity as to the scope of the suit itself.
- xiii. Learned counsel for the appellant-objector further submits that on 12.07.2004, the respondent no.1-decree holder filed I.A. No. 5530/2004 under Order XXXIX Rule 2A CPC, alleging contempt and breach of the injunction order passed in the suit. In the said application, the respondent no.1-decree holder provided details of the



purchasers and occupiers of the front basement, impleaded them as parties, and also sought the appointment of a Receiver for the said front basement alone. However, from the pleadings in the said application, it is evident that the respondent no.1-decree holder was always aware of the construction and occupation of the rear basement by the appellant-objector. Despite this knowledge, the respondent no.1-decree holder deliberately refrained from taking any steps to implead the appellant-objector in the subject suit.

- xiv. He further contends that the respondent no.1-decree holder, taking undue advantage of the *ex-parte* proceedings in the suit, deliberately misled the Court and obtained the judgment and decree dated 21.10.2011 for the entire basement of the said property, without specifying the area, measurements, or any site plan of the basement(s), and thus a fraud has been played on the Court by the respondent no.1-decree holder.
- xv. He further contends that in distinction to the other parties, the ownership claim of the appellant-objector does not derive from the respondents no.2 and no.3-judgment debtors. Since the decree does not bind the appellant-objector, who claims ownership in his own right over a separate portion of the property, he rightfully filed objections under Order XXI Rule 97 CPC to establish his independent title to the *Rear Basement* and to expose the fraud committed by the plaintiff in obtaining the decree. However, the learned Executing Court, *vide* the impugned order, summarily dismissed the objections without conducting any inquiry into the independent ownership rights



of the appellant over the rear basement. The impugned order is, thus, *ex-facie* erroneous and contrary to law and the facts on record.

- xvi. He concludes his submissions by stating that a perusal of the record of the Trial Court would indicate that there exist multiple unanswered questions and thus, fresh adjudication is required. He further places reliance on the decision of the Supreme Court in the case of *Noorduddin v. K.L. Anand (Dr)*¹ to state that the scheme of Order XXI Rule 97 CPC empowers the Court to adjudicate upon the rights and interests of parties claiming an independent right *qua* the immovable property. He further relies on *Babulal v. Raj Kumar*² to contend that in the event an obstruction is caused in the nature of resistance, before the removal of the resistance, an adjudication is required to be conducted under Order XXI Rule 98.

Submissions on behalf of the Respondent no.1-decree holder:

15. Mr. Bhushan Kapur, learned counsel appearing on behalf of the respondent no.1-decree holder, vehemently rejecting the submissions advanced on behalf of the appellant-objector, has advanced the following broad submissions:-

- i. Learned counsel contends that he was originally inducted as a tenant with respect to the Ground Floor of the suit property, then owned by respondents no.2 and no.3-judgment debtors, *vide* lease agreement dated agreement dated 12.10.1994.

¹(1995) 1 SCC 242

²(1996) 3 SCC 154



- ii. He submits that *vide* agreement dated 10.12.1996, executed between the respondents no.2 and no.3-judgment debtors, it was agreed that the suit property would be redeveloped by demolishing the existing structure and constructing a new residential building at the cost and expense of defendant no. 2. As per the terms of the collaboration agreement, the newly constructed building was to consist of a basement, ground floor, first floor, and second floor. In response, the third party therein filed their reply, admitting that they were unaware of the agreement to sell dated 27.03.1997 and had, in the said circumstances, taken a portion of the basement measuring 340 sq. ft. on rent from respondent-judgment debtor, *vide* lease dated 14.03.1997, for a period of three years. This was later followed by a sale deed dated 28.03.2003, wherein respondent-judgment debtor further sold the said property to Manoj Kain and Sanjay Sharma.
- iii. Learned counsel further submits that ten issues were framed based on the pleadings of the parties, out of which issues no. 1 to 4 were decided against the respondent-judgment debtor. Issues no. 5 to 10 were taken up together, as they were inter-connected, and were also decided against the respondent-judgment debtor. According to learned counsel, the Trial Court, after discussing various clauses of the collaboration agreement [Ex. PW1/10] in paragraph 11 of the judgment dated 21.10.2011, proceeded in paragraph 12 of the judgment to return a categorical finding that the maximum permissible covered area for the basement, as per the Municipal Bye-Laws, was 1172 sq. ft. and not 251 sq. ft. as claimed by the appellant-



objector. This finding was rendered after a detailed reference to the relevant Municipal Bye-Laws.

- iv. To rebut the contention of the appellant-objector that they were only permitted to construct 251.25 sq. ft., this Court, in paragraph 13, rejected their stand while referring to Ex. CW2/PX-1, which is the sale deed executed by defendant no. 1 in favour of Manoj Kumar Jain and Sanjay Sharma dated 28.01.2003. The sale deed itself recorded that on 20.01.2003, 490 sq. ft. of the basement had been constructed in the subject property, out of which 450 sq. ft. was sold to the said individuals for a consideration of Rs. 1 Lakh.
- v. Learned counsel places reliance on the judgment and decree dated 21.10.2011, and contends that the Court therein recorded a categorical finding that the total permissible area for construction of the basement was 1172 sq. ft. and consequently, held that the respondent-judgment debtor was entitled to specific performance of the tripartite agreement to sell dated 27.03.1997.
- vi. With regard to the sale deed dated 28.01.2003 [Ex. PW2/PX-1], learned counsel submits that the appellants therein, Shri Manoj Kain and Shri Sanjay Sharma, who purportedly purchased 450 sq. ft. of the basement, acquired no valid right, title, or interest therein, as the sale was executed in clear violation of the injunction order dated 10.11.1998. He further submits that this finding was correctly recorded by the Executing Court, which consequently directed the appellants therein to hand over possession of the subject property within four weeks from the date of judgment. He submits that the



appellant-objector herein is also on the same footing as the third parties therein.

- vii. He placed reliance on the following observations of the Executing Court, which reads as under:-

“Even otherwise, the basement portion having been purchased by them in violation of the injunction order, the sale in their favour is non est and a nullity in the eyes of law, thereby conferring no right, title, or interest upon them in respect of the said basement portion. Consequently, the appellants are liable to be evicted therefrom.”

- viii. With regards to the contention advanced by the appellant-objector that the property purchased by him did not exist on the date of institution of the suit, learned counsel submits that such a transaction is clearly governed by Section 52 of TPA, which deals with fraudulent transfers during litigation. He submits that the appellant, having acquired the property *pendente lite*, derives no independent title but merely steps into the shoes of the judgment debtor. Therefore, any defence unavailable to the judgment debtor is equally unavailable to the appellant-objector. Order XXI Rules 97 to 106 of CPC, which pertain to *“Resistance to the delivery of possession to the decree-holder or purchaser”* are also relevant in this context.

- ix. Learned counsel concludes his submissions by stating that the present application has been filed under Rule 97. While Rule 101 of Order XXI provides for the determination of all questions relating to right, title, or interest through an application under Rule 97, Rule 102 imposes a specific bar, expressly prohibiting claims by any person to whom the judgment debtor has transferred property subsequent to the institution of the suit in which the decree was passed.



- x. Learned counsel places reliance upon the judgment of the Supreme Court in *Silverline Forum (P) Ltd. v. Rajiv Trust*³, specifically paragraphs 10, 14, 17, 18, 23, and 26 thereof, and also relies upon the decision in *Agnigundala Venkata Ranga Rao v. Indukuru Ramachandra Reddy*⁴, particularly paragraphs 32 and 35 thereof.

Analysis:-

16. I have heard the learned counsel for the parties and have perused the record.

17. The core aspect that emerges for consideration from the arguments advanced by the parties in the present appeal, is whether, under the facts and circumstances, the Executing Court was justified in dismissing the objections filed by the appellant-objector under Order XXI Rule 97 of the Code of Civil Procedure, having regard to the bar contained under Rule 102 thereof, and consequently directing delivery of possession, notwithstanding the contention of the appellant-objector that several issues relating to right, title, and interest in the subject property remain unanswered and necessitate fresh adjudication.

18. The case of the appellant-objector, in essence, is that the basement area purchased by him, classified by him as the “Rear Basement”, pertains exclusively to the additional floor area subsequently sanctioned by the concerned municipal authorities. Consequently, it is contended that the builder alone held rights over such an enhanced area, and therefore, the

³(1998) 3 SCC 723

⁴(2017) 7 SCC 694



same was never the subject matter of the injunction order passed in the suit for specific performance. On this basis, the appellant-objector submits that the respondent no.1-decree holder does not possess any right, title, or interest whatsoever in relation to this additional basement portion. To substantiate this contention, learned counsel placed strong reliance on the decision of the Supreme Court in *Noorduddin* to contend that the scheme envisaged under Order XXI Rule 97 CPC clearly mandates that whenever an application is filed under the said provision, the Executing Court is obligated to adjudicate upon the rights, titles, and interests claimed by the parties, or by any third party asserting an independent claim in respect of the immovable property involved. Such determination, the Court held, shall be conclusive and binding upon the parties concerned as if it were a decree, subject only to appeal, thereby precluding its agitation by way of a separate suit. The relevant portion of the decision reads as under:-

“8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.”



19. However, upon examination of the decision, it only indicates that the Executing Court is obligated to adjudicate upon the assertions made by the “*third party*”. It is settled law that Rules 97 to 106 of Order XXI CPC are intended to address comprehensively all forms of resistance or obstruction encountered during the execution of a decree or order. These Rules collectively constitute a self-contained Code for the purpose of adjudicating questions arising from resistance or obstruction to the delivery of possession under a decree. A third party to the decree, who raises such resistance, would fall squarely within the purview of Rule 101 CPC, and in terms of Rule 98 read with Rule 101, an adjudication on the merits of such objections is mandated.

20. However, where resistance is offered by a *transferee pendente lite* of the judgment debtor, the scope of adjudication is significantly narrowed and confined strictly to determining whether the objector qualifies as such a transferee. If an affirmative finding is rendered in this regard, the Executing Court must conclude that such a transferee lacks the right to resist execution, having regard to the explicit bar contained in Rule 102 CPC. The legislative intent behind precluding additional objections by a *transferee pendente lite* aligns with the principles enshrined in Section 52 of the Transfer of Property Act, 1882, which prohibits the transfer of property during pendency of litigation.

21. This Court in *Vineet Tiwari v. Harinder Pal Singh Chawla*⁵, while examining the jurisprudential contours of the doctrine of *lis pendens* and the

⁵2025 SCC OnLine Del 780



status of a *transferee pendente lite*, observed that the principle of *lis pendens*, derived from the Latin maxim *ut pendent nihil innovetur*, implies that during the pendency of litigation, nothing new should be introduced or altered concerning the property in dispute. The doctrine essentially bars the creation of any fresh rights or interests in the subject matter of litigation during its pendency, ensuring that such transfers remain subordinate to, and contingent upon, the ultimate outcome of the pending suit. Upon a comprehensive analysis of a catena of decisions, this Court distilled the governing legal principles, which are set forth as under:-

“55. On a careful analysis of the common thread running through the aforesaid decisions, the following fundamentals could be laid down:-

(i) The decree holder or the purchaser of any property sold in the execution of a decree has an unfettered right to seek redressal under Rule 97 of Order XXI of CPC by filing a complaint against any objection or resistance in taking possession; (Silverline Forum Pvt. Ltd.)

(ii) A claim of objection or obstruction at the instance of a third party is entertainable under Order XXI Rule 97 of the CPC in execution proceedings. However, such third party could not be the judgment debtor or any person claiming through the judgment debtor pendente lite in light of the express bar (Silverline Forum Pvt. Ltd.);

(iii) A person claiming through decree holder is not legally entitled to raise an objection under Order XXI Rule 97 to 101 of CPC (Sriram Housing Finance);

(iv) An applicant raising an objection under Rule 97 of Order XXI must be independent of the judgment debtor or a person having derived rights from the judgment debtor (Noorduddin and Ashan Devi);

(v) A transferee pendente lite, whether a party or otherwise, is bound by the result of litigation and the provisions of Section 52 TPA strike at the transactions which confer him with any right over the suit property by rendering such pendente lite transfers as subservient to the outcome of the suit (H. Anjanappa and Ors.)”



22. Further, reference can be made to the decision of this Court in the case of *Naresh Kumar Jain v. R.L. Kapoor*⁶, where it was observed that the objective of Rule 102 is to preclude a *transferee pendente lite* from obstructing the enjoyment of the fruits of the decree by the decree-holder and to prevent unwarranted delays in the execution proceedings. The relevant portion of the said decision reads as under:-

“44. For an adjudication to fall within the ambit of Section 96 or Section 100 of CPC, it must be predicated upon a statutory provision that reflects the legislative intent to confer a right of appeal upon the aggrieved party. While the provisions under Order XXI, Rules 97 to 106 of CPC, constitute a comprehensive Code governing the adjudication of disputes relating to rights, title, and interest in the property under execution, it is evident from these provisions that the right to raise objections or impede the possession of a decree-holder is expressly unavailable to the judgment-debtor or any subsequent purchaser deriving title from the judgment-debtor via a transaction effectuated pendente lite. As delineated in the above-noted discussion, the doctrine of lis pendens is firmly rooted in principles of justice, equity, and good conscience, as permitting alienation during the pendency of litigation undermines the rights of the parties and prejudices the decree-holder, who has secured a decree in his favor on merit. Moreover, it also undermines the sanctity of the adjudicatory process in an equal measure. The certainty and sanctity of the subject-matter under adjudication is paramount and they must be preserved.

45. The objective of Rule 102 is to preclude a pendente lite transferee from obstructing the enjoyment of the fruits of the decree by the decree-holder and to prevent unwarranted delays in the execution proceedings. Entertaining such objections or permitting appeals arising therefrom would contravene the statutory bar under Rule 102 and further protract the execution of the decree, thereby, defeating the intent of the provision.”

23. To establish his independent status as a third party and assert rights in the property distinct from those of the judgment-debtor, the appellant-

⁶ 2025 SCC OnLine Del 448



objector has contended that the portion currently in his possession was constructed pursuant to a subsequent amendment in the Building Bye-laws and FAR, and consequently, did not originally form part of the subject matter of the dispute.

24. For a more comprehensive appreciation of the factual matrix, it is imperative to closely examine the contours of the suit property as delineated in the original suit for specific performance filed by respondent no.1-decree holder against respondents no.2 and no.3-judgment debtors.

25. A perusal of the plaint in CS(OS) 1571/1998, filed at the instance of the respondent no.1-decree holder and the corresponding written submissions, reveals the following factual position:-

- i. In paragraph 5 of the plaint, it was averred that under the tripartite agreement to sell dated 27.03.1997, the respondent no.1-decree holder was entitled to obtain all possessory rights over the basement, which was to be constructed by the judgment-debtor builder. It was further stipulated that the construction would be carried out within the maximum permissible area and would comprise a hall, one toilet, and a pantry. Additionally, the respondent no.1-decree holder was granted the right to use the common toilet proposed to be constructed on the second floor, along with various other common area rights, including access to staircases, the lift, and other shared facilities.
- ii. In paragraph 11 of the plaint in CS(OS) 1571/1998, it was contended that only a truncated and abridged portion of the basement was utilized for construction, thereby deviating from the agreed terms. It was asserted that the construction was not carried out in the maximum



permissible area, constituting a breach of the agreement, and consequently, the plaintiff was entitled to quantified liquidated damages. Furthermore, in paragraph 14 of the plaint, it was specifically averred that the basement was not constructed in accordance with the dimensions stipulated in the agreement to sell dated 27.03.1997. It was further alleged that the construction not only failed to comply with the maximum permissible area but also violated the terms of the building collaboration agreement dated 10.12.1996, which had been executed between the judgment debtors, i.e., respondent No. 2 and respondent No. 3 herein.

- iii. In response to the plaint, defendant No. 1 therein, i.e., respondent No. 2-judgment debtor, took the position that the tripartite agreement dated 27.03.1997 was itself illegal. They further contended that the construction of the basement was solely the responsibility of defendant No. 2, which had been duly carried out.
 - iv. Additionally, defendant No. 2 therein, i.e., respondent No. 3-judgment debtor, in his written statement, admitted in paragraph 5 on merits that the tripartite agreement to sell dated 27.03.1997 had indeed been executed between the parties. Further, in paragraphs 10 and 11, he asserted that the basement had been constructed in compliance with the Municipal Corporation of Delhi [MCD] rules and regulations, adhering to the maximum permissible area, which was approximately 251 sq. ft., and that the said construction had already been completed.
26. Accordingly, the Court appointed a Local Commissioner to inspect the suit property. Pursuant to the inspection, the Local Commissioner



submitted a report dated 06.08.1998, wherein it was observed that the basement comprised a single large room admeasuring approximately 14x20 square feet. It was further noted that the basement remained largely unconstructed and was filled with wooden panels and other construction materials. The relevant portion of the observations made by the Local Commissioner is as follows:-

“6. The basement has one room, it is a big room with a approximate area of 14x20 sq.ft. and a small portion which falls under the stairs leading to the ground floor. The room of the basement is full of wood/wood panels, no construction has been started in this area,, the walls are cemented, the stair case is also kachcha cemented construction (there are nine steps; leading to the basement. The basement is being used as a building material store, there is lot of wood lying inside and most of it seems to be old bits and pieces. There is no one in the basement, it is not inhabitable and is only used as a dump for building material.

7. Therefore, there is no one in possession of either of the floors (basement and ground floor). The construction work in the basement has not been started and the same seems to be used as a dump for construction material. Area of the basement is approximately 14x20 sq ft”

27. Ultimately, when the matter was adjudicated on 21.10.2011, the Court undertook a comprehensive analysis of the aspect of maximum permissible area for the basement, which was to be constructed under the tripartite agreement to sell dated 27.03.1997. Consolidating and addressing issues No. 5 to 10, the Court, in paragraph 12 of the judgment dated 21.10.2011, first noted that defendant No. 2 was obligated to construct the basement to the extent of the maximum permissible covered area and that the basement was agreed to be sold to the plaintiff for a total consideration of Rs. 12.25 lakhs. The Court further observed that the extent of the permissible basement was governed by the Building Bye-Laws, 1983. Upon examining the relevant



bye-laws, it was noted that the suit property was constructed on a plot measuring 217 square yards. Consequently, the maximum permissible coverage for this plot was determined to be approximately 130 square yards, translating to a basement area of about 1172 square feet. Thus, the Court held that a basement measuring up to 1172 square feet was legally permissible for construction on the suit property.

28. Since the parties had explicitly agreed that defendant No. 1 was to construct the basement to the maximum permissible covered area and sell the same to the plaintiff for Rs. 12.25 lakhs, defendant no. 2 was duty-bound to construct, and defendant no. 1 was obligated to sell, a basement measuring 1172 square feet in accordance with the agreement to sell dated 27.03.1997. The Court further noted that the defendants, in their written statement, had erroneously claimed that the maximum permissible basement area for the suit property was only 251.25 square feet. The Court therein categorically rejected this claim, holding that the actual maximum permissible area for basement construction on the suit property was 1172 square feet. The relevant portion of the said observations are reproduced hereunder:-

“12. It would thus been seen that defendant No. 2 was to construct basement to the extent of maximum permissible covered area and that basement was agreed to be sold to the plaintiff for a total consideration of Rs 12.25 lac. The extent of permissible basement has been prescribed in Building Bye Laws 1983. The relevant Bye Laws read as under: —

(b) Plot coverage—The plot coverage shall be as follows:

(i) (b) Above 100 sq. yds. (83.61 sq. mtr.), but not exceeding 300 sq. yds. (250.83 sq. mts.)

(iv) Basement:



(b) Basement area shall not exceed the ground floor coverage and shall be below the ground floor. Basement area may however be extended below the internal courtyard and shaft.

Admittedly, property No. 249, Defence Colony, New Delhi is constructed on a plot measuring 217 sq. yards. The maximum coverage on this plot, therefore, comes to about 130 sq. yards which would mean about 1172 sq. ft. Thus, basement, measuring up to 1172 sq. ft was permissible to be constructed on Property No. A-249, Defence Colony, New Delhi. Since the parties specifically agreed that defendant No. 1 was to construct basement to the extent of maximum permissible covered area and agreed to sell that much to the plaintiff for a consideration of Rs 12.25 lac, defendant No. 2 was required to construct and defendant No. 1 was required to sell, basement measuring 1172 sq. feet to the plaintiff in terms of the agreement to sell dated 27th March, 1997. The case of the defendants in the written statement is that the maximum permissible basement on Property No. 249, Defence Colony was 251.25 sq. ft which is patently incorrect. No material has been placed by the defendants on record to show that maximum permissible area for the basement was 251.25 sq. ft and not about 1172 sq. ft. I, therefore, have no hesitation in holding that the maximum permissible area for construction of basement on the suit property was about 1172 sq. ft.”

29. The Court, from paragraph no. 13 onwards, examined the position taken by the defendants, wherein they asserted that only 251.25 square feet of the basement had been constructed as it was the maximum permissible area. The Court, however, scrutinized the agreement entered between the respondent no.1-decree holder and the appellant-objector[Ex. CW-2/PX-1], and observed that the initially constructed basement area in the suit property, was actually to the extent of 290 square feet. This was found to be inconsistent with the plea taken in the written statement, where the defendants claimed the constructed basement area to be only 251.25 square feet.

30. Further, the sale deed dated 20.01.2003 [Ex. CW-2/PX-1] established that as of that date, a total of 890 square feet of the basement had been



constructed on the suit property. Out of this, an area measuring 450 square feet had been sold by defendant No. 1 to Mr. Sanjay Sharma and Mr. Manoj Kain. The Court reiterated that under the agreement dated 27.03.1997, the defendants were obligated to construct the basement to the maximum permissible coverage, which amounted to approximately 1172 square feet. Consequently, it was held that the plaintiff therein, i.e. the respondent no.1-decree holder was entitled to the specific performance of the agreement dated 27.03.1997, at the very least, concerning the entirety of the basement as constructed.

31. The Court further noted that even if the initially constructed basement area was only 251.25 or 290 square feet and the remaining portion was constructed subsequently, as indicated in the sale deed [Ex. CW-2/PX-1], this fact would not alter the entitlement of the plaintiff. The plaintiff remained entitled to the entire basement space that could have been lawfully constructed on the property. It was further emphasized that the relevant Building Bye-Laws, 1983, which were in force at the time the agreement to sell was executed, permitted a basement area of approximately 1172 square feet.

32. Regarding the subsequent sale of 450 square feet of the basement to M/s ESSEMM Realtors, a subsequent purchaser, the purchasers contended that they were unaware of the pending suit and the subsisting injunction order and, therefore, had not acted in violation thereof. While the Court noted that M/s ESSEMM Realtors had not wilfully contravened the injunction order, it nonetheless held that the purchase and the consequent sale deed were in clear violation of the injunction. Consequently, the sale



transaction was declared *non est* and a nullity in the eyes of law, conferring no right, title, or interest upon M/s ESSEMM Realtors in respect of the basement portion purchased by them. The relevant observations made by the Court therein are reproduced hereunder:-

“In my view considering all the facts and circumstances of the case, the ends of justice in this case would be adequately met if Mr. Sanjay Sharma and Mr. Manoj Kain are directed to deliver possession of the basement floor occupied by them in property No.A-249 Defence Colony to the plaintiff without demur or protest, within 04 weeks from the date of this order. Even otherwise, the basement portion having been purchased by them in violation of the injunction order, the sale in their favour is non est and nullity in the eyes of law and it confers no right, title or interest on them in respect of the basement portion purchased by them and they are liable to be evicted therefrom. Mr. Sanjay Sharma and Mr. Manoj Kain are accordingly directed to deliver peaceful and vacant possession of the basement portion occupied by them in Property No. A-249 Defence Colony to the plaintiff without demur or protest within 04 weeks from today. The application stands disposed of in terms of this order.”

33. Thus, it is evident that while adjudicating the suit for specific performance, the Court declared all subsequent sale deeds executed after the grant of the injunction order to be *non est* and, therefore, a nullity in the eyes of law. Pursuant to this judgment and decree, the decree holder sought execution of the decree, in furtherance of which a bailiff was appointed on 31.10.2018. Under the authority of the “warrant of possession”, the Bailiff proceeded to take possession of the entire basement.

34. Aggrieved by the said execution proceedings, the appellant-objector filed an application on 22.11.2018, invoking Order XXI Rule 97 CPC, contending that he had purchased the suit property *vide* sale deed dated 07.08.2000, and was *bona fide* unaware of the ongoing litigation between the parties. He asserted that he had no reason to suspect any dispute



concerning the property, as the rear basement was accessible only through the front basement. The appellant-objector further relied on the registered sale deed, arguing that unless the said deed was formally cancelled, he could not be dispossessed. Additionally, he contended that the rear portion of the basement had been expanded subsequently and, therefore, was not part of the subject matter of CS(OS) 1571/1998. Considering the submissions advanced, the Executing Court observed that multiple sale transactions, including the sale to M/s ESSEMM Realtors, had been carried out by the judgment-debtors during the subsistence of the injunction order and the pendency of CS(OS) 1571/1998. The Court noted that the decree passed in CS(OS) 1571/1998 had categorically recognized the entitlement of the decree-holder to the maximum permissible area in the basement as per the original tripartite agreement. It further held that if the Floor Area Ratio [FAR] had increased, the benefit of such an increase would vest with the decree holder as the lawful purchaser and could not be retained solely by the builder. Additionally, the Court had, in clear terms, held that the decree holder was entitled to a basement area of 1172 square feet. Even the by-laws relied upon by the appellant-objector indicated that the maximum permissible area had not been fully constructed by the judgment-debtors and was not handed over to the decree holder. The Executing Court further relied on Section 52 of the Transfer of Property Act, 1882, which prohibits the creation of third-party rights during the pendency of a suit. Consequently, it was held that the judgment-debtors had no authority to alienate any portion of the basement or create third-party rights, and any enhanced FAR, if applicable, would enure solely to the benefit of the decree holder.



35. Based on these findings, the Executing Court concluded that the appellant-objector had no enforceable rights in the basement, and the sale deed in his favour conferred no valid title. It was further held that the decree holder was the rightful owner of the entire basement.

36. Thus, the conclusions of the Executing Court were in alignment with the findings rendered in CS(OS) 1571/1998. The position of the appellant-objector herein is analogous to M/s ESSEMM Realtors, who had similarly purchased a portion of the basement in 2003.

37. Consequently, it is evident that the objections raised by the appellant-objector in the present execution proceedings were substantively the same as those adjudicated by the Court while passing the judgment and decree in CS(OS) 1571/1998. The only distinction lies in the fact that, in CS(OS) 1571/1998, the contention that the maximum permissible area of the basement was limited to 251 square feet, was advanced by the respondent no.2 and no.3-judgment-debtors, and other purchasers, whereas in the instant execution proceedings, the same argument is now being raised by the appellant-objector.

38. Therefore, the first and foremost aspect that needs determination is whether the appellant-objector is raising contentions as an independent third party or, by virtue of being a *transferee pendente lite*, has only stepped into the shoes of the judgment debtor. The relevant provisions regarding the same are enumerated under Order XXI of the Code of Civil Procedure, which has been rightly referred to by the appellant-objector.

39. Order XXI governs the execution of decrees and orders. Rules 97 to 106, falling under the heading "*Resistance to delivery of possession to*



decree-holder or purchaser,” provide a comprehensive mechanism to address any form of obstruction encountered during execution proceedings.

40. The Supreme Court, in *Silverline Forum*, examined the scheme of Order XXI Rules 97 to 106 and held that any resistance or obstruction raised by a third party to the execution of a decree can be adjudicated upon under Rule 97 CPC. As already noted above, under Rule 101 CPC, a third party resisting execution is entitled to an adjudication on all questions relating to right, title, or interest in the suit property. In such cases, Rule 98, read with Rule 101, mandates a full-fledged determination of the rights asserted by the objector.

41. The Court, however, clarified that when resistance to execution is raised by a *transferee pendente lite* of the judgment-debtor, the scope of adjudication stands substantially circumscribed to the singular determination of whether the said objector indeed falls within the category of such a *transferee*. Once this question is answered in the affirmative, the Executing Court is obliged, in terms of Rule 102 CPC, to hold that the *transferee* possesses no right to obstruct the execution proceedings. Therefore, considering that the CPC distinctly demarcates the rights of third-party objectors *vis-à-vis transferees pendente lite*, the preliminary inquiry must invariably ascertain the precise legal character of the objector or resistor in execution. The scope and depth of judicial scrutiny by the Executing Court hinge exclusively upon this preliminary classification. It bears repetition that, upon establishing the status of the objector as a *transferee pendente lite*, no further consideration of their objections is permissible, as such



claims stand irretrievably defeated by the principle of *lis pendens*, statutorily encapsulated in Section 52 of the Transfer of Property Act.

42. If the contentions of the appellant-objector are tested on the anvil of Order XXI of CPC and Section 52 of TPA, the same would indicate that post the sale deed of 2000 being executed while the injunction order is operating, the appellant-objector would be falling under the ambit of *transferee pendent lite* and, therefore, his objections under Order XXI Rule 97 were *per se* not maintainable. Thus, the adjudication of his objections would not fall within the purview of the decree as envisaged under Rule 103 of Order XXI of the CPC.

43. In *Topanmal Chhotamal v. Kundomal Gangaram*⁷, it has been categorically observed that an executing Court, in no circumstances, can go behind the decree and give any relief which was denied to the party. The Executing Court must take the decree as it stands and the same is binding between the parties.

44. In the instant case, the transferees, being ESSEMM Realtors, also a subsequent purchaser, and the appellant-objector, being a purchaser in the year 2000, both have sale deeds that were executed post the grant of order of injunction *qua* the basement. The contentions raised by the respondents nos. 2 and no.3-judgment debtors, the other subsequent purchaser, and the appellant-objector are analogous.

45. The Court, at this stage, deems it appropriate to cull out the essential arguments of the appellant-objector and indicate how the same objections

⁷1959 SCC OnLine SC 22



were already dealt with by the Court that has passed the judgment and decree in CS(OS) 1571/1998.

Principle contention(s) of appellant-objector	How similar contentions were dealt with by the Court in CS(OS) 1571/1998
The appellant-objector was unaware of the pending litigation and, consequently, of the injunction order.	In paragraph 18 of the judgment and decree in CS(OS) 1571/1998, the Court categorically held that the sale deed executed in favor of third parties in violation of the injunction order were <i>void ab initio</i> and <i>non est</i> in law and the knowledge of the subsequent purchaser is immaterial.
The maximum permissible construction at the time of initiation of litigation was only 251 sq. ft.; thus, the decree-holder is not entitled to claim any additional construction beyond this limit. The injunction order applied only to 251 sq. ft. as of that date and is not applicable to subsequent construction.	In paragraph 13 of the judgment, the Court expressly rejected this contention, holding that the <i>Building Bye-Laws, 1983</i> , which were in force at the time of execution of the agreement to sell, permitted a basement area of 1172 sq. ft.. The Court further observed that even if only 251.25 or 290 sq. ft. of the basement was initially constructed and the remaining portion was developed later, the entitlement of the decree holder remained unaffected. The plaintiff was held entitled to the entire basement area that could have been legally constructed under the governing bye-laws.

46. The contentions raised by the appellant-objector are thus found to be merely reiterative of the arguments previously advanced by the judgment-debtors, respondents no. 2 and no. 3, which already stand conclusively



adjudicated on merits. Pertinently, the transfer upon which the appellant-objector predicates his claim was executed during the subsistence of an *interim* injunction and unquestionably constitutes a *transfer pendente lite*. Moreover, at the relevant juncture, the area earmarked for the basement was smaller than the permissible construction area, thereby substantiating the prior and superior entitlement of the decree-holder, whose rights emanated explicitly from the original agreement executed among the parties. Hence, the claim of the decree-holder could not have been subverted through such subsequent transactions.

47. Consequently, the appellant-objector, being categorically identified as a *transferee pendente lite*, is precluded from re-agitating the defenses previously canvassed by the judgment-debtors and possesses no lawful standing to obstruct or impede execution proceedings. This Court finds no infirmity whatsoever in the impugned order passed by the Executing Court, which rightly declined to venture into any further inquiry after conclusively determining the status of the appellant-objector as *transferee pendente lite*.

48. Thus, the instant appeal fails and stands dismissed, along with the pending application(s). No order as to cost.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MARCH 25, 2024/sp