

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1381 of 2014

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Shri Krishna Dubey & Ors

.... Petitioner/s

Versus

Most. Kunti Kuer & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subhash Chandra Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 10-12-2015 Heard learned counsel for the petitioners and learned
counsel for respondent no.2.

2. By the impugned order dated 27.09.2013 passed by
Munsif, Bhabua, Kaimur in Execution Case No.01 of 2012 the
objection filed by the petitioners under Section 47 CPC (although
not mentioned in the objection application) has been rejected by
the lower appellate court.

3. According to the learned counsel for the petitioners,
there is no specification in the decree of the appellate court that 10
kari will be taken out from either plot no.309 or plot no.310 or out
of 10 kari how many kari will be taken out from plot no.309 and
how many kari from plot no.310. Therefore, the petitioners filed
objection for dismissing the execution case. Further the daughters
of the petitioners, who have also got interest in the property, have
filed separate suit being Title Suit No.54 of 2012 so if the

execution case is not dismissed, the further proceeding in execution case be stayed till the disposal of the aforesaid title suit but the learned court below has wrongly rejected the objection filed by the present petitioners.

4. On the other hand, the learned counsel appearing on behalf of respondent no.2 submitted that the description is there in the decree which has been filed by the decree-holder along with description of the property in the plaint. The petitioners lost case up to the High Court as the second appeal filed by them has already been dismissed. Now, therefore, objection filed by the petitioners cannot be examined under Section 47 of the Code of Civil Procedure and the suit filed by the daughters is after filing of execution case and it is only with a view to linger the disposal of the execution case.

5. Perused the order. It appears that the court below considered the point raised by the learned counsel for the petitioners and in the order the court below has clearly recorded that there is map of the suit land and also description in detail and, therefore, the petitioners' objection has got no merit. The Hon'ble Supreme Court in the case of **Dhurandhar Prasad Singh Vs. Jai Prakash University and others**, A.I.R. 2001 SC 2552 has held that under Section 47 all questions arising between the parties to

the suit in which the decree was passed or their representatives relating to the execution, discharge or satisfaction of decree have got to be determined by the Court executing the decree and not by a separate suit. The powers of Court under Section 47 are quite different and much narrower than its powers of appeal, revision or review. The exercise of powers under Section 47 is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing Court can allow objection under Section 47 to the executability of the decree if it is found that the same is void ab initio 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 provision of law or the law was promulgated making a decree inexecutable after its passing. In the present case, the point raised by learned counsel for the petitioners relates to the description or mistake. Therefore, the court below has rightly rejected the application, as such, in supervisory jurisdiction the same cannot be interfered with.

6. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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