

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1079 of 2016**

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Kishun Prasad Sah @ Krishna Prasad Sah

.... Appellant/s

Versus

Sita Devi & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jyoti Ranjan Jha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

3 29-11-2016

Heard learned counsel for the petitioner.

2. Perused the impugned order dated 09.08.2016 passed by the learned Civil Judge, (Junior Division) 1st, (Munsif 1st), Munger in T.S. No. 05 of 2014, whereby the learned court below has rejected the objection petitioner filed by the defendant-judgment debtor-petitioner.

3. The objection was filed on the grounds that the description of the suit property in the decree is not clear. Therefore, the decree is not executable and that the application for execution is not on affidavit and in proper form and that it should have been filed under Order 21 Rule 11 C.P.C. and the present execution case is not according to law.

4. Except Section 47 of the C.P.C., there is no provision in C.P.C. for filing the objection by the defendant and the points raised in the present case are not covered under the Code of Civil Procedure.



5. The Hon'ble Supreme Court in the case of ***Dhurandhar Prasad Singh Versus Jai Prakash University & Ors.*** reported in ***AIR 2001 SC 2552*** has held that 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 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 *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.

6. From perusal of the impugned order, it appears that the court below considered the fact and has rejected the objection application filed by the petitioner. Thus, in view of the above settled proposition of law laid down by the Supreme court, I do not find any reason to interfere with impugned order in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed.

Brajesh/-

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(Mungeshwar Sahoo, J)

