

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1892 of 2014

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Abhay Kumar Mishra			Petitioner
Versus			
Shanti Seema and Anr. .			Respondent/s

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Appearance :

For the Petitioner/s : Mr. Laxmi Narayan Das
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

3 11-01-2016 Heard learned counsel Mr. Lakshmi Narayan Das, on
behalf of the petitioner.

By the impugned order dated 13.12.2013, the learned
Sub-Judge-IV, Patna, rejected the objection filed by the petitioner
in an Execution Case No. 2 of 2005.

It appears that the respondent filed Money Suit No. 01
of 1994 against one Badri Narayan Mishra. The suit was decreed
and therefore the Execution Case No. 2 of 2005 was filed by Badri
Narayan Mishra during the pendency of the said execution case.
The said judgment debtor Badri Narayan Mishra died and then the
present petitioner and the respondent no. 2 were substituted in
place of Badri Narayan Mishra in the said Execution Case No. 2 of
2005. They filed objection under Section 47 of the Code of Civil

Procedure. By the impugned order the Court below has rejected the said application.

The learned Counsel Mr. Das submitted that the decree cannot be executed against the heirs of Badri Narayan Mishra and the property of the petitioner cannot be attached for recovery of the amount of decree against his father. Secondly the other legal representatives of the deceased judgment debtor have not been added as party in the suit. Therefore, there is no compliance of the provision as contained in Order 21 Rule 13 C.P.C.

Further the learned counsel submitted that subsequently the property which was sought to be attached was settled in the name of the present petitioner, therefore, also the property of the petitioner could not have been directed to be attached as has been done by the executing Court in this case.

Perused the order passed by this Court, it appears that the Court below considered the fact that the property was renewed in favour of the petitioner only after the death of the father. The learned Court below also held that the son has got moral obligations to pay the debt of his father. So far Order 21 Rule 13 is concerned, it is not barred for execution of a decree. So far objection under Section 47 of the Code of Civil Procedure is concerned the Hon'ble Supreme Court, in the case of *Dhurandhar*

Prasad Singh Vs. Jai Prakash University and others, AIR 2001

Supreme court Page No. 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 view of the above settled principle of law on the grounds raised by the learned counsel for the petitioner it can be said that the execution of the decree is not executable. So far the attachment of property of the petitioner is concerned the Court below has already found that the petitioner has got lease in his favour after the death of his father. In such circumstances the

order cannot be interfered with in supervisory jurisdiction.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J.)

M.S. KHAN/-

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