

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1486 of 2016**

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Naresh Kumar

.... Appellant/s

Versus

Jitendra Kumar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sudhir Kumar Raj

For the Respondent/s : Mr.

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

2 22-12-2016

Heard the learned counsel for the petitioner.

Perused the impugned order dated 24.08.2016 passed by Sub Judge II, Bihar Sharif in Misc. Case No.3 of 1988 whereby the learned Court below rejected the objection under Section 47 of the Code of Civil Procedure filed by the judgment debtor-petitioner in Execution Case No.3 of 1987.

It appears that eviction suit was filed by the plaintiff-respondent which was decreed. Execution Case was filed for execution of the decree. During the pendency of the execution case, the defendant-judgment debtor filed application under Section 47 of the Code of Civil Procedure questioning the maintainability of the entire decree on the ground that part of the suit premises has already been sold by the decree holder in favour of the judgment debtor by two sale deeds dated 11.02.1985. It was contended that only part of the decree can be executed in view of



the sale deeds. By the impugned order, the Court below has rejected the objection recording finding that so far this question regarding whether the suit property has been sold in part or not, it is outside the purview of the execution case and outside the scope of Section 47 of the Code of Civil Procedure.

It may be mentioned here that the execution case has been filed in the year 1987 and according to the judgment debtor-petitioner, the sale deed was executed in the year 1985. Now, the question arises if the sale deed had already been executed by the decree holder, there was no question of filing execution case for executing the entire decree. Now therefore, unless the petitioner gets his title declared on the basis of so called registered sale deeds, that cannot be decided under Section 47 of the Code of Civil Procedure.

The Hon'ble Supreme Court in the case of **Dhurandhar Prasad Singh v. Jai Prakash University and others, AIR 2001 Supreme Court 2552** has held that "it is plain that executing Court can allow objection under S.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 this settled proposition of law, the question of acquisition of title or otherwise by the plaintiff by registered sale deeds cannot be the subject matter of a proceeding under Section 47 C.P.C.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction and accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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