

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13080 of 2015

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Bijay Chandra Pathak

.... Petitioner/s

Versus

The State of Bihar & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Kant Tiwary

For the Respondent/s : Mr. Ajay- Ga12

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 05-05-2016 Heard the learned counsel, Mr. Yogendra Mishra, for the petitioner.

Although this application has been filed under Article 226 of the Constitution of India, it is heard treating the same as an application under Article 227 of the Constitution of India.

This application has been filed for setting aside the order dated 29.05.2015 and for setting aside the subsequent actions taken by the executing Court, i.e, Execution Munsif in Execution Case No.9 of 2008.

It appears that eviction suit was filed by the plaintiff respondent. The said eviction suit was decreed. Thereafter, the decree holder filed execution case for eviction. By order dated 29.05.2015, the executing Court has only directed to issue the writ for delivery of possession.

In such view of the matter admittedly the decree has been passed against the petitioner and the executing Court has only directed to delivery of possession.

The learned counsel for the petitioner submitted that objection

under Section 47 CPC has been filed on the ground that the decree was not executable because of the fact that the landlord has died and so called the collector of the rent is proceeding with the execution of the decree.

So far the submission of the learned counsel with regard to objection under Section 47 is concerned, it may be mentioned here that the question raised by the petitioner cannot be investigated in this present case as the scope of enquiry under Section 47 are quite different and much narrower than its powers of appeal, revision or review. 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 the law or the law was promulgated making a decree inexecutable after its passing.’ In this regard reference may be made in *AIR 2001 SC 2552 Dhurandhar Prasad Singh Vs. Jai Prakash University*.

Therefore, I find no reason to interfere with the impugned order. Thus, this writ application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)