

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12860 of 2015

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Surendra Prasad

.... Petitioner/s

Versus

Yamuna Mahto & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shabbir Ahmad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 17-05-2016 Heard the learned counsel, Mr. Shabbir Ahmad, for the petitioner.

By the impugned order dated 20.07.2013, the learned Sub Judge I, Sheikhpura in Title Execution Case No.1 of 2013 rejected the objection application filed by the petitioner under Section 47 of the Code of Civil Procedure.

It appears that partition suit was filed and after final decree, the present execution case has been filed by the decree holder for execution of the final decree and delivery of possession of *takhta* allotted in favour of the decree holder. Objection has been filed on the ground that there is mistake in the *takhta* allotted by the pleader commissioner as the properties allotted in favour of the decree holder is not described fully and cannot be identified at the spot. The Court below by the impugned order has rejected the objection.

The Hon’ble Supreme Court in the case of *Dhurandhar Prasad Singh Vs. Jai Prakash University AIR 2001 SC 2552* has held that ‘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.’ In the present case, the question raised by the petitioner is the subject matter of the appeal which is pending before the appellate Court filed by the present petitioner. Therefore, I find no reason to interfere with the impugned order. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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