

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.727 of 2016**

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Shardanand Pandey

.... Appellant/s

Versus

Jagdish Pandey & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bishwa Nath Chaudhary

For the Respondent/s : Mr.

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

ORAL ORDER

2 27-09-2016

Heard the learned counsel, Mr. Bishwa Nath Chaudhary

for the petitioner.

Perused the impugned order dated 21.06.2016 passed by learned 2nd Munsif, Siwan in Execution Case No.11 of 1988 whereby the learned Court below rejected the objection filed by the judgment debtor-petitioner under Section 47 of the Code of Civil Procedure.

It appears that the plaintiffs-respondents filed title suit for declaration of title with respect to the suit property. It was decreed by the lower appellate court and the lower appellate court granted the decree to the effect that the plaintiff-decree holder is entitled to recover the possession of the suit property described in the schedule of the plaint. Execution case has been filed in the year 1988. The objection under Section 47 of the Code of Civil Procedure has been filed on the ground that there is no identity of



the suit land as it is not identified by the boundary, therefore, the execution case is not maintainable. The Court below by the impugned order has rejected this objection on the ground that in the year 2003, four times same point was raised which have already been rejected and again the same point has been agitated by this petitioner.

The judgment of the lower appellate court has been annexed. It appears that suit has been decreed and held that the plaintiff-respondent is entitled for the recovery of possession of the half share in the suit property described in the schedule of the plaint. It further appears that in the objection application, the plaintiff-respondent raised the question that the Survey Knowing Pleader Commissioner be appointed for delivery of possession. From perusal of the impugned order, the Court below also held that the plaintiff may take appropriate steps after rejecting the objection application.

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 "under S.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 S.47 are quite different and much narrower than its powers of appeal, revision or review. The exercise of powers under S.47 is microscopic and lies in a very narrow inspection hole. Thus 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.”

It may be mentioned here that none of these grounds are available to the present petitioners. Admittedly, half share in the suit property has been decreed by the lower appellate court. The respondent-decree holder is praying that Pleader Commissioner may be appointed and delivery of possession may be effected.

Now, therefore, only because there is no mention of boundary in the plaint, the execution case cannot be said to be inexecutable and, therefore, the learned Court below has rightly rejected the objection filed by the petitioner, as such, this is not a case for interference in supervisory jurisdiction.

Accordingly, this Civil Miscellaneous application is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)