

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1532 of 2016

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1. Ashok Kumar Pandey, son of Baliram Pandey, resident of village-
Piparpati, P.S.- Barhara, District- Bhojpur.

.... Appellant/s

Versus

1. Ram Chandra Yadav.
2. Tarkeshwar Yadav.
3. Mutur Yadav. All sons of Late Pandei Yadav.
4. Meena Devi.
5. Radhika Devi. Nos. 4 and 5 are daughters of Late Pandei Yadav.
6. Shanti Devi, wife of Late Triloki Pandey.
7. Poonam Devi, D/o Late Triloki Pandey, All residents of Piparpati, P.S.-
Barhara, P.O.- Achraj Lal Ka Tola, District- Bhojpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anish Chandra Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 22-12-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 29.08.2016
passed by the learned Executive Munsif, Ara, in Execution Case
No. 7 of 2016 whereby the learned Executive Munsif has
dismissed the execution case as per under Article 136 of the
Limitation Act.

It appears that the plaintiff- petitioner filed the suit
for declaration of title and confirmation of possession and in
alternative recovery of possession. The suit was decreed in 2004
and the execution case has been filed in the year 2016. Then the



court below dismissed the execution case on the ground of limitation. Learned counsel for the petitioner submitted that the decree was amended in 2013 and therefore the limitation will start from the date of amendment is allowed. In support of his contention learned counsel relied upon a decision of the Supreme Court in the case of Akkatanaicker –v- A.A.A. Kotchadainaidu, AIR 2004 Supreme Court Cases 4822.

So far this decision is concerned, it may be mentioned here that the decree was not enforceable because of bar created by the legislature. In such circumstances the Supreme Court said that when the bar was withdrawn, the limitation will start. In the present case so far amendment is concerned, under Section 152 CPC application was filed by the petitioner for correction of the decree i.e. clerical mistake. That cannot be equated that amendment of the decree. The Supreme Court in the case of Ratan Singh-v- Vijay Singh, AIR 2001 S.C. 279, clearly held that the limitation for filing execution case shall start from the date of decree and the limitation will not postponed because of filing of appeal.

In the present case the plaintiff got ex parte decree in 2004 and then execution has been filed after 12 years. The decree was passed on 16.01.2014 and the application has been filed for



execution on 20.06.2016. Therefore, in view of Article 136 of the Limitation Act it is admittedly barred by limitation. Therefore, the learned court below has rightly held that the execution case filed after 12 years is barred by Limitation Act.

Thus, I find no merit to interfere with the impugned order in exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

Accordingly, this miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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