

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3955 of 2014

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Bibi Najmunnissa & Ors

.... Petitioner/s

Versus

Nur Fatima & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjay Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 12-01-2016

Heard the learned counsel, Mr. Abbas Haider for the petitioners.

The judgment debtor-petitioner has filed this application under Article 227 of the Constitution of India against the order dated 22.01.2014 passed by the learned Sub Judge I, Gopalganj in Execution Case No.13 of 1998.

It appears that the plaintiffs-respondents filed Title Suit No.5 of 1972 claiming partition. The suit was decreed by the appellate Court although, the suit was dismissed by the trial Court. On the basis of the said decree subsequently final decree was prepared and then Execution Case No.13 of 1998 was filed by the plaintiff for obtaining delivery of possession.

The learned counsel for the petitioners submitted that there are two decree holders and, therefore, the execution case is not maintainable at the instance of only one decree holder because the only decree holder who has filed the execution case is trying to

grab the property of other decree holder. Therefore, the objection was filed by the petitioners to dismiss the execution case.

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."

In view of the above settled proposition of law, the order passed by the Court below rejecting the objection cannot be interfered with in supervisory jurisdiction. Thus, this writ application is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)