

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.232 of 2016

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Ashok Kumar @ Ashok Kumar Gupta

.... Petitioner/s

Versus

Chandra Shekhar Prasad & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 17-08-2016

Heard learned counsel, Mr. J.S. Arora, appearing for the petitioner and learned counsel, Mr. J.K. Verma, appearing for the respondents.

2. Perused the order dated 06.11.2015 passed by the Sub-Judge-3rd, Samastipur in Execution Case No. 14 of 2014, whereby, the learned court below rejected the objection filed by the petitioner-judgment debtor under Section 47 C.P.C. as submitted by the learned counsel, Mr. J.S. Arora.

3. It appears that partition suit was filed. It was decreed finally but *ex-parte* against the present petitioner. The present petitioner has filed the application under Order 9 Rule 13 C.P.C. Against the contested final decree, title appeal is pending before the lower appellate court and against the preliminary judgment and decree, two title appeals have been filed, which are still pending. The plaintiffs-respondents filed execution case for delivery of

possession of the suit property allotted in their share in the final decree, which has been numbered as Execution Case No. 14 of 2014.

4. It also appears that in that case, delivery of possession is effected and *Nazir* submitted the report, wherein, the decree holder endorsed to the effect he is satisfied with the final decree. At this stage, objection has been filed by the present petitioner for rejecting the report of the *Nazir* on the ground that the Pleader Commissioner's report in the final decree proceeding is collusive and that some portion of the purchased properties of the petitioner have not been delivered possession to the decree holder and the petitioner is still in possession of the same. Therefore, the report submitted by the Nazir is wrong. By the impugned order, the court below has rejected the objection filed by the petitioner.

5. Learned counsel, Mr. J.S. Arora relied upon a decision of the Supreme Court reported in ***AIR 1956 SC Page 87*** and submitted that whatever objection, which was raised by the petitioner under Section 47 of the C.P.C., should have been noticed by the court below and should have been decided in view of the decision of the supreme Court and the defendant-petitioner is not required to file another suit for that purpose.

6. On the other hand, learned counsel, Mr. J.K. Verma



for the respondents submitted that all the points, which have been raised by the petitioner and the objection under Section 47 of the C.P.C., are questions of fact and the question, whether the Pleader Commissioner's report is collusive or that excess property was given to the plaintiff- decree holder or that no notice was served on the petitioner, all of them are points that can be decided in the appeal or the application under Order 9 Rule 13 C.P.C. but in an application under Section 47 C.P.C., no such inquiry can be made.

7. From perusal of the impugned order, it appears that the court below has considered the facts that according to Pleader Commissioner's report, which was made part of the final decree, delivery of possession has been effected and it is not the case of the petitioner that the excess area has been allotted to the decree holder nor it is the case that area, which has been allotted in favour of the decree holder, is contrary to the area allotted by the Pleader Commissioner.

8. So far the decision relied upon by the learned counsel for the petitioner is concerned, it may be mentioned here that the Hon'ble Supreme Court in the case of ***Dhurandhar Prasad Singh Vs. Jai Prakash Universty & Ors.*** reported in ***AIR 2001 SC 2552*** has held that the powers of Court under Section 47 are quite different and much narrower than its power of appeal, revision or

review. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus 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.

9. In view of the above settled proposition of law and in view of the fact that the delivery of possession has been effected by Nazir, according to the final decree, the learned court below rightly rejected the objection filed by the petitioner. As such, it is not a case for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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