

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7827 of 2014

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Harendra Raj

.... Petitioner/s

Versus

Harihar Prasad & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 23-02-2016 1. Heard the learned counsel, Mr. S.R.P. Singh, for the
petitioner.

2. By the impugned order dated 19.12.2013, the learned
Execution Munsif, Ara in Execution Case No.183 of 1977 rejected
the objection petition filed by the Judgment debtor petitioner
under Section 47 of the Code of Civil Procedure.

3. It appears that partition suit was filed by the plaintiff
respondent. The same was decreed and, thereafter, final decree
was prepared. For execution of the final decree, the execution
case have been filed by the plaintiff respondent. Thereafter, when
the delivery of possession was issued by the executing Court, this
objection under Section 47 was filed by the petitioner raising the
dispute that in fact the petitioner has already purchased the
property from the plaintiff by registered sale deed in the year 1995

itself and, therefore, the execution case is liable to be dismissed.

The plaintiff respondent then filed objection to the said objection application alleging that in fact the plaintiff has never sold any property and, therefore, the allegation made by the petitioner is wrong.

4. From perusal of the impugned order, it appears that the Court below recorded finding that although the petitioner is claiming to have purchased the property from the decree holder plaintiff in the year 1995 but still the original of the sale deed has not been produced rather a photocopy have been produced. The Court below also recorded finding that although the petitioner is claiming to have purchased the property in the year 1995 but still the original of the sale deed has not been produced rather a photocopy have been produced. The Court below also recorded finding that although the petitioner is claiming to have purchased the property in the year 1995 but till the date of delivery of possess was issued by the Court, this question was never raised by the petitioner although on each date, he was making pairvi in the execution case and accordingly rejected the objection application.

5. The learned senior counsel for the petitioner submitted that the original sale deed was not supplied by the registry office



to the petitioner and, therefore, photocopy as been filed in the Court below. In such circumstances, it was the duty of the executing Court to have decided the question as to whether the sale deed which is denied by the plaintiff respondent is genuine, valid and binding on him or not but in limine, the executing Court has dismissed the objection application under Section 47 of the CPC.

6. Section 47 of the CPC provides that **“all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court. All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this Section.”**

7. The Hon’ble Supreme Court in the case of *Dhurandhar Prasad Singh Vs. Jai Prakash University AIR 2001 SC 2552* has

held that ‘the powers of Court under Section 47 are quite different and much narrower than its powers 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.’

8. In the present case the question raised by the petitioner is vehemently opposed by the decree holder respondent. Therefore, the question as to whether the alleged sale deed is genuine or not if at all it will be produced is a matter that cannot be decided by the executing Court that to in a proceeding under Section 47 of the Code of Civil Procedure. Therefore, the Court below has rightly rejected the same. Thus, this writ application has got no merit and accordingly, it is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)