

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17781 of 2015

=====

Bharath Bhagat & Ors

.... Petitioner/s

Versus

Ramadhar Singh & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Chandra Kant

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 04-01-2016

Heard the learned counsel, Mr. Chandra Kant on behalf
of the petitioners.

The Court below by the order dated 21.09.2015 passed
by Sub Judge VIII, Siwan in Execution Case No.3 of 2013
rejected the application filed by the judgment debtors-petitioners
to reject the execution case.

It appears that the plaintiffs-respondents filed Title Suit
No.12 of 2003 for declaration of title and for confirmation of
possession and in the alternative for recovery of possession of the
suit property. The trial Court dismissed the suit. Thereafter, the
plaintiff filed Title Appeal No.59 of 2008. The appellate Court
allowed the appeal and set aside the judgment and decree of the
trial Court. The plaintiff then filed execution case for execution of
the said decree. The judgment debtor-defendant filed application
praying for dismissal of the execution case on the ground that the

decree passed by the appellate Court is not executable. By the impugned order, the Court below has rejected the said application.

The only grievance of the judgment debtor is that while allowing the appeal and reversing the judgment of the trial Court, the lower appellate Court has not granted any relief to the plaintiff nor the trial Court specified the relief to which the plaintiff is entitled for. In such circumstances, no executable decree has been passed by the lower appellate Court. It is the duty of the appellate Court to have specifically mentioned in the operative part of the judgment that which relief the plaintiff is entitled for. In support of his contention, the learned counsel relied upon A.I.R. 2003 Supreme Court 351.

Perused the judgment of the lower appellate Court and the order passed by the Court below. From perusal of the impugned order, it appears that the lower appellate Court had recorded finding that plaintiffs have got the title and defendants have dispossessed the plaintiffs. Admittedly, the defendants have filed Second Appeal before the High Court which is still pending for admission. So far executability of the decree is concerned, it is not the case of the petitioners that the lower appellate Court has got any inherent lack of jurisdiction.

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 the present case, the only grievance is that the appellate Court has not specified the relief in the operative part. From perusal of the lower Court judgment, it appears that at paragraph 11, the appellate Court clearly recorded that the plaintiffs have got title and from 3 kathas land, the plaintiffs have been dispossessed after passing injunction order.

So far the submission of the learned counsel is concerned, this cannot be a ground for objection under Section 47 C.P.C. So far the decision relied upon by the learned counsel for the petitioners is concerned, it is with regard to the merit of the judgment of the title appeal which cannot be decided in this case.

Therefore, I find no merit in this writ application, as such, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--