

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.11116 of 2014**

Prabha Devi W/O Arjun Sharma, Resident of Village- Barheta, P.S.- Parasbigha,  
District- Jehanabad. At present resident of Old G.T. Road Aurangabad, P.S.-  
District- Aurangabad.

.... .... Petitioner/s

Versus

1. Anjani Ranjan Lal s/o Late Nathuni Lal, resident of - 123, Grand Shiva  
Apartment, Shiv Nath Path, Patliputra Colony, P.S.- Patliputra, District- Patna.
2. Smita Lal, D/o Anjani Ranjan Lal, W/o Ujjwal Gourav, R/o House No. 70,  
Pocket E-15, Sector-8, Rohani, New Delhi. At present resident of - 123, Grand  
Shiva Apartment, Shiv Nath Path, Patliputra Colony, P.S.- Patliputra, District-  
Patna

.... .... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Arbind Kumar Singh, Adv.

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 06-09-2016**

Heard learned counsel for the petitioner and learned  
counsel for the respondent no. 2.

The petitioner is a decree holder in the suit for specific  
performance of contract and has filed the present application under  
Article 227 of the Constitution of India assailing the order passed by  
the executing court below impleading the respondent no. 2 as party in  
the execution case on the ground that she was a coparcener and had  
interest in the property subject matter of the suit for specific  
performance of contract.



The fact is not in dispute that the present petitioner filed a suit for specific performance of contract against the defendant Raj Kumari Devi. The suit was decreed at the stage of appeal. Thereafter the petitioner-decree holder filed the execution case. During the pendency of the execution case, the sole judgment-debtor Raj Kumari Devi died and was substituted by the respondent no. 1. It is not in dispute that the original judgment-debtor died issueless and respondent no. 1 was ordered to be substituted in her place being her heir and legal representative. Subsequently, a petition was filed by the respondent no. 2, who is nonelse than the daughter of the respondent no. 1, with the claim that the decree had been obtained fraudulently and the property subject matter of the suit and the decree under execution in fact belonged to the Joint Hindu Family in which the respondent no. 2 was also a coparcener. The impugned order demonstrates that the executing court has allowed the prayer for impleadment as made by the respondent no. 2 on the aforesaid premises asserting that the decree was obtained fraudulently and she had interest in the property subject matter of the said suit.

This Court is unable to uphold the reasonings assigned by the executing court below for impleading the respondent no. 2 as party in the execution case on the grounds as pleaded by her inter alia questioning the legal sustainability of the decree under execution

itself. It is well settled that the executing court cannot go behind the decree even if it is ex parte or other wise. The decree holder has prayed for and got substituted the respondent no. 1 in place of the deceased sole judgment-debtor. The decree holder cannot be compelled to pursue the execution case against the stranger to the decree on the basis that the stranger has got an interest in the property and the decree under execution was fraudulent and not sustainable. The order passed by the learned court below is perverse and not legally sustainable.

Accordingly, this application is allowed and the impugned order is overturned. However, this order shall not prejudice the claim of the respondent no. 2, if permissible in law, and also her right to pursue the legal remedies in accordance with law for redressal of her grievances.

**(V. Nath, J)**

Devendra/-

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