

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 593 of 2017

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1. Rameshwar Prasad
 2. Jawahar Lall Prasad
 3. Sant Kumar Prasad
 4. Prem Nath Prasad

All S/o late Ramsunder Sah and all are resident of Village & P.O. & P.S.
Chouradano, District- East Champaran.

.... Petitioner/s

Versus

Kanhaiya Lal Sah, S/o Late Janki Sah, resident of Village- Chouradano, P.O. &
P.S.- Chauradano, District- East Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramakant Yadav, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 18-10-2017

The petitioners, in the present application filed under Article 227 of the Constitution of India, are aggrieved by an order, dated 23.01.2017, passed by the learned Munsif, Raxaul, Motihari, East Champaran, in Execution Case No. 2 of 2015, whereby, a petition filed on behalf of the petitioners, under



Section 47 Code of Civil Procedure (*in short 'the CPC'*), has been rejected.

2. A decree of mandatory injunction was passed on 13.06.2001, whereas, the execution case was registered in the year 2015. This is not in dispute that the decree is an *ex-parte* decree. It is not known whether the steps have been taken for setting-aside the said *ex-parte* decree.

3. From the petition, preferred under Section 47 of the CPC, and the impugned order, passed by the learned court below, I notice that the plea against maintainability of the execution case was taken on behalf of the petitioners, taking aid of Article 136 of the Schedule of the Limitation Act, which prescribes 12 years limitation period for filing an execution case. Learned court below, having noticed the proviso to the said Article 136 of the Limitation Act, has rejected the petitioners' application under Section 47 of the CPC, since the said proviso lays down that an application for the enforcement or execution of decree, granting a perpetual injunction, shall not be subject to any period of limitation.

4. I do not find legal infirmity in the impugned order. It will, however, be open to the petitioners to take steps for setting-aside the *ex-parte* decree in accordance with law and for



stay of the execution in an appropriate proceeding.

5. The application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30/10/2017
Transmission Date	N/A

