

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.805 of 2016**

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Smt. Gouri Devi

.... Appellant/s

Versus

Bharat Panjiyar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar Jha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 17-02-2017 **1.** Heard the learned counsel, Mr. Dinkar Kumar Jha for the petitioner and the learned counsel, Mr. Manoj Kumar Jha, for the sole respondent.

2. Perused the impugned order dated 23.06.2016 passed by learned Second Munsif, Darbhanga in Title Execution Case No.8 of 2013 whereby the objection filed by the petitioner to the executability of the decree has been rejected.

3. The learned counsel for the petitioner submitted that the Gram Panchayat has no jurisdiction to decide complicated matters involving questions of title, particularly when the valuation of the suit property is more than Rs.10,000/-. Without notice to the present petitioner, the Gram Kachahari decided the Gram Kachahari Case No.64 of 2013 without considering the valuation, jurisdiction and the complicated questions of title, therefore, the



judgment and decree passed by the Gram Kachahari is nullity and could not be executed.

4. On the other hand, the learned counsel for the respondent submitted that for the first time, these objections are being raised before this Court. In the objection petition, it is not stated by the petitioner that the valuation of the suit property is more than Rs.10,000/-. According to the learned counsel, question of title was not in dispute between the parties and moreover, in the judgment and decree passed by the Gram Kachahari, only dispute regarding the share of both the parties have been decided, i.e., in which portion of the plot, the petitioner had got the property and in which portion of the plot, the respondent is in possession. Except this, no decision has been given by the Gram Kachahari, therefore, in no case, it can be said that Gram Kachahari has no jurisdiction.

5. It is admitted fact that before the Gram Kachchhari, the petitioner did not file any objection. No evidence has been adduced on her behalf. Therefore, the question regarding valuation of the suit property or that any complicated question of title is involved is raised for the first time before the executing Court. Now, therefore, the question will be whether the executing Court can decide the valuation and the complicated question of



title involved in the proceeding and say that the Gram Kachchari could not have decided the proceeding as if he is sitting in appeal against the judgment and Decree of the Gram Kachchari under Section 12 of the Gram Panchayat Rajya Act.

6. At the time of hearing in admission matter, the learned counsel for the petitioner admitted the fact that although no provision has been mentioned in the objection petition but the objection is under Section 47 of the Code of Civil Procedure. Therefore, the Court below should have dealt with the questions raised by the petitioner.

7. The Hon'ble Supreme Court in the case of ***Dhurandhar Prasad Singh Vs. Jai Prakash University AIR 2001 SC 2552*** has held that 'under Section 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 executing Court, the decree and not by a separate suit. 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 in executable after its passing.’ In the present case at our hand, all the facts which are being raised by the petitioner are only the facts before the executing Court. The executing Court cannot, therefore, decide the fact alleged by the petitioner as if he is sitting in Appeal.

8. In view of the above facts and circumstances of the case, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this Civil Misc. application is dismissed.

9. If the petitioner so desire may file Appeal according to law subject to limitation.

(Mungeshwar Sahoo, J)

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