

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.8 of 2017**

=====

Anju Kumari & Anju Devi & Anr

.... Appellant/s

Versus

Bibi Salma Khatoon & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Dhananjay Kumar

For the Respondent/s : Mr.

=====

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

2 18-01-2017

Heard the learned counsel for the petitioners.

Perused the impugned order dated 29.11.2016 passed by the learned Sub Judge II, Munger in Title Execution Case No.1 of 2010(B) whereby the learned Sub Judge II, Munger has rejected the application filed by the petitioners under Section 47 of the Code of Civil Procedure praying for dismissal of the execution case as not maintainable.

It appears that plaintiffs-respondents filed the suit for specific performance of contract. The suit was decreed upto the High Court and thereafter the plaintiffs-respondents filed the Execution Case No.1 of 2010(B). In the said execution case, objection has been filed by the present petitioners objecting to the maintainability of the execution case.

The learned counsel for the petitioners submitted that the petitioners were added as party in the title appeal as respondent.



The title appeal was filed by the defendant of the suit for specific performance of contract. The title appeal was dismissed and then Second Appeal was filed by the defendant. The Second Appeal was dismissed. The objection of the petitioners is that earlier in the year 1930, the title of the petitioner's vendor has already been confirmed and the vendor had sold the property to the petitioners in 1994 and since then they are in possession of the suit premises. Earlier the application filed by the petitioners was rejected and against that, the petitioners filed Civil Revision No.56 of 2014 and this Court by terms of order dated 02.09.2014 permitted the petitioner to withdraw the Civil Revision application with liberty to raise all the points, as raised herein, before the trial court in Title Execution Case No.1 of 2010. When the petitioner raised all these questions, the learned trial court by the impugned order rejected the application only on the ground that the execution case arises out of the suit of the year 1985 and rejected the objection without considering the objection raised by the petitioners and liberty granted by the High Court. The learned counsel in support of his contention relied upon Full Bench decision of the Patna High Court, AIR 1965 Patna 427. According the learned counsel, the title has already been confirmed and the vendor has sold the property to the petitioner. Moreover, the auction sale is under



challenge which is pending in Second Appeal No.50 of 2009 and, therefore, in view of that decision, the execution case cannot proceed and the decree passed in suit for specific performance cannot be executed.

Perused the impugned order. Perused the order dated 02.09.2014. Admittedly, the petitioners had filed objection under Section 47 in the execution case which was registered as Misc. Case No.1 of 2012. It was rejected. The petitioners then filed Civil Revision No.56 of 2014. The High Court by terms of order dated 02.09.2014 dismissed the civil revision application granting liberty to the petitioners to raise all the questions before the Executing Court in Execution Case No.1 of 2010. Now, the same points are being raised by the petitioners. From perusal of the impugned order, it appears that the Court below has considered the fact that the decree passed by the Court below in suit for specific performance of contract confirmed upto the High Court in Second Appeal is still there. Admittedly, the petitioners were party in the said Second Appeal. Thereafter, the decree holder has filed the execution case. So far objection under Section 47 is concerned, the main objection is that another Second Appeal is pending before the High Court which relates to the title of the parties. So far this objection is concerned, it may be mentioned here that in the suit



for specific performance of contract, title is not required to be gone into. If at all the petitioners have got title that can be decided in the Second Appeal and moreover, the petitioners have not filed any suit challenging the present decree passed in suit for specific performance of contract.

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 objection is that another Second



Appeal is pending. It may be mentioned here that the decree passed in the suit for specific performance is not under challenge in the said Second appeal arising out of the suit filed, challenging the auction sale of the vendor of the petitioners. It is admitted fact that the decree passed in suit for specific performance of contract is still there which has neither been varied nor altered nor set aside.

In view of the above facts and circumstances of the case that the Second Appeal is pending or that the court below has not considered all these aspects of the matter, the objection under Section 47 cannot be allowed. Therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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

