

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.133 of 2017**

=====

Indradeo Yadav

.... Petitioner/s

Versus

Ramashish Yadav & Anr

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Phulen Yadav

For the Respondent/s : Mr.

=====

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

2 28-01-2017

Heard the learned counsel for the petitioner.

Perused the impugned order dated 14.12.2016 passed by the learned Musif, Paliganj in Execution Case No.11 of 2004 whereby the learned Munsif has rejected the objection petition under Section 47 of the Code of Civil Procedure.

The learned counsel for the petitioner submitted that it is unfortunate on the part of the petitioner that in spite of the fact that he filed written statement in the suit but then the suit was decreed ex parte. Thereafter, the petitioner filed miscellaneous case in the year 1999 which was also dismissed and thereafter he filed Misc. Appeal No.42 of 2004 which was also dismissed for default then the petitioner filed Misc. Case No.4 of 2014 for restoration of the Misc. Appeal which was also dismissed. The petitioner thereafter filed Civil Writ No. 3719 of 2015 before the High Court. The said writ application was disposed of with a



direction to the court below to dispose of the objection petition filed under Section 47 C.P.C. and thereafter the impugned order has been passed without considering objection of the petitioner.

The main objection of the petitioner under Section 47 C.P.C. is that he is the real owner of the property in suit as he has purchased the same by registered sale deed in the year 1948. Because of some unavoidable circumstances, the suit could not be contested by the petitioner. Therefore, this question should have been decided by the executing court in the objection under Section 47 of the Code of Civil Procedure.

From perusal of the impugned order, it appears that the court below has considered the steps taken by the petitioner from the year 1999 to the year 2015. So far objection under Section 47 C.P.C. is concerned, the Hon'ble Supreme Court in the case of **Dhurandhar Prasad Singh v. Jai Prakash University and others, AIR 2001 Supreme Court 2552** held that "the 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, therefore, the objection raised by the petitioner under Section 47 C.P.C. is not tenable, as such, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction.

Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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

