

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.218 of 2017**

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Ram Sumer Singh & Ors

.... Petitioner/s

Versus

Bishwanath Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma

For the Respondent/s : Mr.

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

2 06-02-2017 Heard the learned counsel, Mr. Jitendra Kishore Verma
for the petitioners.

Perused the impugned order dated 30.01.2016 passed
by Sub Judge II, Saran at Chapra in Execution Case No.11 of 2000
whereby the learned Sub Judge has rejected the objection filed by
the petitioner No.1.

It appears that the plaintiffs-respondents filed suit for
declaration of title and recovery of possession with respect to
Schedule I and Schedule I(ka). The suit was decreed with respect
to Schedule I only and it was dismissed with respect to Schedule
I(ka). The plaintiff thereafter filed appeal against that part of the
decree whereby the suit was dismissed with respect to Schedule
I(ka). The appellate court set aside that part of the decree of the
trial court and remanded the matter. The trial court then decreed
the suit for Schedule I(ka) also. Now therefore, because of



subsequent judgment passed by the trial court the suit of the plaintiff has been decreed in its entirety. Then the present petitioners have filed appeal against the judgment of the trial court.

It may be mentioned here that the execution case has been filed in the year 2000 for execution of the decree with respect to Schedule I property which was decreed in the year 2000. However, when objection was raised by the petitioner that a wrong statement has been made by the plaintiff-decree holder in the execution application that he had not filed appeal against that part of the decree whereby prayer for Schedule I(ka) was dismissed, while rejecting this objection application, the court below held that the execution case shall proceed with respect to Schedule I(ka) also.

The learned counsel for the petitioners submitted that since the execution case has been filed for execution of the decree of the year 2000, now the executing court cannot proceed to execute the decree which has been subsequently passed in the year 2008 whereby the plaintiff's suit has been decreed with respect to Schedule I(ka) property also without making any amendment in the execution proceeding. According to the learned counsel, it is a fresh decree, therefore, separate execution proceeding is to be filed



by the decree holder.

So far these grounds raised by the petitioners are concerned, those are only technical grounds. Now, the plaintiff's suit has been decreed in its entirety. If at all the earlier execution case was filed with respect to Schedule I only then the court taking into notice the subsequent development between the parties and subsequent decree may make necessary correction or direct the decree holder to make necessary correction for execution of the entire decree passed by the court. So far the objection is concerned, on the ground that some wrong statement has been made in the execution case, the execution case cannot be dismissed.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction and accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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