

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.285 of 2016

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Surendra Prasad and Anr

... .. Petitioner/s

Versus

Shiromani Prasad and Ors

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amar Nath Singh, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

15 22-11-2022

Heard learned counsel for the petitioner.

This Civil Revision Application has been filed for setting aside the order dated 23.09.2016 passed by the learned Sub-ordinate Judge II, Biharsharif at Nalanda in Miscellaneous Case No. 05 of 2016 under section 47 of the Civil Procedure Code.

It is submitted by the learned counsel for the petitioners that earlier a petition was filed bearing number Civil Miscellaneous Application No. 53 of 2016, which was dismissed by a Co-ordinate Bench of this Court *vide* Order dated 02.08.2016 on the ground that it is pure question of fact and can only be examined in a properly constituted proceeding. If in fact no notice was served to the petitioner, he could have filed application under Order 9 Rule 13 of the Civil Procedure Code, but certainly, the executing Court has no jurisdiction to decide the said application while executing the final decree.



Further, the execution proceeding was initiated by the opposite party(decree holder) for execution of the final decree *vide* execution case no. 03 of 2013. The present petitioner again filed miscellaneous case no. 05 of 2016 before the learned Sub-Judge-II, who dismissed the petition filed under Section 47 of the Code of Civil Procedure on the ground that it is not in accordance with observation of this Court passed in Civil Miscellaneous Application No. 53 of 2016 and further held that the executing Court cannot consider the merit of the decree and rejected the Miscellaneous Case No. 05 of 2016 which is under challenge. The learned counsel for the petitioners submitted that under wrong advice petitioners filed Miscellaneous Case No. 05 of 2016 under Section 47 of the Civil Procedure Code instead of Miscellaneous Case under Order 9 Rule 13 of the Code of Civil Procedure before the learned Sub-Judge-II, Biharsharif, Nalanda. In the circumstances, if so advised, the petitioners are permitted to file proper application before the proper court.

This application is accordingly disposed of.

(Khatim Reza, J)

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