

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.460 Of 2018
(Through video conferencing mode)

Kishore Chandra Dash

...

Petitioner

Mr. K.K.Jena, Advocate

-versus-

***Narayan Prasad Satpathy and
others***

...

Opposite parties

Mr. H.S. Deo, Advocate
for O.Ps. 1 and 2

CORAM: JUSTICE ARINDAM SINHA

ORDER
02.02.2022

Order No.

- 07.**
1. Mr. Jena, learned advocate appears on behalf of petitioner and submits, his client is a co-sharer of the suit property but was not made party in the suit. Collusive preliminary and final decrees were got obtained in the suit. Execution was launched by Execution Case no.3 of 2012. His client applied for being added as party in the execution case. By impugned order dated 8th March, 2018, his client's application was rejected.
 2. On query from Court he submits, his client thereafter filed I.A. no.36 of 2022 before the execution Court under order XXI rule 97,

Code of Civil Procedure resisting execution. That application is pending before the Execution Court.

3. Mr. Deo, learned advocate appears on behalf of opposite party nos.2 and 4. He submits, petitioner had also filed first appeal against impugned order.

4. It is well settled that a decree can only be executed against judgment debtors. On behalf of petitioner there is submission that he was not made party in the suit, though he is a co-sharer. As such, petitioner has applied in resisting execution of decree against him. That is the application that must be dealt with by the executing Court. So far as petitioner's earlier application for being added as party in the execution case is concerned, the executing Court appears to have correctly dealt with it in rejecting the same. Said Court is requested to deal with petitioner's application, i.e., I.A. no.36 of 2022 expeditiously by first dispose of it before proceeding with the execution.

5. The CMP is disposed of.

(Arindam Sinha)
Judge

Prasant