

HIGH COURT OF ORISSA: CUTTACK

C.M.P No. 627 of 2022

(In the matter of an application under
Article 227 of the Constitution of India, 1950)

***Kaupinidhari Mahima Samaj and
another*** ...

Petitioners

Mr. Susanta Kumar Dash, Advocate

-versus-

Mahima Gossain Bijee and others ...

Opposite Parties

Mr. Dwarka Prasad Mohanty, Advocate

Date of Hearing: 24.08.2022 : Date of Judgment: 14.10.2022

CORAM:

JUSTICE KRUSHNA RAM MOHAPATRA

JUDGMENT

KRUSHNA RAM MOHAPATRA, J.

1. This matter is taken up by virtual/physical mode.
2. Order dated 11th July, 2022 (Annexure-8) passed in Civil Revision Petition No.4 of 2022 is under challenge in this CMP whereby learned District Judge, Dhenkanal dismissing the revision petition, confirmed the order dated 16th April, 2022 (Annexure-4) passed by learned Senior Civil Judge, Dhenkanal in a petition under Section 47 CPC in Execution Case No.63 of 1998.
3. Short narration of facts necessary for proper adjudication of the case are that Execution Case No.63 of 1998 has been filed by the Mahimia Gossain Bijee, Mahimagadi, Joranda in the district of Dhenkanal, represented by Satya Mahima Dharma Dhama Parichalana Samiti and others (hereinafter referred to as 'the

DHrs.}') for execution of the decree passed in Original Suit No.62/152 of 1939-1940 (HC No. 21 of 1943) modified in Civil Appeal No.1 of 1945. On their appearance, present Petitioners (hereinafter referred to as 'the JDrs.')

filed an application under Section 47 CPC on 9th March, 2022 (Annexure-3) challenging executability of the decree on different grounds praying *inter alia* to drop the execution proceeding. The petition was dismissed vide order dated 16th April, 2022 (Annexure-4) by learned Senior Civil Judge, Dhenkanal against which Petitioners preferred CRP No.4 of 2022. The said Civil Revision being dismissed, vide order dated 11th July, 2022 (Annexure-8), the present CMP has been filed.

4. Mr. Dash, learned counsel for the Petitioners/JDRs. submitted that the land in dispute pertains to Plot No.1397 area Ac.0.34 decimal, Plot No.1938 area Ac.5.00, Plot No.1399 area Ac.1.25 decimal, Plot No.1400 area Ac.0.50 decimal under Khata No. 13, besides other plots situated in mouza Joranda (hereinafter referred to as 'the case land'). The case land stands recorded in the name of Mahima Gossain Bije at Mahimagadi, Joranda, the Deity. OS No.62/152 of 1939/1940 was instituted by Baba Dinabandhu Das as Managing Marfatdar of Mahima Gossain for ejectment of Baba Krupasindhu Das. The said suit was discontinued after death of said Baba Krupasindhu Das. Subsequently, the said Suit, i.e., OS 62/152 of 1939-1940 (HC 21 of 1943) was revived by Mahima Gossain, the Deity through its managing Marfatdar Baba Dinabandhu Das and others against Surendranath Das and others, in the High Court of Judicature at Dhenkanal. The said suit was filed for declaration of title of the Deity, namely, Mahima Gossain over the disputed site as well as to

remove the sheds and other constructions standing thereon and for a perpetual injunction to prohibit the Defendants from raising further construction over the case land. The suit was decreed on 16th December, 1944 with the following order.

“That the suit be decreed on contest in favour of the plaintiff Sree Mahima Gossami. The title of the said plaintiff to the disputed site be declared and the defendants do remove the sheds constructed by the deceased Baba Krupasindhu Das and themselves to a suitable site within the Matha compound which may be convenient for them and not inconvenient to their who have already for their sheds there and remove the Akhandabati lit up by the deceased Baba Krupasindhu Das to the site where the aforesaid sheds would be removed or to the Shunyamandir within the Gadi compound, within three months of this date are allowed to do so by the plaintiffs. If they are not allowed to do so by the plaintiffs they shall continue to remain where they are till they are allowed to do so. If within the period of 3 months from this date the defendants fail to do so, though allowed to do so, the plaintiffs shall be entitled to do so through court by taking out execution, and the defendants shall be liable for the costs of such removal. The defendants be also restrained from constructing any hut or other structure on the Gadi compound.

Both the parties to bear their own costs.”

The said decree was assailed by the DHrs. in the appellate side of the High Court of Judicature at Dhenkanal in Civil Appeal No.1 of 1945. The appeal was disposed of on 6th June, 1945 with certain modification in the original decree, which is as follows:-

“Result is that the cross objection is disallowed and the appeal is dismissed with this modification that the defendants will not be able to construct a separate Dhuni Mandap and lit up a separate Akhandabati in their new place of residence in the math area and the words in the order portion of the judgment of the learned trial Court – ‘to the site where the aforesaid sheds would be removed or’ should be taken as deleted. The judgment is confirmed in all other

respects. The parties shall bear their own costs in this appeal.”

Subsequently, Title Suit Nos. 13/31 and 14/22 of 1960-62 were filed by Balkaladhari Mahima Samaj for declaration of title in respect of Plot Nos.1548, 1441, 1443, 1444, 1437, 1436 and 1440 under Khata No.13 of mouza Joranda. The said suits were disposed of vide judgment dated 13th November, 1962 and possession of both the parties was confirmed. Assailing the same Title Appeal Nos.30 and 31 of 1963 were filed by Balkaladhari Mahima Samaj and the appeals were dismissed. Likewise, Kaupinidhari Mahima Samaj had also filed Title Appeal Nos.16 and 17 of 1979 against the judgment passed in the aforesaid suits. The said appeals were disposed of with the finding that both the suits were incompetent as the same were filed in violation of mandates of the Scheme which was in force by then. The suits were also held as barred by *res judicata* and otherwise not maintainable in view of the provisions of Section 73 of the Odisha Hindu Religious Endowments Act, 1951. Second Appeal Nos.365, 366, 367 and 368 of 1968 were filed before this Court assailing the judgment and decree passed in aforesaid Title Appeals. Second Appeals were disposed of holding that the case land belongs to Mahima Gossain and both the rival groups of Sanyasis being members of the same religious order have equal rights to use the disputed lands and that neither of the groups has any right to exclude the other from such user or use them in contravention of the tenets of their Dharma. This Court, while deciding the Second Appeals also took note of the judgment and decree dated 16th December, 1944 and 31st January, 1945 respectively. Thereafter, TS No.41 of 1972 was

filed by Kaupinidhari Mahima Samaj seeking injunction against Balkaladhari Mahima Samaj, who were creating disturbance in the joint enjoyment of two groups of Sanyasis of the properties of the Mahima Gossain. The suit was decreed restraining Bakaladhari group from obstructing the Kaupinidhari group from the joint enjoyment of the properties of Mahima Gossain. Further, Balkaladhari group was restrained from obstructing the access of the Kaupinidhari group to the place of temple since their entry is not prohibited as per the tenets of the religion. It was also held that both the groups of Sanyasis have equal rights and enjoyment of the properties of Mahima Gossain as per decree passed in 1944. It was further observed *inter alia* that the Balkaladhari group of Sanyasis may make construction over the case land, but with prior permission of Kaupinidhari group and such construction must be confined to the welfare of the Mahima Gadi and to protect the shrine and shall not be made in order to obstruct the Kaupinidhari group of Sanyasis. Said Kaupinidhari group of Sanyasis filed TS No.12 of 1977 seeking injunction against the Balkaladhari group to restrain them from fixing any gate to the main entrance on the western wall of third *bedha* (boundary) of the Ashram. The suit was decreed on 30th April, 1981 restraining Balkaladhari group of Sanyasis permanently not to fix any gate at the entrance of third *bedha* and cause inconvenience for access of Kaupinidhari group. Thereafter, Title Appeal No.10/4 of 1981/1985 filed by Balkaladhari Samaj was dismissed on 10th February, 1987 confirming the decree passed in the suit. Assailing the same, Second Appeal No.127 of 1987 was filed by Balkaladhari

Samaj. The Second Appeal was also dismissed vide judgment and order dated 20th April, 2018.

- 4.1** Subsequently, TS No.22 of 1994 was also filed by Kaupinidhari group against Balkaladhari group seeking a decree of permanent injunction as the Defendants started doing earth work over Hal Plot Nos.2360 and 2361 and also dug foundation over Hal Plot No.2670 under Hal Khata No.449 of mouza Joranda. Learned trial Court taking into consideration series of litigations between the two groups of Sanyasis including the Suit No.HC 21 of 1943 held that the parties are in litigating term for more than half a century. Accordingly, the suit was disposed of directing that the Bakaladhari group have no right to change the nature of any such land by raising any construction, making renovation and doing other similar work over the suit land until and unless they are authorized to do so and decreed the suit vide decree dated 7th August, 1997.
- 4.2** It is also submitted by Mr. Dash, learned counsel for the JDrs that this Court in W.P.(C) Nos.9219 and 9199 of 2005, vide its order dated 30th January, 2018, has held that both the groups of Sanyasis have 50% share of the landed property of Mahima Gossain and they are Marfatdars of Satya Mahima Dharma Parichalana Samiti and the entire property should be recorded accordingly. These material aspects were not taken into consideration by learned executing Court while adjudicating the petition under Section 47 CPC. Had the developments as aforesaid been taken into consideration while adjudicating the matter, learned executing Court could not have rejected the petition under Section 47 CPC filed by the JDrs. Being

aggrieved by the order dated 16th April, 2022 passed by learned executing Court, the JDrs. approached this Court in CMP No.352 of 2022, which was disposed of on 2nd May, 2022 with an observation that the JDrs. have remedy to assail the order passed under Section 47 CPC. Accordingly, the Petitioners preferred Civil Revision No.4 of 2022 before learned District Judge, Dhenkanal, who by misreading the judgment passed by this Court in W.P.(C) Nos. 9219 and 9199 of 2005, dismissed the revision.

5. It is his submission that the decree put to execution is no more available for execution. Parties to the execution proceeding were neither Plaintiffs nor Defendants. The successor/representative capacity of the parties is disputed in absence of any concrete proof. The decree in the suit was not passed against the JDrs. who are the successors of the original Defendants being in occupation of the case land. JDrs. in the execution petition were neither provided with sufficient opportunity to establish their case raised in the petition under Section 47 CPC nor the same was registered as separate Misc. Case as per the provision of GRCO. In view of the above, he prayed for setting aside the impugned order under Annexure-8 and remit the matter to learned executing Court to adjudicate the petition under Section 47 CPC afresh.
6. It is further submitted by Mr. Dash, learned counsel for the JDrs. that the executing Court has the jurisdiction to take notice of subsequent events. Lot of events and developments have taken place after judgment and decree passed by High Court of Judicature at Dhenkanal. The executing Court should have taken the subsequent

events into consideration while adjudicating the petition under Section 47 of CPC. In support of his case, he relied upon a decision of the Hon'ble Supreme Court in the case of ***Laxmi & Co. Vs. Dr. Anant R.Deshpande and another***, reported in AIR 1973 SC 171, in which it is held as under:-

“27. It is true that the Court can take notice of subsequent events. These cases are where the court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same. If the Court finds that the matter is no longer in controversy the court also takes notice of such event.”

(emphasis supplied)

He, therefore, submitted that the judgment and decree is no more available to be executed. He also relied upon the ratio of the decision in the case of ***Smt. Radhi Dei and others Vs. Lalit Bihari Mohanty***, reported in AIR 1991 Ori 36, which reiterates the ratio in ***Laxmi and Co. (supra)***. Thus, the DHrs. in HC No.21 of 1943 (OS No.62/152 of 1939-40) and the judgment and decree passed in the appeal are no more available to be executed, more particularly when this Court vide judgment dated 30th January, 2018 has categorically held that the property described in the application for execution is jointly recorded in favour of both parties and that both parties have joint right of management and maintenance of Mahimagadi. Since the decree is in the nature of mandatory injunction, it should have been put to execution within three years as per Article 135 of the Limitation Act, 1963. Even though limitation is not taken as a

defence, the Court has jurisdiction to delve into the issue of limitation in view of Section 3 of the Limitation Act, 1963. In support of his case, he relied upon the case law in the case of ***Maqbul Ahmad and others Vs. Onkar Pratap Narain Singh and others***, reported in AIR 1935 PC 85, wherein, it is held that it is the duty of the Court to give effect to the provision, even though it is not referred to in the pleadings or urged by the party.

Para-22 is relevant for our discussion, which is as under:-

“22. Secondly, it was urged that there was some sort of judicial discretion which would enable the Court to relieve the appellants from the operation of the Indian Limitation Act in a case of hardship and that this was a case of hardship, and in particular because it was alleged that the decree-holder was in regard to the proceedings which he took by way of execution in some way misled by some mistake in the form of the preliminary decree. It is enough to say that there is no authority to support the proposition contended for. In their Lordships’ opinion it is impossible to hold that, in a matter which is governed by Act, an Act which in some limited respects gives the Court a statutory discretion, there can be implied in the Court, outside the limits of the Act, a general discretion of dispense with its provisions. It is to be noted that this view is supported by the fact that Section 3 of the Act is peremptory and that the duty of the Court is to notice the Act and give effect to it, even though it is not referred to the pleadings.

In view of the above, he prays for setting aside the impugned order under Annexure-8.

7. Mr. Mohanty, learned counsel for the DHrs./Opposite Parties strongly refuted the submissions made by Mr. Dash, learned counsel for the Petitioners. It was his submission that a plain reading of the petition under Section 47 CPC (Annexure-3) would make it clear

that the DHrs. challenged the executability of the decree and maintainability of the execution petition on four grounds, namely,—

- (i) The date of the decree mentioned in the execution petition is 16th December, 2015, but no such decree was passed on the said date;
- (ii) Secondly, the JDrs. alleged that the decree passed in the original suit having been modified in appeal there is no existence of the judgment and decree passed in the suit, but the DHrs. have filed execution case to execute the decree passed in the suit and not in the appeal;
- (iii) The JDrs. alleged that parties to the original suit are not parties to the execution case; and
- (iv) The decree passed in original suit as well as modified appellate decree are no more available to be executed in view of the judgment passed in W.P.(C) Nos.9210 and 9199 of 2005;

8. In answering the objection (i) raised by the JDrs., Mr. Mohanty, learned counsel for the Opposite Parties submitted that in the original execution petition, the date of the decree was correctly mentioned as “16th December, 1944”, but while filing consolidated execution petition, a typographical mistake crept in. However, the correct date is available in the original petition and the executing Court has rightly taken note of the same and proceeded with the execution case.

- 8.1** It was his submission that Column 'J' of the execution petition clearly refers to the original as well as modified/appellate decree, which is sought to be executed. Thus, the objection (ii) is also not sustainable.
- 9.** In para-6 of the order under Annexure-4, the executing Court has clearly held that after death of original JDrs., the decree can only be executed against their legal representatives in terms of Section 50 (1) of CPC. The JDrs. have never denied that they are not legal representatives of the original Defendants. Further, the suit was filed against the Defendants in their representative capacity and not in an individual capacity. Accordingly, requirement under Order I Rule-8 of CPC was complied during pendency of the suit. At a subsequent stage, the JDrs. formed an association and continued to contest different litigations in respect of the self-same property claiming under the JDrs. The JDrs. never challenged the original decree passed in the suit. On the other hand, the Plaintiffs/DHrs. assailed the same in appeal in which the modified decree was passed.
- 10.** It is further submitted that the present JDrs. on an earlier occasion had, challenged the maintainability of the execution case before the executing Court. The executing Court by order dated 12th November, 2003, dismissed the execution case as not maintainable. The said order was challenged before this Court in W.P.(C) No.288 of 2005. Though there is a reference to the same in the present CMP; but a copy of the judgment has not been annexed. The said writ petition was disposed of vide order dated

26th June, 2015, wherein, this Court set aside the order dated 12th November, 2003 passed by the executing Court and held the execution case to be maintainable. Hence, the JDrs. at this stage cannot raise an objection that the execution case is not maintainable against them as they were not parties to the original suit or appeal.

- 11.** Mr. Mohanty, learned counsel further submitted that the judgment and decree put to execution was never modified by this Court in the judgment passed in W.P.(C) Nos.9219 and 9199 of 2005. The execution case has been filed for removal of encroachment by the JDrs. in tune with the judgment and decree passed in the original suit, as modified in the appeal. The temple complex consists of three layers of boundaries (bedhas). The temple complex is only a tiny part of the huge property of the DHrs.-Math, which measures more than seven acres of land. Since the JDrs. created obstruction between 2nd and 3rd boundaries (bedhas) blocking the courtyard and free movement of the Sanyasis, execution case has been filed. It is clear from the judgment and decree that a mandatory injunction has been issued to remove the disputed shed to suitable site within the Math compound, which may be convenient to them, but not inconvenient to others. Thus, it has nothing to do with the judgment passed in the aforesaid two writ petitions. The judgment passed in the aforesaid writ petitions is in no way affect or nullify the judgment and decree put to execution. The JDrs. by virtue of judgment and decree, are directed to shift the said shed to a place within the Math compound, which would not cause inconvenience to others. Further, the judgment passed in W.P.(C)

Nos. 9219 and 9199 of 2005 is concerning recording of name of Mahima Swamy (deity) in respect of the entire properties of the Math situated in mouza Joranda and Natima.

12. Further, the executing Court has answered all the issues raised in the petition under Section 47 CPC, which has been rightly confirmed by the revisional Court. Thus, the impugned orders warrant no interference. Further, the JDrs./Petitioners have raised certain objections in the CMP, which were not raised in the petition under Section 47 CPC, such as non-registration of the petition as miscellaneous case etc. The objections which were not raised before the executing Court should not be taken into consideration in a petition under Article 227 of the Constitution of India. Since the matter has been dealt with in detail by the executing Court as well as revisional Court, the same should not be interfered with in the CMP. The JDrs. are raising different pleas at different stages only to obstruct the execution of the decree. Hence, the CMP should be dismissed with cost.
13. Heard learned counsel for the parties at length; perused the materials on record. There is no serious dispute with regard to the factual aspects of the case. No doubt, the decree in the original suit, i.e., HC 21 of 1943/OS 62/152 of 1939-40 was passed on 16th December, 1944. The same was modified by the appellate side of the High Court of Judicature of Dhenkanal in Civil Appeal No.1 of 1945. The execution case was filed in the year 1998. The Petitioners/JDrs. raised an objection that the said execution case is barred by limitation. Admittedly, no such objection was either

raised in the petition under Section 47 CPC or before the revisional Court. Mr. Dash, learned counsel for the Petitioners referring to Section 3 of the Limitation Act submitted that the issue of limitation though not raised as defence ought to have been taken into consideration by the executing Court while entertaining the execution case. Plain reading of the execution petition (Annexure-1 to the CMP) clearly reveals that the cause of action for filing of the execution case arose when the JDrs. instead of removing the dispute structure, made further construction in contravention of the direction in the judgment and decree. They were also served with notice on 24th November, 1995 through registered post and in reply dated 19th December, 1995 they responded in the negative. The original decree is for mandatory and prohibitory injunction. Thus, perusal of the execution petition reveals that it was filed in time. Hence, neither Section 3 of the Limitation Act nor the ratio decided in *Maqbul Ahmad (supra)* is applicable to the case at hand. In view of the above, objection with regard to limitation was rightly not raised in the petition under Section 47 CPC. As such, the issue of limitation raised for the first time in the CMP is not sustainable.

- 14.** As rightly pointed out by Mr. Mohanty, learned counsel for the Opposite Parties/DHrs., the petition under Section 47 CPC was filed raising four objections, as aforesaid. The objections raised by the JDrs. were discussed in detail both by the executing Court as well as the revisional Court. An objection was raised by the JDrs. with regard to the date of the judgment mentioned in the execution petition. It is submitted by Mr. Dash, learned counsel for the

Petitioners that the date of the judgment has been reflected to be 16th December, 2015 in the execution petition. No such judgment and decree was passed on the said date either by the trial Court or the appellate Court. In order to test the veracity of such objection, this Court verified the original execution petition, a copy of which is filed by the DHrs./Opposite Parties along with written note of submission. On perusal of the same, it appears that at Column 'g' the date of the judgment is reflected as '16.12.1944'. However, in the consolidated execution petition annexed to the CMP as Annexure-1, the date of the decree at Column- 'c' of the said petition has been mentioned as '16.12.15'. On perusal of the entire petition under Annexure-1, it appears that the date mentioned at Column 'c' of Annexure-1 is a typographical error, as the subject matter of the petition refers to the judgment and decree passed in Civil Suit No.HC 21/1943 (OS 62/152 of 1939-40), which was modified in Civil Appeal No.1 of 1945 by the appellate side of High Court of Judicature of Dhenkanal. Hence, the aforesaid objection raised by the JDrs. is not sustainable. The objection raised by the JDrs. in their petition under Section 47 of CPC was that the decree passed in original suit having been modified in appeal, the original decree passed in the suit is no more available to be executed. However, perusal of Annexure-1 more specifically description at Column under the heading '*1. Mode in which the assistance of the court is required*', clearly suggests that the decree as modified in appeal is put to execution. Column-'d' of the said petition as at Annexure-1 also clearly reveals that the decree passed in original suit was assailed in Civil Appeal 1 of

1945. It would not be out of place to reiterate that the appeal filed by the DHrs. was dismissed subject to certain modifications in the decree passed in suit. The said modification does not in any way affect the direction with regard to removal of unauthorized construction made by JDrs. in the suit premises. The execution petition is only filed to remove the unauthorized constructions and to restrain the JDrs. from making any further unauthorized construction in the suit premises. The petition as a whole is required to be taken into consideration, as has been done by both the Courts. Thus, the objection raised by the JDrs. to this effect is also not sustainable.

14.1 Further, an objection is raised to the effect that the JDrs. in the execution case were not parties to the original suit or appeal. The said objection is also not sustainable, inasmuch as the JDrs. are litigating as the legal representatives of the Defendants in the suit. The suit was filed against the Defendants in their representative capacity complying with the provisions under Order I Rule 8 CPC. Further, representing themselves to be the legal representatives of the Defendants in the original suit, the Petitioners/JDrs. filed W.P.(C) Nos.9219 and 9199 of 2005. Since the JDrs. are representing the cause of the Defendants in the suit, they are estopped to raise the aforesaid objection to frustrate the decree stating that they were not parties to the suit.

15. The Petitioners/JDrs. had also raised an objection to the effect that in view of the judgment and decree passed in W.P.(C) Nos. 9219 and 9199 of 2005 the decree in question is no more available to be

executed. The judgment dated 30th January, 2018 (Annexure-9) passed in W.P.(C) Nos. 9219 and 9199 of 2005 relates to order passed by Sub-Collector, Dhenkanal in OEA Appeal Nos. 2, 3, 4, 5 and 8 of 2002 reversing the order dated 15th July, 2002 passed by the Additional Tahasildar, Gondia in Bebondabasta Case Nos. 122-126 of 2000. In the said judgment, this Court has taken note of the judgment and decree passed in original suit as well as in the appeal. It has also taken note of different litigations between the parties. After discussing in detail the rival contentions of the parties, this Court, while answering the point No.(II), has held as under:-

“42. It appears from the registration of said Samiti filed by State shows that the names of both groups of Sanyasis appear and they are in joint management of the Mahima Gadi. When there are several Civil suits and finally culminated with Second Appeal where this Court directed for joint enjoyment of properties of Mahima Goswami by the plaintiffs and the members of the opposite party No.1, we are of the view that the suit properties of Sri Alekh Goswami or Mahima Gosain should be jointly recorded in favour of petitioners and the opposite party No.1 as both the parties have got joint right of management and maintenance of Mahima Gadi. Point No.(II) is answered accordingly.”

The said observation does not in any way affect the judgment and decree passed either in the suit or in the appeal. A meticulous reading of the judgment under Annexure-9 makes it clear that the Court has only declared that the property belonging to the deity Mahima Gossain and both groups of Sanyasis have equal right over the suit property. However, it does not spell out a single word on the merit of the decree put to execution. On the other hand, this

Court has relied upon said judgment and decree in its judgment under Annexure-9. Thus, the objection raised in the petition under Section 47 CPC was rightly turned down by the executing Court as well as the revisional Court.

16. In the CMP, the Petitioners/JDs. have made an attempt to assail the maintainability of the execution petition on few other grounds, which were not raised in the petition under Section 47 CPC. The issue of limitation has already been discussed in paragraph-13 of this judgment. Hence, the same needs no reiteration. Mr. Dash, learned counsel for the Petitioners/JDs., however, raised an objection that while adjudicating the petition for stay of the order passed under Section 47 CPC, the revisional Court disposed of the entire revision. On perusal of the order under Annexure-8, it appears that both parties to the revision argued the matter on merit. It also appears, while considering the petition for stay of the impugned order under Section 47 CPC, merit of the case was required to be gone into. Since both parties argued the matter on merit before the revisional Court, it has committed no error in passing the order on merit of the revision. Mr. Dash, learned counsel for the Petitioners also could not satisfy the Court as to how the Petitioners are prejudiced for not entertaining the petition for stay of the order passed under Section 47 CPC. Hence, the said objection raised by Mr. Dash is not sustainable.

17. The revisional Court, while adjudicating the revision made an observation that no order was passed in the writ petitions with regard to any specific plot. The said observation of the revisional

Court appears to be not correct. The judgment passed by this Court under Annexure-9 has dealt with the land particulars at para-3 of the said judgment. But that does not in any way affect merit of the order passed in the revision under Annexure-8.

- 18.** Mr. Dash, learned counsel for the Petitioners/JDs. also raised an objection that there are several developments from the date of the original decree as modified in the appeal. The said developments rendered the original decree in-executable. On a thorough scrutiny of the materials available on record, this Court finds the subsequent judgment and decrees do not in any way affect the merit of the judgment and decree put to execution. On the other hand, the subsequent judgment/orders/decrees were passed relying upon the judgment and decree put to execution. Thus, the ratio decided in the case of *Laxmi and Co. (supra)* and *Smt. Radhi Dei and others (supra)* have no application to the present case.
- 19.** It also appears that the Petitioners/JDs. had earlier filed an application under Section 47 CPC, which was allowed holding that the execution case is not maintainable. Assailing the same, the DHrs. had moved this Court in W.P.(C) No.288 of 2005. The said writ application was allowed vide order dated 26th June, 2015 holding that the Opposite Parties/DHrs. have rightly approached the executing Court. Although a reference has been made with regard to the judgment and order passed in W.P. (C) No.288 of 2005 in the present CMP, but the JDs. for the reasons best known to them do not whisper a single word about the order passed in the said writ petition. Thus, the Court does not hesitate to draw an

adverse inference against the Petitioners-JDrs. for not explaining the judgment passed in W.P.(C) No.288 of 2005, which was filed against an order passed in a petition filed under Section 47 CPC in the selfsame execution case.

20. In view of the discussions made above, this Court finds no merit in the CMP. It appears that the Petitioners/JDrs. are raising unsustainable objections at different stages of the execution proceeding only to see that the Opposite Parties/DHrs. do not enjoy the fruit of the decree. Accordingly, while disposing of the CMP, this Court holds that the executing Court should take all possible steps to see that the execution proceeding is disposed of at an early date keeping in mind the observation of Supreme Court in the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi and others***, reported in (2021) 6 SCC 418. In the facts and circumstances of the case, there shall be no order as to costs.

(KRUSHNA RAM MOHAPATRA)
JUDGE

s.s.satapathy

High Court of Orissa, Cuttack
14th Oct., 2022