

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1309 of 2018

Ram Kripal Singh Son of Late Rameshwar Singh Resident of Village and Post Office - Shiv Kund, Police Station - Dharhara, District Munger and at present residing at Mohalla - Chauhatta Mathiya, Police Station - Pirbahore, District - Patna.

... .. Petitioner/s

Versus

Ram Sharan Prasad Singh Son of Late Rajendra Prasad Singh Resident of Village and Post Office - Shiv Kund, Police Station - Dharhara, District - Munger and working as Assistant Teacher in S.J.M. 2 School at and Post Office - Mokama, District - Patna and presently residing at Mohalla - Chauhatta Mathiya, Police Station - Pirbahore, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Kushagra Kush, Advocate Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. Ajay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 05-09-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 11.06.2018 passed by learned Execution Munsif, Patna in Execution Case No. 73 of 2017.



3. The brief facts of this case are that the petitioner had filed Title Suit No. 15 of 2006 for recovery of possession which was dismissed by the judgment and decree dated 30.11.2010. Aggrieved by the said judgment and decree, the petitioner preferred Title Appeal No. 140 of 2010 which was allowed by the judgment and decree dated 15.12.2016 whereby the judgment and decree of the trial Court was set aside and the suit filed by the plaintiff / petitioner was decreed. The petitioner filed an Execution Case being Execution Case No. 73 of 2017. The judgment debtor / respondent taken objection to the fact that the said Execution Case is not sustainable and against the law as the decree of the learned Appellate Court does not contain description of the property hence the Execution Case is not fit to proceed. The Executing Court after hearing the parties passed the impugned order which has been challenged in this Civil Miscellaneous Application.

4. Mr. J.S. Arora, learned senior counsel for the petitioner submits that the impugned order passed by the Executing Court is completely erroneous and misconceived. From the relevant provision of the Code of Civil Procedure, it is quite apparent that the description of the property in the suit is only given in the decree prepared by the trial Court not in the decree of the



Appellate Court. Further, he submits that, in fact, the decree of the appellate Court contains mainly whether the appeal is allowed or not allowed. The memo of appeal does not contain the description of the property and there is no ambiguity in the decree of the appellate Court. The decree holder is being deprived of the fruits of the decree on account of frivolous objection raised by the judgment debtor. Since the decree of the trial Court has merged into the decree of learned Appellate Court and the description made in the decree of learned trial Court contains the description of disputed property, the same is not required to be mentioned in the decree of the appellate Court. For identifying the property, the decree of the appellate Court would be of no use. It is the decree of the original court which specifies the subject matter of the suit, and so, the identity of the property could have been established before the court by production of the decree of the trial Court.

5. Learned senior counsel referred Form No. 23 in Appendix D of the CPC which relates to form of decree for recovery of land and mesne profit and Form No. 9 of Appendix-G refers decree in appeal under Order 41 Rule 35 and the same does not contain the description of the disputed property. He further submits that the decree has been prepared in accordance



with law in the prescribed format given in Form No. 9 in Appendix -G. He further submits that in view of the objection taken by the judgment debtor the petitioner had moved the application before the appellate Court for correction of the decree under Section 152 of the CPC stating that in the said decree the property in dispute which is subject matter has not been amended but the learned appellate Court vide order dated 02.06.2018 observed that the Court had given direction to the defendants / respondents to vacate the disputed property and hand over the possession to the appellant. The appellant has not given separately the description of the suit property in the appeal. Accordingly, it is not in the interest of justice that in the judgment and decree passed by the appellate Court separate description of disputed property is required and accordingly, dismissed the petition of the petitioner. Despite the said finding and observation of the Appellate Court the learned Execution Munsif has passed the impugned order which is liable to be set aside and the learned Court below be directed to proceed in accordance with law.

6. Per Contra, learned counsel for the respondent submits that the decree of the appellate Court cannot be executed in view of the fact that description of property has not been



mentioned in the decree and the Executing Court can not go beyond the original decree of the court when the appellate decree does not give any description of the suit property. He has further submitted that the learned Court below rightly passed the impugned order which is a reasoned order and requires no interference by this Court.

7. Rule 106 of Civil Court Rules of the High Court of Judicature at Patna referred by the learned Court below reads as under:

“ Decree should be drawn up in such a manner that, in order to the understanding and execution of them, it may not be necessary to refer any other document or paper whatever”

8. A decree is defined as “ the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit”, and a judgment as “the statement given by the judge on the grounds of a decree or order” the judgment, therefore, merely given the reasons and it is the decree which contains the order.

9. Under Order 20, Rule 4 the judgment “shall contain a concise statement of the case, the point for determination, the



decision thereon and the reasons of such decision”. Whereas under Rule 6, the decree, in addition to other particulars “shall specify clearly the relief granted and other determination of the suit. Again Order 41 Rule 31, provides the judgment of the appellate Court shall state the points for determination, the decision thereon, the reasons for the decision, and where the decree appealed from is reversed or varied “the relief to which the appellant is entitled and under Order 32, the judgment may be “for confirming, varying or reversing” the decree from which the appeal is preferred.

10. The legislature has placed upon the Court which passed the decree the duty of embodying its decision in the form of a decree. Obviously, it is not always possible for the Court when disposing of the case to pass an order complete in all details so that, when it becomes necessary to act on that decision, it will be clear to the executing court or other authority acting on the decision what that decision is. The Court which passed the decree is in the best position to give particulars and to determine what is the real effect of the decision contained in the judgment. In case of discrepancy between the judgment and the decree, the executing Court cannot go behind the decree, and the party aggrieved must seek amendment of the decree. The



question of amendment would not arise if the decree was itself the adjudication. Section 152 C.P.C. provides for amendments in judgment confined to clerical or arithmetical mistakes, but if there is mistake of substance, the remedy is by review of judgment.

11. Ordinarily items of cost forms part of the decree which has to be ascertained by careful examination of record. In decision on accounting it will not always be possible for the judge to make necessary calculations himself to arrive a definite figure. He may merely indicate the lines on which the accounting should be made and the result so arrived at will be incorporated in the decree. Other details required in the decree are names and particulars of the parties and specification of the subject matter of the litigation.

12. The code has provided for execution of decrees and for an appeal against a decree; to give effect to the decision, the executing Court must know exactly what the decision is, and to deal with the appeal, the appellate Court must know who the parties are and what the subject matter of suit is.

13. The decree is subordinate to the judgment and it is the judgment and not the decree which disposes of the case is made



clear by the fact that the decree is required to be in agreement with the judgment. It is clear that the adjudication is made by the judgment and not by the decree.

14. Where the appellate Court is not interfering with the decree of the Court below, all that is necessary is that it should be stated in form of decision that the appeal be dismissed or the decree of the Court below is confirmed. In the case of a decree of the subordinate Court being reversed or varied, it becomes necessary that the relief which the appellant is to get should be specified.

15. In **Topanmal Chhotamal Vs. Kundomal Gangaram AIR 1960 SC 388**, a three Judge Bench of Hon'ble Supreme Court held as follows:

“ It is well settled principle that a Court executing a decree cannot go behind the decree. It must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit”.

16. In **Meenakshi Saxena Vs. ECGC Ltd. (2018) 7 SCC 479** it was reiterated that:

“The whole purpose of execution proceedings is to enforce the verdict of the Court. Executing Court while



executing the decree is only concerned with the execution part of it but nothing else. The Court has to take the judgment in its face value. It is settled that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the Court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing Court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing Court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree”.

17. As is commonly known, the stream cannot rise above its source. The execution of decree is the last leg of the journey that a litigant is put through to obtain desired relief from the Court.

18. In view of the aforesaid facts and circumstances of the case and the legal provisions as discussed above, it is apparent that the identity of the property can be established before the Court by production of the decree of the trial Court. There is no discrepancy between the judgment and decree in the present



case.

19. In view of the aforesaid, the impugned order is set aside and the learned Executing Court is directed to proceed the execution of the decree in accordance with law.

20. This Civil Miscellaneous Application is, accordingly, allowed.

(Sunil Dutta Mishra, J)

ashutosh/-

AFR/NAFR	AFR
CAV DATE	22.08.2023.
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