

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.209 of 2021

Shree Bhagwan Pandey Son of Late Shri Shiv Govind Pandey Resident of Village- Bharauli, P.O. and P.s.- Simari, District- Buxar, Presently residing at Mohalla- Rambag, Buxar, P.O.- Buxar, P.s.- Buxar (T), District- Buxar 802101

... .. Petitioner/s

Versus

1. Ram Autar Pandey Son of Late Chandra Dev Pandey Resident of Mohalla- Rambag, P.P. Road, Buxar, P.s. and District- Buxar
3. Madan Verma Son of Late Nandlal Sonar, Resident of - Rambagh, P.P. Road, Buxar, P.S- Buxar (T), P.O. and District- Buxar.
4. Gopal Verma Son of Late Nandlal Sonar, Resident of - Rambagh, P.P. Road, Buxar, P.S- Buxar (T), P.O. and District- Buxar.
5. Govind Verma Son of Late Nandlal Sonar, Resident of - Rambagh, P.P. Road, Buxar, P.S- Buxar (T), P.O. and District- Buxar.
6. Uma Shankar Lal Son of Kamta Lal, Resident of - Rambagh, P.P. Road, Buxar, P.S- Buxar (T), P.O. and District- Buxar.
7. Abhay Kumar Singh Son of Late Shri Krishna Singh Resident of Village- Belahari, P.s.- Navanagar, District- Buxar, Presently residing at Raj Bangala Ghat, behind Girls High School, Buxar, P.s.- Buxar(T), P.o. and District- Buxar
8. Rajesh Kumar Singh Son of Late Shri Krishna Singh, Resident of Village- Belahari, P.s.- Navanagar, District- Buxar, Presently residing at Raj Bangala Ghat, behind Girls High School, Buxar, P.s.- Buxar(T), P.o. and District- Buxar
9. Sanjay Kumar Singh Son of Late Shri Krishna Singh, Resident of Village- Belahari, P.s.- Navanagar, District- Buxar, Presently residing at Raj Bangala Ghat, behind Girls High School, Buxar, P.s.- Buxar(T), P.o. and District- Buxar
10. Amrendra Pratap Singh Son of Late Shri Krishna Singh, Resident of Village- Belahari, P.s.- Navanagar, District- Buxar, Presently residing at Raj Bangala Ghat, behind Girls High School, Buxar, P.s.- Buxar(T), P.o. and District- Buxar
11. Raj Kamal Singh Son of Late Shri Krishna Singh, Resident of Village- Belahari, P.s.- Navanagar, District- Buxar, Presently residing at Raj Bangala Ghat, behind Girls High School, Buxar, P.s.- Buxar(T), P.o. and District- Buxar
12. Rajnikant Singh Son of Late Shri Krishna Singh, Resident of Village- Belahari, P.s.- Navanagar, District- Buxar, Presently residing at Raj Bangala Ghat, behind Girls High School, Buxar, P.s.- Buxar(T), P.o. and District- Buxar
13. Ashok Shrivastava Son of Late Ramchhavi Lal Resident of Mohalla- Rambagh, P.P. Road, Buxar, P.s.- Buxar (T), P.o. and District- Buxar
14. Vijay Shrivastava Son of Late Ramchhavi Lal Resident of Mohalla- Rambagh, P.P. Road, Buxar, P.s.- Buxar (T), P.o. and District- Buxar



15. Nirmal Shrivastava Son of Late Ramchhavi Lal Resident of Mohalla- Rambagh, P.P. Road, Buxar, P.s.- Buxar (T), P.o. and District- Buxar
16. Kapil Muni Dube Son of Late Sachchidanand Dube Resident of Village- Belahari, P.s.- Navanagar, Distt.- Buxar
17. Awadhesh Prasad Son of Late Rameshwar Prasad Resident of Mohalla- Piparpati Road, Buxar, P.s.- Buxar (T), P.o. and District- Buxar
18. Rajeev Kumar Pandey Son of Late Yogendra Nath Pandey Resident of Mohalla- Ram Rekha Ghat, P.s.- Buxar (T), P.o. and District- Buxar
19. Shashi Ranjan Pandey Son of Late Yogendra Nath pandey Resident of Mohalla- Ram Rekha Ghat, P.s.- Buxar (T), P.o. and District- Buxar
20. Kailash Bihari Upadhyay Son of Late Radhachandra Upadhyay Resident of Mohalla- Rambagh, P.P. Road, Buxar, P.s.- Buxar (T), P.o. and District- Buxar
21. Mahanth Chandrama Das Chela- Late Ram Lakhan Das Resident of Mohalla- Ram Rekha Ghat, P.s.- Buxar (T), P.o. and District- Buxar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Avinash Kumar, Advocate Mr. Ajay Dutt Mishra, Advocate Mr. Binod Bihari Sinha, Advocate
For the Respondent/s	:	Mr. Pandit Jee Pandey, Advocate Mr. Ramendra Pati Tripathy, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

12 21-11-2024 Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. The petitioner is aggrieved by the order dated 13.05.2019 passed by learned Munsif, Buxar in Misc. Case No. 9/18 of 2018 whereby and whereunder the learned Munsif, Buxar rejected the application dated 18.08.2018 filed by the petitioner with prayer to reject the Misc. Case No. 9/18 of 2018.

3. Learned counsel for the petitioner submits that pursuant to the judgment and decree passed in Title Demarcation Suit No. 107 of 1996, Execution Case No. 5 of



2003 has been filed by the petitioner who is the decree holder. However, in the said case, respondent no.1 filed miscellaneous case under Section 47 of the Code of Civil Procedure (hereinafter 'the Code') with prayer to dismiss the Execution Case No. 5 of 2003 and for declaration that the decree dated 17.01.2003 passed in Title Demarcation Suit No. 107 of 1996 is null and void and non-exacutable. Learned counsel further submits that the respondents, who filed miscellaneous case, has contested the suit and was also party in the appeal and after 15 years of passing of the decree, he filed the miscellaneous case for setting aside the decree. The miscellaneous case is hopelessly time barred. Even the appeal against the judgment and decree of the learned trial court has attained finality after it was dismissed as withdrawn. Respondent no.1 did not contest the suit and did not controvert the subject matter of the suit and are admitted the right of the petitioner over the suit land and the same needs to be demarcated by the process of the court. But the learned trial court did not consider these facts and jurisdiction, admitted the miscellaneous case and rejected the application filed by the petitioner for rejecting the said miscellaneous case and, hence, the impugned order could not be sustained.



4. Learned counsel appearing on behalf of respondent no.1 submits that there is no infirmity in the impugned order and the same does not require any interference. Learned counsel further submits that the petitioner, as a plaintiff, filed a suit bearing Title Demarcation Suit No. 107 of 1996 for demarcation of his land. The claim of the plaintiff was that he purchased 1 katha 5 dhur land from plot nos. 1024 and 1026 but due to mistake of the scribe, Plot No. 1026 could not be mentioned in his sale deed and on this ground, the suit was brought and it was decreed. However, it is not possible to demarcate the land of two plots because there is no land in Plot No. 1026 of the plaintiff and the decree suffers from vagueness. Learned counsel further submits that there is no question of limitation in the execution proceeding for filing an application under Section 47 of the Code. Learned counsel further submits that the respondents of the miscellaneous case are yet to be heard and the miscellaneous case is at its preliminary stage and since identity of the suit property is yet to be made clear, it could not be done without hearing the respondents and other judgment-debtors, who are holding the land in the said plots. Learned counsel further reiterates that miscellaneous case is at its preliminary stage and at this stage seeking its dismissal could



not be allowed unless the parties are heard and objections raised by the respondent no.1 are decided.

5. Considering the rival submission of the parties and perused the record. I find some merit in the submission of the learned counsel for respondent no.1 that when there is question over the identity of the suit property and execution proceeding is still pending, rejection of petition filed under Section 47 of the Code *in limine* could not be allowed. It is true that the executing court cannot go behind the decree but when certain questions have been raised regarding identity of the suit property and further questions about non-executability of the decree has been raised, the same needs to be answered. It could be done only after detailed hearing and consideration of the rival submission of the parties in a proceeding under Section 47 of the Code and for this reason, I do not find any infirmity in the impugned order and, hence, the same is affirmed.

6. Accordingly, the instant petition stands dismissed.

(Arun Kumar Jha, J)

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