

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.264 of 2025

Mohammad Ali @ Syed Mohammad Ali son of Late Ibrahim Mian @ Syed Mohammad Ibrahim, Resident of Village- Khujawan Pargana Andar, P.S.- Raghunathpur, P.O.- Khujawan, District Siwan.

... .. Petitioner/s

Versus

1. Balister Yadav Son of Jagarnath Yadav resident of Village- Kusahara Pargana Andar, P.S.- Ragnathpur, P.O.- Kujawan District- Siwan.
2. Lilawati Devi, Wife of Mahatma Yadav @ Mahatam Yadav resident of Village- Kusahara Pargana Andar, P.S.- Ragnathpur, P.O.- Kujawan District- Siwan.
3. Tarkeshwar Yadav, Son of Mahatama Yadav @ Mahatam Yadav resident of Village- Kusahara Pargana Andar, P.S.- Ragnathpur, P.O.- Kujawan District- Siwan.
4. Paspati Yadav, Son of Mahatama Yadav @ Mahatam Yadav resident of Village- Kusahara Pargana Andar, P.S.- Ragnathpur, P.O.- Kujawan District- Siwan.
5. Govind Yadav, Minor, Son of Mahatma Yadav @ Mahatam Yadav through their guardian Lilawati Devi (Mother), resident of Village- Kusahara Pargana Andar, P.S.- Ragnathpur, P.O.- Kujawan District- Siwan.
6. Lal Prakash Yadav, Minor, Son of Mahatma Yadav @ Mahatam Yadav through their guardian Lilawati Devi (Mother), resident of Village- Kusahara Pargana Andar, P.S.- Ragnathpur, P.O.- Kujawan District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Adv. Mr. Amir Alam, Advocate Mr. Dhananjay Kumar, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 22-04-2025 The record taken up on mentioning being made on behalf of the petitioner.

2. Heard learned senior counsel for the petitioner.

3. The petitioner is aggrieved by the order dated 13.03.2024 passed by learned Civil Judge (Junior Division-I),



Siwan in Execution Case No. 22 of 2014 whereby and whereunder the learned executing court rejected the objection petition dated 14.03.2016 filed by the petitioner/judgment debtor under Section 47 of the Code of Civil Procedure (for short 'the Code') due to non-appearance of the conducting lawyer on behalf of the petitioner on repeated calls.

4. Learned senior counsel appearing on behalf of petitioner, at the outset, submits that the decree is not executable as it has all along be the case of the decree holder/plaintiffs/respondents that they were in possession of the suit property. Even their witnesses deposed only to this effect. Still, by filing the execution case, the decree holders are seeking possession of decretal property. However, in a proceeding under Section 145 of Cr.P.C., the petitioner was held to be in possession of the suit property and thereafter the respondents filed the Title Suit No. 181 of 1988 but they did not seek any relief of recovery of possession. In their pleadings as well as the evidence adduced by them, everywhere they put forward their case that they were in possession. However, subsequently they filed Execution Case No. 22 of 2014 where they made specific prayer for delivery of possession over the Schedule-1 property under Order 21 Rule 22 of the Code. Therefore, the executing



court has a decree before it which is not executable against the petitioner. For this reason, the impugned order rejecting the objection petition of the petitioner under Section 47 of the Code, though passed due to non-appearance of the conducting lawyer of the petitioner, is flawed even on merits and the same could not be sustained.

5. Perused the record

6. Operative part of the judgment dated 25.07.2014 passed by learned Munsif-1st, Siwan in Title Suit No. 181 of 1988 reads as under:-

"वादी का वाद स- संघर्ष डिक्री किया जाता है। वादग्रस्त पर वादी का हक एवं स्वत्व एवं दखल घोषित किया जाता है तथा प्रतिवादों को आदेशित किया जाता है कि वाद पत्र में वर्णित सम्पत्ति पर 30 (तीस) दिनों के भीतर वादग्रस्त सम्पत्ति को खाली कर वादीगण को कब्जा प्रदान कर दें। अन्यथा वादीगण न्यायालय की प्रक्रिया से खाली करवाने का अधिकारी होंगे तथा रिविजन वाद सं० 325/87 दिनांक 8. 4. 88 में पारित आदेश को शून्य घोषित किया जाता है।"

7. Further the decree sealed and signed on 19.08.2014 also reiterates the same position. The conjoint reading of the operative part of judgment dated 25.07.2014 and decree sealed and signed on 19.08.2014, it is apparent that the learned trial court directed the defendant to vacate the suit land within 30 days of the date of passing of the judgment and it also transpires



from the same judgment that the order dated 08.04.1988 passed in Revision Case No. 325 of 1987 was declared void. Apparently this revision was against a proceeding under Section 145 of Cr.P.C. Therefore, it cannot be said that there has been no order to hand over the possession of suit property to the plaintiffs/decreed holders. If the petitioner is aggrieved by the said portion of the judgment and decree wherein the court directed the defendant to vacate the suit premises within 30 days, the proper forum would be the appellate court because only the appellate court could consider each and every contention on facts as well as on law. At this stage, it has been submitted by the learned senior counsel that Title Appeal No. 174 of 2014 has already been preferred by the petitioner against the respondents which was dismissed for not filing of requisites and Misc. Case No. 4 of 2015 has been filed for restoration of the said title appeal which is still pending before the court of learned 4th Additional District Judge, Siwan. Since the petitioner has already approached the appellate court, this fact shows the petitioner was alive to this fact about his challenge to the execution proceeding being a matter which needs consideration by the learned appellate court. Moreover, it is the settled law that an executing court would not go behind the decree or



appreciate the facts, pleadings or evidence unless there is any vagueness or decree is ambiguous. If there is no vagueness, the learned executing court cannot go behind the decree, whatever might be the contention of the petitioner about non-executability of the decree.

8. In the light of discussion made hereinbefore, I do not find any material to uphold the contention of the petitioner that the decree was non-executable. When there is specific direction to the defendant/judgment debtor for vacating the suit land, the executing court is duty bound to give effect to the decree in execution proceeding and an objection regarding non-executability of the decree before the executing court could not be sustained in the given facts and circumstances.

9. Therefore, I do not find any infirmity in the impugned order and, hence, the impugned order dated 13.03.2024 passed by learned Civil Judge (Junior Division-I), Siwan in Execution Case No. 22 of 2014 is affirmed.

10. Accordingly, the present petition stands dismissed.

11. However, the court of learned Additional District Judge-4th, Siwan is directed to expedite the proceeding of Misc. Case No. 4 of 2015 which is pending before it for last ten years and try to dispose it of at the earliest and preferably within a



period of six months from the date of receipt/production of a
copy of this order.

(Arun Kumar Jha, J)

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