

(2003) 07 PAT CK 0090
In the Patna High Court
Case No : Civil Revision No. 629 of 2003

Abhinandan Jha alias Abhed Jha and Others	APPELLANT
Vs	
Anant Mishra and Others	RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Citation : (2003) 07 PAT CK 0090

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—(sic) Madhubani, rejecting their objection u/s 47 of the CPC (hereinafter referred to as "the Code").

2. The Plaintiff-opposite 1st party (decree-holders) filed Title Suit No. 31 of 1999 in the court of the Munsif 1st, Madhubani, for declaration of title and possession over Schedule-I land and for eviction and permanent injunction against the Petitioners over schedule-II land. The said suit was decreed ex parte on 14.10.1999. The Petitioners have filed Title suit No. 39 of 2001 challenging the said decree, which has been dismissed and an appeal is pending at the instance of the Petitioners.

3. The decree-holders opposite first party levied Execution case No. 7 of 1999 and the Petitioners raised objection with regard to the executability of the decree on the ground that the direction of the court below was to give vacant possession to the decree-holders, whereas, the judgment-debtors have got their house over Schedule-II land and as such the decree, as it stands, is not executable. The executing court has rejected the same. Hence, this Civil Revision.

4. The operative portion of the decree runs as follows:

Defendant 1st set is directed to hand over the vacant possession of land described in Schedule II of plaint within a month from the date of the order. In case of default, Plaintiff may get the possession over the suit land through process of the court.

4. The law is well-settled that the executing court has to execute the decree as it stands. The executing court cannot go behind the decree and all efforts should be made to execute the decree. However, for (sic) the case of Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, held that the exercise of powers u/s 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection u/s 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.

5. In the present case, as stated above, there is direction of the court below to give vacant possession of Schedule-II land to the decree-holders. It is not a case of the judgment-debtor-Petitioners that the construction over Schedule II land was from before the institution of the suit. The court below after having considered the said aspect, has ordered for giving vacant possession. There is no ambiguity in the decree. In terms of the decree, the vacant possession of Schedule-II land is to be given to the decree-holders. Accordingly, the court below rightly rejected the objection filed by the Petitioners u/s 47 of the Code.

6. In the result, I do not find any merit in this Civil Revision and it is, accordingly dismissed.