
(2026) 01 SC CK 1913
In the Supreme Court Of India
Case No : Civil Appeal No(S).1920 Of 2011

Ananda Chandra Panda (Dead) Through Lrs	APPELLANT
Vs	
Collector, Keonjhar & Another	RESPONDENT

Date of Decision : 22-01-2026

Acts Referred:

Code of Civil Procedure, 1908 — Section 47

Citation : (2026) 01 SC CK 1913

Hon'ble Judges : B.V. Nagarathna, J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : V. K. Monga, Sanjay K Das, Swetaketu Mishra, Gouri Monga

Final Decision : Allowed

Judgement

B.V. Nagarathna, J

1. On perusal of the Office Report dated 12.01.2026, it is noted that despite service of notice on respondents there is no representation made on their behalf. In the circumstances, we have heard learned counsel for the appellants only.
2. Appellants are aggrieved by the order dated 06.04.2010 passed in W.P.(C) No.1888/2007 by the High Court of Orissa at Cuttack by which the Writ Petition filed assailing an order dated 24.01.2007 passed by the learned Civil Judge (Senior Division) Anandpur in CMA No.40/2006 arising out of Execution Proceeding No.8/2000 rejecting the appellant's preliminary objections to the application filed by the respondents herein under Section 47 of Code of Civil Procedure, 1908 (for short "CPC") was sustained.
3. Briefly stated the facts of the case are that the appellants had filed a civil suit bearing T.S. No.16 of 1983 on the file of the Sub-Judge, Anandpur and the said suit was dismissed by judgment and decree dated 17.01.1994.
4. Being aggrieved by the dismissal of the suit, the appellant herein preferred T.A. No.11/1994 before the first Appellate Court (learned District Judge at

Keonjhar) and by judgment and decree dated 08.10.1999, the said appeal was allowed in part. For immediate reference, paragraph 12 of the said judgment is extracted as under:

"12. In the result the appeal is allowed in part. The right, title and interest of the plaintiff-appellant over Suit Hal Plot No.53 in Khata No.19 measuring AO.08 decimals as per the plaint schedule is declared but the other prayers relating to the suit house which stands over Hal Plot No.54 and its recovery of possession/confirmation of possession is dismissed against respondent no.1 and 2 with cost and ex parte against respondent No.3."

5. The said judgment related to the declaration of right, title and interest of the appellant-plaintiff over Suit Hal Plot No.53 in Khata No.19 measuring AO.08 decimals as per the plaint schedule but the other prayers relating to suit house which stands over Hal Plot 54 and its recovery of possession was dismissed. The said judgment and decree has attained finality.

6. Since the declaration of right, title and interest of the appellant-plaintiff was made about the suit Hal plot No.53, the appellant herein preferred E.P. No.8/2000 in respect of the scheduled land. For ease of reference, the details of the scheduled land are extracted as under:

"The schedule of land, the delivery of possession of which was given to the decree holder Sri Ananda Chandra Panda, son of late Sridhar Panda of Vill/PO. Ghasipura is given below:

Name of the Mouza

Khata No.

Plot No.

Status

Area

Remarks

1

2

3

4

5

6

Khaparakh ai PS Ghasipura

19

Gharabari

AO.08 Dec. North-Plot No.727 South-Plot No.64 East-Plot No.601 Possessed by Akhya Mishra West-Plot No.728 Present Status House Homestead

7. By order dated 26.08.2006, learned Civil Judge (Senior Division) Anandpur allowed the execution Case No.8/2000 which was disposed of as the decree passed by First Appellate Court was satisfied. For immediate reference the said order is extracted as under:

"This order is on the report of C.C.C., submitted dtd.18.3.06 regarding delivery of possession.

The report of the CCC reveals that land as demarked by him in the presence of the parties and witnesses and thereafter possession was delivered to the Dhr by the bailiff. Delivery of possession finds corroboration in the report of the bailiff as well.

No objection has been filed by the Dhr as well as Jdr against the report of the Commissioner. Thus the portion has been delivered to the Dhr as per the decree passed in his favour in TS 16/83. Hence, the report of the Commissioner is accepted. Accordingly, the present execution proceeding is disposed of with full satisfaction."

This was on the basis of the report submitted by the Civil Court Commissioner on the basis of the Amin of the District and Sessions Judge Office, Kheonjhar dated 25.01.2006.

8. When the matter stood thus, an application was filed by the respondents herein under Section 47 of the CPC seeking the following reliefs:

"Under the aforesaid circumstances the state humbly prays:

a) To set aside the delivery of possession effected by civil court commissioner in respect of Plot No.54 in lieu of Plot No.53, on dated

b) To deliver the plot no.53 and plot no.54 to the respective land lords, specifically by the settlement officer Keonjhar through his office Amins since he has prepared the map of the village-Khapara Khai.

c) To injunct the opposite party specific direction not to carry on any construction work on the wrongly delivered area of plot no. 54 assuming the same to the plot no.53 as per the report of CCC in Execution Case No.8/2000 until full demarcation is made and for which act of your kindness, the petitioner shall as in duty bound remain ever pray."

9. The said application was allowed by order dated 24.01.2007 by holding that the judgment debtor was alleging wrongful delivery of a different plot of land in view of the plot of land found in the decree. Hence, the delivery of possession

was erroneous. Hence, the application under Section 47 of the CPC was maintainable and therefore, the preliminary objections raised by the decree-holder was rejected as being without any merit.

10. Being aggrieved by the said order, the appellant-plaintiff/decreed-holder preferred W.P No.1888/2007 before the High Court. The High Court by the impugned order has dismissed the Writ Petition by holding that the application under Section 47 of the CPC was in accordance with law and hence, the objections filed under Section 47 of the CPC were not maintainable. Since the application was held to be maintainable and the Writ Petition was dismissed, the appellant-plaintiff/decreed-holder is before this Court in this appeal.

11. We have heard learned counsel Mr. S.K. Das for the appellant. As noted above, there is no representation on behalf of the respondents. We have perused the material on record.

12. What is evident on hearing the learned counsel for the appellant and on perusal of the material on record, is the fact that the decree passed by the first Appellate Court had been executed and by order dated 26.08.2006, the execution case was disposed of on 26.08.2006. It is only thereafter the application was filed by the respondents herein in the month of November 2006 invoking Section 47 of the CPC. Section 47 of the CPC reads as under:

"47. Questions to be determined by the Court executing decree.-(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

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(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I.-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

On a reading of Section 47 of the CPC it becomes evident that all questions arising between the parties to the suit in which the decree was passed

or their representatives relating to the execution discharge or satisfaction of the decree must be determined by the Court executing the decree and not by a separate suit. This means that the said questions must be determined during the process of the execution of the decree it is during the pendency of the execution and proceeding and not subsequently when the execution proceeding is closed and the decree has been executed to the satisfaction of the executing court. In the instant case there was no such application filed by the respondents herein during the pendency of the execution proceedings by the appellant herein. It is only thereafter when the execution proceeding was concluded that the application under Section 47 of the CPC was filed.

13. We find that in the facts and circumstances of this case the application was not at all maintainable. Hence, the said application ought to have been dismissed. Alternatively, the respondents herein could have assailed the order passed in the execution petition, if it was so advised; the same not having been done, the application seeking setting aside of the delivery of possession could not have been filed subsequent to the satisfaction of the decree when there was no such objection raised during the pendency of the execution proceedings. Further, in the instant case the respondents had also stated that they had no objection for the delivery of possession to be given to the appellants herein by way of a memo which is extracted herein for immediate reference extracted:

"Memo on behalf of State

On perusal of the Report of Civil Court Commissioner, it is observed that the delivery of possession was effected in presence of the Office Amin Sri Bipin Bihari Bal who is signatory to the notice as well as the report.

No report of any anomaly has been reported as yet from the Tahsildar, touching the sanctity of delivery of possession, for which no objection has been filed against the same.

Hence necessary orders may be passed without prejudice to the interests of State."

15. We find that the respondent-State in the instant case was thereafter estopped from filing the said application under Section 47 of the CPC. The respondent-State could not have approbated and reprobated on the question of handing over the possession to the appellants herein.

Hence, for these aforesaid reasons, the appeal is allowed by setting-aside the order dated 06.04.2010 passed in the W.P.(C) No.1888/2007 and order dated 24.01.2007 passed by the learned Civil Judge (Senior Division), Anandpur in CMA No.40/2006 arising out of execution proceeding No.8/2000.

No costs.

UPON hearing the counsel the Court made the following

ORDER

IA No.233443/2025:

1. Learned counsel for the appellants submitted that appellant No.1(i)-Savitri Panda has died and her legal representatives are appellant Nos.(ii), (iii), (iv) and (v). Hence, appellant No.1(i) may be deleted from the array of parties.
2. Submission of learned counsel for the appellants is accepted. Accordingly, appellant No.1(i) is deleted from the array of parties and the application being IA No.233443/2025 is disposed of.
3. Appellants' counsel to file amended memo of parties, if not already filed.

Civil Appeal No(S). 1920/2011:

1. The Civil Appeal is allowed in terms of signed non-reportable order.
2. Pending application(s), if any, shall stand disposed of.