

(1968) 08 PAT CK 0007
In the Patna High Court
Case No : A.F.A.O. No. 330 of 1967

Yugeshwar Prasad Singh and Others

APPELLANT

Vs

Jiyal Chaudhary and Others

RESPONDENT

Date of Decision : 13-08-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 47

Citation : AIR 1969 Patna 265

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : Shambhu Nath, for the Appellant;

Final Decision : Allowed

Judgement

U.N. Sinha, J.—This appeal has been filed by the decree-holders and it arises out of an application filed by respondent No. 1 u/s 47 of the CPC in Execution Case No. 148 of 1963, alleging that he was not the judgment-debtor and, therefore, the decree-holders cannot proceed against his properties. This application u/s 47 of the CPC was dismissed by the executing Court; but on appeal, it has succeeded.

2. It appears that the decree-holders had obtained a decree in Money Suit No. 182 of 1962 against one Jiyal Chaudhary son of Ojan Chaudhary. The suit having been decreed ex parte, execution was levied and by an order passed in the execution case on the 19th August. 1964, the name of the judgment-debtor was allowed to be corrected, describing him as Jiyal alias Jehal son of Bojhan alias Ojan. Thereafter, respondent No. 1 filed two applications in 1965, one under Order IX Rule 13 of the CPC (which was numbered as Miscellaneous Case No. 11 of 1965) for setting aside the ex parte decree, and another u/s 47 of the Code from which application this appeal arises. The application under Order IX of the Code has been dismissed as not maintainable by the person who had filed it.

3. The Court of appeal below is of the view that when the petitioner of

Miscellaneous Case No. 11 of 1965 was held as not entitled to maintain that application, it will be curious if the execution case is allowed to proceed against respondent No. 1 calling him to be the judgment-debtor, only because of the amendment allowed in the execution case, as indicated earlier. In my opinion, the judgment of the Court of appeal below is not correct. If respondent No, 1 disclaims to be the judgment-debtor, then he cannot maintain this application u/s 47 of the Code of Civil Procedure. He may have his remedies at subsequent stages; but his contention in this case is that as the decree was passed against Jiyal son of Ojan, it cannot be executed against Jehal son of Bojhan, who are two different persons. In the circumstances, the court of appeal below has wrongly allowed this objection u/s 47.

Respondent No. 1 has not appeared in this Court to contest the appeal. The appeal is allowed for the reasons given above and the judgment and order of the Court of appeal below is set aside and that of the executing court is restored. There will be no order for costs of this Court.