



IN THE HIGH COURT OF JHARKHAND, RANCHI
C.M.P. No. 708 of 2023

1. Sahdeo Sonar, aged about 60 years
2. Arjun Sonar, aged about 50 years
3. Sanjay Sonar, aged about 35 years

All sons of Karu Sonar and resident of Village – Jamu, PO – Jamu,
PS – Markachho, District – Koderma, Jharkhand

.... Judgment Debtors/Petitioners

-- Versus --

1. Kavita Devi, wife of Jagdish Sonar
2. Jagdish Sonar, son of Late Natho Sonar, both residents of village –
Jamu, PO – Jamu, PS – Markachho, District – Koderma, Jharkhand
3. Gangadhar Sonar, son of Late Natho Sonar
4. Karu Sonar, son of Late Chaman Sonar
Both residents of village – Jamu, PO – Jamu, PS – Markachho,
District – Koderma, Jharkhand

.... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:-	Mr. Amar Kumar Sinha, Advocate
For the O.Ps	:-	Mr. Bharat Kumar, Advocate

11/17.03.2025 Heard learned counsel appearing for the petitioners and
learned counsel appearing for the opposite parties.

2. This petition has been filed under Article 227 of the
Constitution of India for setting aside of the order dated 20.05.2023
passed by learned Munsif, Koderma in Execution Case No.05 of
2013 by which the objection filed by the judgment debtors in the
execution case has been rejected.

3. Mr. Amar Kumar Sinha, learned counsel appearing for the
petitioners submits that the petitioners herein are the judgment



debtors. He submits that the plaintiffs/opposite parties have instituted Title Suit No.21 of 2007 in the Court of learned Munsif, Koderma against the defendants praying therein a decree for declaration of their right, title, interest and confirmation of possession over Schedule-A lands and plaintiffs have also claimed declaration that the registered sale deed dated 06.09.2000 executed by the defendant No.1 in favour of defendant Nos.2 to 4 be declared void *ab-initio*, illegal and not binding upon the plaintiffs and prayer was also made for grant of injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs over the suit lands.

4. He submits that the decree was passed in that case by judgment dated 20.03.2009 against that the petitioners have moved in the higher court by way of filing Title Appeal No.19 of 2010 which was further dismissed on the point of limitation against which the Second Appeal No.136 of 2013 was filed before this Court which was dismissed by order dated 26.10.2018. He submits that the Execution Case No.05 of 2013 was instituted by the plaintiffs/decreed holders before the learned Court in which the objection has been filed which has been rejected by the learned Court. He submits that there is no decree with regard to the recovery of possession and in spite of that the learned Court has wrongly passed the said order of removing the structure and handover the possession to the plaintiffs. On this ground, he submits that the learned Court has



erred in passing such order and in view of that, the order may kindly be set aside.

5. Mr. Bharat Kumar, learned counsel appearing for the opposite parties opposes the prayer and submits that up to the second appeal, the petitioners/judgment debtors have already lost and prior to filing of the present objection earlier objection was filed on 05.02.2018 which was rejected by order dated 03.05.2019. He submits in view of that the learned executing court has passed the order issuing of the writ, however, again the second objection has been made and in view of that it is barred by principles of *res judicata*. He submits that even in the execution case the principles of *res judicata* apply. He further draws the attention of the Court to paragraph Nos.8 and 9 of the counter affidavit and submits that during the pendency of the suit illegally construction has been made after the decree and in view of that the learned Court has rightly passed the order. On this ground, he submits that there is no illegality in the impugned order.

6. Admittedly, the Title Suit No.21 of 2007 was instituted by the plaintiffs/opposite parties which was decreed by judgment dated 20.03.2009 in favour of the plaintiffs and against that the petitioners/ defendants have preferred the title appeal which was dismissed on the point of limitation and against that the second appeal has been preferred before this Court which was further dismissed by order dated 26.08.2018. In light of that Execution



Case No.05 of 2013 was instituted in which the petitioners have already filed a petition earlier of objection which was rejected by the learned Court by order dated 03.05.2019 and in view of that the direction has already issued by the learned Court and thereafter again the present objection has been filed. This earlier objection was not challenged before any higher court and subsequently the second objection has been filed and in view of that the Court finds force in the argument of learned counsel appearing for the decree holders that the *res judicata* will apply, so far filing of the second objection is concerned. In paragraph Nos.8 and 9 of the counter affidavit, it has been disclosed that during the pendency of the suit after the decree the construction has been made by the plaintiffs/judgment debtors and that has not been denied by way of filing any rejoinder which clearly suggests that the construction has been made during the pendency of the suit and in view of that the plea of the petitioners is not tenable. The reference may be made to the case of ***Brakewel Automotive Components (India) Private Limited versus P.R. Selvam Alagappan reported in (2017) 5 SCC 371*** wherein at paragraph Nos.20 to 22, it has been held as under :-

20. It is no longer res integra that an Executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus



inexecutable. An erroneous decree cannot be equaled with one which is a nullity. There are no intervening developments as well as to render the decree inexecutable.

21. *As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.*

22. *Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric . This Court, amongst others in Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and others 1971 (1) SCR 66 in essence enunciated that only a decree which is a nullity can be the subject matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following extract from this decision seems apt: (SCC pp.672-73, paras 6-7)*

6. *"A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.*

7. *When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed*



an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

7. In view of the above, the scope of interfering in such petition by the executing court is very limited and only on the ground of construction etc. interference can be made by the executing court. The construction can be removed for complying the decree has been made by Hon'ble Supreme Court in the case of **B. Gandaghar versus B.G. Rajalingam reported in (1995) 5 SCC 238** wherein at paragraph Nos.7 and 8, it has been held as under :-

7. Order 21, Rule 35(3) envisages that :

"Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession."

8. Rule 35(3) of Order 21 itself manifests that when a decree for possession of immovable property was



granted and delivery of possession was directed to be done, the court executing the decree is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the decree for possession. That power also includes the power to remove any obstruction or super-structure made pendente lite. The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment-debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the court. Otherwise, the decree becomes inexecutable driving the plaintiff again for another round of litigation which the code expressly prohibits such multiplicity of proceedings.

8. In view of the above judgments and further considering that in paragraph Nos.8 and 9, it has been disclosed that after the decree the construction was made and that cannot be binding upon the decree holder, as such the contention of learned counsel appearing for the petitioners about the decree to that fact is not tenable, as such this petition is dismissed.

(Sanjay Kumar Dwivedi, J.)

Sangam/
A.F.R.