



IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.1526 of 2025

(In the matter of an application under Article 227 of the Constitution of India)

Birabar Behera

....

Petitioner

-versus-

Akshaya Kumar Nayak

....

Opposite Party

Advocate(s) appeared in this case:-

For Petitioner : Mr. M.K.Mohanty, Advocate

For Opposite Party : Mr. S.Pattanaik, Advocate

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

11th December 2025

B.P. Routray, J.

1. Heard Mr. M.K. Mohanty, learned counsel for the Petitioner and Mr. S.Pattanaik, learned counsel for Opposite Party.

2. Present CMP is directed against impugned order dated 18th June 2024 of the learned Executing Court passed in C.M.A. No.05



of 2022 at Annexure-8 (arising out of Execution Case No.11 of 2008) and the order dated 28th July 2025 of the learned District Judge, Keonjhar passed in C.R.P. No.02 of 2024 (Annexure-9), wherein the objection of the Petitioner (JDR) under Section 47 of the CPC has been rejected.

3. The Opposite Party was the Plaintiff in Title Suit No.125 of 1995 which was decreed by the First Appellate Court in R.F.A. No.12/26 of 2006/03 declaring the right title interest of the Plaintiff over the suit schedule-A land and also for recovery of possession from the Defendant. Present Petitioner was the Defendant in the suit. The suit schedule land as described in the consolidated plaint after amendment is as follows:-

"District-Keonjhar, P.S.-Ghatagaon, Mouza Upardiha, Hal Khata no.12, Hal plot no. 1554, Ac.0.11 dec out of Ac. 0.39 dec with dimension of 137 links, 76 links- 83 links and 137 links as shown in the rough sketch man (as per the sketch map submitted by the Civil Court Commissioner) which I corresponds to sabik plot no.812".



4. The decree as passed by the First Appellate Court has attained finality being not challenged before any higher forum. The Plaintiff filed Execution Case No.11 of 2008 being the DHR, where the Defendant as the JDR after his appearance filed his objection under Section 47 of the CPC to contend that the decretal land is unidentifiable and not properly demarcated in the plaint and therefore the decree is in-executable. While questioning the executability of the decree the JDR contends that the Plaintiff did not possess any land more than Ac.0.02 decimals in Hal Plot No.1554 corresponding to Sabik Plot No.812 since his purchased land is measuring Ac.0.66 decimals, whereas by virtue of the decree passed in another suit i.e. T.S. No.89 of 2000 the land measuring Ac.0.64 decimals in Plot No.1555 have been decreed in his favour. Accordingly, it is contended by the JDR that the DHR has no right to possess more than two decimals in Plot No.1554 and by suppressing the decree obtained in T.S. No.89 of 2000 he committed fraud on the Court to obtain such decree in his favour in T.S. No.125 of 1995 before the First Appellate Court.

5. Mr. Mohanty, learned counsel for the Petitioner contends that since the decree has been obtained by fraud, the same is not



executable in as much as the decretal land is unidentifiable. He further submits that while dealing with the objection under Section 47 CPC, the Court is authorized to hold the decree as null and void on the ground of fraud played on it and therefore, in the present circumstances of the case the objection of the JDR regarding inexecutability of the decree has to sustain.

6. On the other hand, Mr. Pattanaik, learned counsel for the Opposite Party submits that the specific objection of the JDR under Section 47 being regarding to the executability of the decree for indefiniteness of the schedule of property of the plaint, the JDR is not allowed to enter into the merits of the decree to question the same in the guise of objection under Section 47 of the CPC.

7. Law is well-settled that while dealing with the objection under Section 47 of the CPC, the Court is not authorized to exercise the power as would be sitting in appeal to examine the merits of the decree. It is of course true that the Executing Court may entertain the objection with regard to in-executability of the decree for lack of identification of the decretal property. In *Vedic Girls Senior Secondary School, Arya Samaj Mandir v. Rajwanti*, (2007) 5 SCC 97, it is stated that, “.. .. The executing court was required to



execute the decree as made and it had no jurisdiction to widen its scope or to add to it unless a specific question was raised relating to discharge or satisfaction of the decree as envisaged in Section 47 of the Code of Civil Procedure.”

8. In ***Harpal Singh v. Ashok Kumar***, (2018) 11 SCC 113, it has been observed as follows:-

7. In *Sunder Dass v. Ram Prakash* [*Sunder Dass v. Ram Prakash*, (1977) 2 SCC 662] this Court held that : (SCC p. 667, para 3)

“3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide *Kiran Singh v. Chaman Paswan* [*Kiran*



Singh v. Chaman Paswan, AIR 1954 SC 340 : (1955) 1 SCR 117] and *Hira Lal Patni v. Kali Nath* [*Hira Lal Patni v. Kali Nath*, (1962) 2 SCR 747 : AIR 1962 SC 199]. It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent.”

[See also *Gaon Sabha v. Nathi* [*Gaon Sabha v. Nathi*, (2004) 12 SCC 555]]

9. Mr. Mohanty, learned counsel for the Petitioner relies the decision in ***Haji SK. Subhan vs. Madhorao., 1961 SCC Online SC 200***, to contend that the Executing Court can refuse execution of the decree on account of invalidity of the decree or with respect to the decree being wrong. It is true that the learned Executing Court while proceeding for execution of the decree cannot go behind the decree and the facts as narrated in the said decision in ***Haji SK. Subhan (supra)*** the same are quite different being that the factual possession was changed by virtue of change of law and thus inapplicable with the present facts of the case.



10. The decision of learned Single Judge of Madras High Court in *Abdul Waheed Sahib vs. A.R. Naina Mohammed & Ors., 1981 SCC Online Mad 5.*, is also relied on by Mr. Mohanty, learned counsel for the Petitioner. In said decision, it is observed by the Madras High Court that the question of enforceability of a decree would arise only at the stage of execution proceeding and not earlier to that and it would be a fallacy to say that the Trial Court can render a finding about executability of the decree at the time of passing of the decree. Thus it is seen that said decision has no application in the present facts of the case.

11. In the given facts of the case at hand, the JDR raised question about executability of the decree by submitting that the decree which was passed in Ac.0.11 decimals is not executable since the Plaintiff is not entitled to more than two decimals after the decree was rendered in his favour in T.S. No.89 of 2000. It is of course true that the Executing Court while sitting over execution of the decree can examine the merit of the decree as null and void in reference to the jurisdiction of the Court but at the same time, it is true that the Executing Court cannot examine the merits of the decree as if sitting in appeal over the same. Thus what is contended by the present



Petitioner being the JDR that the Executing Court is required to enter into further merits of the case in order to examine executability of the decree touching upon the entitlement of the Plaintiff for such extent of land mentioned in the plaint, is not found appreciable or convincing for this Court.

12. The essence of objection as raised in the 47 petition (Annexure-6) is with regard to the identifiability of the decretal land and as held in the judgment rendered by the First Appellate Court a particular issue has been framed to that aspect and answered in favour of the Plaintiff. The said issue is to the effect that, *“Is the description of the suit land is definite”* ? In answering the issue the First Appellate Court has held as follows:-

“Much has been argued on this point. But I find that in this suit one Civil Court Amin Commissioner was deputed to demarcate the suit land. His report has been marked as Ext. 8 in this case and that is without objection. After such report of the Civil Court Commissioner, plaintiff has amended the plaint and has filed the consolidated plaint on 31.01.2003. In the said consolidated plaint the suit land has been specifically described as below:-

SCHEDULE- A-(Suit Land)

District: Keonjhar P.S. Ghatagaon Mouza: Upardiha Hal Khata no. 12, Hal plot no. 1554 Ac. 0.11 dec out of Ac. 0.39 dec with dimension of 137. links X 80 links (as per the sketch map submitted by the Civil



Court Commissioner) which corresponds to sabik plot no. 812:

In the said schedule reference has been made to sketch map prepared by the Civil Court Commissioner vide Ext.8/a. In view of such specification of the suit land, I find that the suit land has been properly described and there is no vague or indefiniteness of the same.

In the result, I find that the plaintiff has right, title, interest over the suit land, but at present he has no possession over the suit land. The suit is not bad for non-joinder of necessary parties. The suit is not liable to be dismissed for vague or indefiniteness of the suit property. Therefore, the suit is to be decreed”.

13. Having gone through such finding of the First Appellate Court with regard to the identification and definiteness of the suit land, no more dispute remains to entertain the objection of the JDR to question the identifiability of the suit land for the purpose of execution of the decree. Therefore, the further question raised by the JDR to delve into further merit of the decree does not arise and his contention with regard to fraud played on the Court to obtain the decree does not stand good to justify to entertain the objection of the JDR.

14. In view of the discussions made above and reason stated, no merit is seen in the contention of the Petitioner to interfere with the impugned orders.



15. Accordingly, the CMP is dismissed.

(B.P. Routray)
Judge

S.Das/Sr.Steno