IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 227 of 2025

Lakhrajo Devi, aged about 86 years, daughter of late Ayodhya Sahu, resident of Sonari by side of Domohani Road, Old Sonari baste, Town Jamshedpur, P.O. and P.S. Sonari, District-Singhbhum East (Jharkhand)

..... Petitioner

-VERSUS-

1. The Tata Iron and Steel Company Limited, having its registered office at Bruce Street Fort Bombay and its works and place business at Jamshedpur, P.O. and P.S. Bistupur, Town Jamshedpur, District-Singhbhum East
2. The State of Jharkhand through Deputy Commissioner, Singhbhum, Town Jamshedpur, District Singhbhum East

..... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Kundan Kumar Ambastha, Advocate
Md. Asdul Wahab, Advocate
Mr. Sumit Kumar, Advocate
Mr. Anurag Chandra, Advocate
For the O.P. No.1 : Mr. Amitabh Prasad, A.C. to Mr. G.M. Mishra
For the O.P. No.2 : Mr. Sachin Kumar, A.C. to S.C.-I

05/Dated: 30/06/2025

Heard Mr. Kundan Kumar Ambastha, learned counsel for the petitioner, Mr. Amitabh Prasad, learned counsel for the O.P. No.1 and Mr. Sachin Kumar, learned counsel for the O.P. No.2

2. This petition has been filed under Article 227 of the Constitution of India for setting aside order dated 30.01.2023 passed by the learned Civil Judge (Junior Division)-I, Jamshedpur in Execution Case No. 42 of 1993.

3. Mr. Kundan Kumar Ambastha, learned counsel for the petitioner submits that O.P. No.1 i.e. Tata Iron and Steel Company Limited had filed Title Suit No. 203 of 1971 in the court of learned Second Additional Munsif, Jamshedpur, East Singhbhum against the Ayodhya Sahu since deceased, the father of the petitioner praying for a declaration of title and recovery of possession with respect to the Schedule-A property. He submits that the Defendant Ayodhya Sahu since deceased, father of the petitioner appeared and contested the suit by filing written statement on various ground including

acquisition of title by adverse possession. He submits that the learned Second Additional Munsif, Jamshedpur, District East Singhbhum by terms of judgment and decree dated 07.01.1976 dismissed the suit holding that Ayodhya Sahu had acquired the title by adverse possession. He then submits that Opposite Party No.1 i.e. Tata Iron and Steel Company Limited being aggrieved by above judgment and decree had filed Title Appeal No. 06/15 of 1976-77 in the court of learned Second Additional Sub-Judge at Jamshedpur which was allowed on 31.08.1978 contained in annexure-2. He further submits that the father of the petitioner herein being aggrieved by judgment and decree passed in Title Appeal No. 06/15 of 1976-77 had filed Second Appeal No. 194/1978 (R). He submits that the High Court by terms of judgment and decree dated 16.05.1985 modified the decree and it has been held that the Opposite Party No.1 i.e. The Tata Iron and Steel Company Limited cannot be granted decree of recovery of possession but only the State of Bihar was entitled to recovery of possession. He submits that the Opposite Party No.1 i.e. The Tata Iron and Steel Company Limited had filed Execution Case No. 81 of 1980 in the court of learned Munsif at Jamshedpur. The learned Munsif at Jamshedpur by terms of order dated 06.03.1992 dismissed the Execution Case and held that Execution Case No. 81 of 1980 was not maintainable in view of the judgement passed in Second Appeal No. 194 of 1978 (R). He further submits that the Opposite Party No.1-Tata Iron and Steel Company Limited had filed C.R. No. 114 of 1992 (R) against the order dated 06.03.1992 before the High Court which was further dismissed by order dated 15.07.1992. He submits that the State of Bihar had executed a lease of deed on 01.08.1985 and same was registered on 06.08.1985 in favour of the Tata Iron and Steel Company Limited. The State of Jharkhand renewed the indenture of lease dated 20.08.2005 and has further extended the lease with retrospective effect from 01.01.1985 for a further terms of 30 years which is valid up to 31.12.2025. He further submits that in Execution Case No. 42 of 1993, the petitioner filed objection challenging the

maintainability of the Execution Case which was rejected on 09.02.2005. He submits that the petitioner herein filed W.P. (C) No. 1662 of 2005 before the High Court against the order dated 09.02.2005 passed by the learned Second Additional Munsif, Jamshedpur in Execution Case No. 42 of 1993. He submits that the High Court by order 19.05.2020 has been pleased to set aside order dated 09.02.2005 passed by learned Second Additional Munsif, Jamshedpur in Execution Case No. 42 of 1993 and matter was remanded back to the learned Executing Court to pass a fresh order in accordance with law relating to res judicata. He submits that thereafter the learned court has been pleased to decide the same that Execution Case is not barred by principles of res-judicata. He further submits that it has been wrongly held by the learned Executing Court that Tata Iron & Steel Company Limited has filed the instant execution case as transferee of decree. He submits that once the execution case was dismissed it was barred by res-judicata and in view of that the learned court has wrongly passed the said order. To buttress this argument he relied in the case of **" *Dipali Biswas and others Vs. Nirmalendu Mukherjee and others"*** reported in ***2021 0 AIR (SC) 4756.*** He refers to para 37 of the said judgment which is quoted hereinbelow;-

> *"37. The appellants cannot be allowed to raise the issue relating to the breach of Order XXI, Rule 64 for the following reasons:*
> *(i) A judgment-debtor cannot be allowed to raise objections as to the method of execution in instalments. After having failed to raise the issue in four earlier rounds of litigation, the appellants cannot be permitted to raise it now;*
> *(ii) As we have pointed out elsewhere, the original judgment-debtor himself filed a petition under Section 47, way back on 02.09.1975. What is on hand is a second petition under Section 47 and, hence, it is barred by res judicata. It must be pointed out at this stage that before Act 104 of 1976 came into force, there was one view that the provisions of Section 11 of the Code had no application to execution proceedings. But under Act 104 of 1976 Explanation VII was inserted under Section 11 and it says that the provisions of this Section shall apply to a proceeding for the execution of a decree and reference in this Section to any suit, issue or former suit shall be construed as references to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree;*
> *(iii) Even in the 5th round, the appellants have not pointed out the lay of the property, its dimensions on all sides and the possibility of dividing the same into two or more pieces, with a view to sell one or more of those pieces for the realisation of the decree debt,*
> *(iv) The observations in paragraph 4 of the order of the High Court dated*

20.12.1990 in C.O.No.2487 of 1987 that, "none of the parties shall have any claim whatsoever as against the applicant in respect of the purchased property which shall be deemed to be his absolute property on and from the expiry of 15th December, 1980", has attained finality;
(v) Section 65 of the Code says that, "where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute". The sale of a property becomes absolute under Order XXI, Rule 92(1) after an application made under Rule 89, Rule 90 or Rule 91 is disallowed and the court passes an order confirming the same. After the sale of an immovable property becomes absolute in terms of Order XXI, Rule 92(1), the Court has to grant a certificate under Rule 94. The certificate has to bear the date and the day on which the sale became absolute. Thus a conjoint reading of Section 65, Order XXI, Rule 92 and Order XXI, Rule 94 would show that it passes through three important stages (other than certain intervening stages). They are, (i) conduct of sale; (ii) sale becoming absolute; and (iii) issue of sale certificate. After all these three stages are crossed, the 4th stage of delivery of possession comes under Rule 95 of Order XXI. It is at this 4th stage that the appellants have raised the objection relating to Order XXI, Rule 64. It is not as if the appellants were not aware of the fact that the property in entirety was included in the proclamation of sale. Therefore, the claim on the basis of Order XXI, Rule 64 was rightly rejected by the High Court."

4. Relying on the said judgment, he submits that once the petition is already decided rest judicata will apply. On the same line he further relied the judgment of Kerala High Court in the case of ***" K.A. Sukumaran Vs. Keral Permanent Benefit Fund Limited"*** reported in ***(2011) 0SCC (ker) 122***. He refers to para 12 of the said judgment which is as under:-

" 12. As per the order dated 18.5.2010, the court below negatived the contention of the petitioner that sale of a portion of item 2 would be sufficient to satisfy the decree debt. That order was not challenged by the petitioner. Even in the present Original Petition, there is no case that the order dated 18.5.2010 was erroneous. Res judicata applies not only to suits but to execution proceedings as well. Explanation VII to Section 11 of the Code of Civil Procedure provides that the provisions of the Section shall apply to a proceeding for the execution of a decree. Therefore, a matter which was heard and finally decided in the execution proceedings would bind the parties in another Execution Petition or at a later stage of the same execution proceedings. That the principle of res judicata would apply to different stages of the same proceedings is well settled. (See Satyadhyan Ghosal and others v. Deorajin Debi and another (AIR 1960 SC 941); Prahlad Singh v. Col. Sukhdev Singh (AIR 1987 SC 1145); Jayalakshmi v. Shanmugham (1987 (2) KLT S.N.Case 67 Page 47.) It is true that a decision in the execution proceeding on the question of value of the property, as such, may not constitute res judicata at a later stage of the execution proceedings where the question arises whether the value of the property has undergone change. In Govinda Bhat v. Sham Bhat (2000 (1) KLT 278), it was held that finding in an earlier suit on the question of value of arecanut and the question that the rate prevailing in a particular area should be taken into account, would not constitute res judicata in a later suit between the same parties. It was held:
"That will not act as res judicata, because on a later stage, because of the market fluctuations and due to innovative technologies in the field of production, the price may vary in either direction."

In the present case, there is no case for the petitioner that there is change in the value of the property or that the value of the property has gone up. In the objection filed in 2009, he stated that the estimated value of the property would be 25 lakhs. In the objection filed in 2010 also he reiterated that contention. Of course, in the second objection, he contended that the centage value of the property would be Rupees One lakh. Even if the centage value of the property is higher, that need not necessarily represent the market value of a larger extent. The petitioner/judgment debtor is the owner of the property. He knew the value of the property better than the court. He stated that the estimated value of the property would be 25 lakhs. That was the price which he stated earlier also. Therefore, there was no change of circumstances warranting a change in the order passed by the court below. If so, the order dated 18.5.2010 would operate as res judicata barring the petitioner from raising the same contention which was raised by him and repelled by the executing court earlier. Sufficient safeguards have been made by the court below for protecting the interests of the judgment debtor. The contentions put forward by the judgment debtor are bereft of bona fides. There is no ground to interfere with the order passed by the court below.

Accordingly, the Original Petition is dismissed."

5. Relying on the above judgement he submits that the learned court has wrongly decided the said issue and in that view of the matter the impugned order may kindly be set aside.

6. Per contra, Mr. Sachin Kumar, learned counsel for the Opposite Party-State submits that the learned court has rightly passed the order as Tata Iron & Steel Company Limited is said to be the transferee of the land in question and res judicata will not apply in view of the fact that on technicality earlier execution case was dismissed.

7. Mr. Amitabh Prasad, learned counsel for the O.P. No.1-Tata Iron & Steel Company Limited submits that the learned court has rightly held that res judicata will not apply as on the technicality the earlier execution case was dismissed and present execution case has been filed by the Tata Iron & Steel Company Limited in the capacity of transferee of land in question and in view of that the learned court has rightly decided the same in favour of Tata Iron & Steel Company Limited as res judicata will not apply. He relied in the case of ***" R.M. Sundaram @ Meenakshisundaram Vs. Sri Kayarohanasamy and Neelayadhakshi Amman Temple(through its Executive Officer), Nagapattinam, Tamil Nadu"*** reported in ***2022 SCC Online SC 888***. He refers to para 35 to 39 of the said judgment which is as under:-

" 35. This Court in Sheodan Singh v. Daryao Kunwar (SMT) has laid down that the following conditions must be satisfied to constitute a plea of res judicata:

"(1) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;

(ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;

(iii) The parties must have litigated under the same title in the former suit;

(iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and

(v.) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit. Further Explanation 1 shows that it is not the date on which the suit is filed that matters but the date on which the suit is decided, so that even if a suit was filed later, it will be a former suit if it has been decided earlier. In order therefore that the decision in the earlier two appeals dismissed by the High Court operates as res judicata it will have to be seen whether all the five conditions mentioned above have been satisfied."

36. General principle of res judicata under Section 11 of the Code contains rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit. The reason is that the first suit is not decided on merits.

37. In the present case, the suit filed in 1981 for appointment of the receiver for preparing an inventory of the suit jewellery was not decided on merits but was dismissed on the ground that the respondent had prayed for mandatory injunction and had not made a prayer for declaration of title. Thus, the suit was dismissed for technical reasons, which decision is not an adjudication on merits of the dispute that would operate as res judicata on the merits of the matter. Further, to succeed and establish a praver for res judicata, the party taking the said prayer must place on record a copy of the pleadings and the judgments passed, including the appellate Judgment which has attained finality. In the present case, the appellant did not place on record a copy of the appellate judgment and it is accepted that the second appeal filed by the respondent was dismissed, giving liberty to the respondent to file a fresh suit with a prayer of declaration of title/endowment in respect of the suit jewellery. The liberty granted was not challenged by the appellant. The right to file a fresh suit to the Temple, therefore, should not be denied. The bar of constructive res judicata/Order II Rule 2 of the Code is not attracted.

38. The plea of constructive res judicata/Order II Rule 2 of the Code also fails as the cause of action in the first suit filed in 1981 was limited and predicated on account of the failure of the appellant to open the locks of the safe and the main door of the Kudavaral, the keys of which were available with the appellant and required joint operation. Here again, the party claiming and raising the plea of constructive res judicata/Order II

Rule 2 of the Code must place on record in evidence the pleadings of the previous suit and establish the identity of the cause of actions, which cannot be established in the absence of record of judgment and decree which is pleaded to operate as estoppel. In this regard, we would like to refer to judgment of this Court in Gurbux Singh v. Bhoorala wherein it has been observed:

"In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits.

Just as in the case of a plea of res judicata which cannot be established in the absence on the record of the judgment and decree which is pleaded as estoppel, we consider that a plea under Order 2 Rule 2 of the Civil Procedure Code cannot be made out except on proof of the plaint in the previous suit the filing of which is said to create the bar. As the plea is basically founded on the identity of the cause of action in the two suits the defence which raises the bar has necessarily to establish the cause of action in the previous suit. The cause of action would be the facts which the plaintiff had then alleged to support the right to the relief that he claimed."

39. Reiterating the above principle, this Court in Virgo Industries (Eng.) Private Limited v. Venturetech Solutions Private Limited observed that:

"The object behind the enactment of Order 2 Rules 2(2) and (3) CPC is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the court which leave, naturally will be granted upon due satisfaction and for good and sufficient reasons.

The cardinal requirement for application of the provisions contained in Order 2 Rules (2)2 and (3), therefore, is that the cause of action in the later suit must be the same as in the first suit."

8. Relying on the above judgment he submits that res judicata will not apply in view of that the learned court has rightly passed the impugned order.

9. In view of above submissions of the learned counsel for the parties, it transpires that Tata Iron and Steel Company Limited instituted the

suit being Title Suit No. 203 of 1971 which was decreed in favour of the father of the petitioner vide judgement dated 07.01.1976. Against the said judgment, Tata Iron and Steel Company filed Title Appeal No. 06/15 of 1976-77 which was allowed. Second Appeal No. 194/1978 (R) filed by the father of the petitioner was disposed of modifying the order of the first appellate court to the effect that only State of Bihar is entitle for recovery of possession. Subsequently, Execution Case No. 81 of 1980 was instituted by Tata Iron & Steel Company Limited which dismissed on the ground that that decree is not in favour of Tata Iron & Steel Company Limited. Civil Revision No. 114 of 1992 (R) filed by Tata Iron & Steel Company Limited was dismissed by order dated 15.07.1992. In Execution Case No. 42 of 1993, objection filed by the petitioner has been rejected vide 09.02.2005 which was challenged before this Court in W.P. (C) No. 1662 of 2005 which was allowed remanding the matter to the executing court to decide the issue of res judicata afresh. Pursuant to that the learned court has been pleased to decide the said issue by order dated 30.01.2023 against that the petitioner herein has filed the present petition.

10. Only question to decide in this case is as to whether the second execution case filed by Tata Iron & Steel Company Limited is barred by principle of res judicata or not. It is well settled that for deciding the issue of res judicata the tests prescribed in the case of ***"Sheodan Singh V. Daryao Kunwar (SMT)"*** reported in ***AIR 1966 SC 1332*** has to be taken into consideration. That aspect has been further considered by the Hon'ble Supreme Court in the case of " ***R.M. Sundaram @ Meenakshisundaram" (supra)*** relied by the learned counsel for the Tata Iron & Steel Company Limited.

11. So far the case in hand is concerned, in the second appeal first appellate court judgment was modified to the effect that State of Bihar can execute the degree. In this background only in the first execution case filed by the Tata Iron & Steel Company Limited and learned court has been pleased to

dismiss the same. In that view of the matter it is an admitted position that only on technical ground the learned executing court has dismissed the first execution case. It is further an admitted position that the land in question was transferred by deed of lease in favour of Tata Iron & Steel Company Limited which was valid till 31.12.2025. Subsequently second execution case was filed being Execution Case No. 42 of 1993 and the learned court considering all these aspects held that on the technicalities the earlier execution case was dismissed and now the TISCO in the capacity of transferee of decree and the State of Bihar which is represented by Deputy Commissioner, East Singhbhum was also an applicant as transferee of decree and found that execution case is not barred by res judicata. The fact of the first execution being dismissed will not preclude to file second execution case in the light of Order XXI Rule 16 of C.P.C as provision is there to transfer the property. Reference may be made to the case of "***Jagan Singh and Company Vs. Ludhiana Improvement Trust and others"*** reported in ***(2024) 3 SCC 308*** wherein para 32 the Hon'ble Supreme Court has held as under:-

> *"32. The fact of the first execution petition being dismissed as not satisfied will not, in our view, preclude filing of the second execution petition giving details of the property. In those proceedings also the respondent Trust chose to absent itself. The execution proceedings have to proceed in accordance with the various stages as envisaged under Order 21 of the said Code and those stages were duly followed."*

12. Once decree holder transfers his interest in the decree by a deed of assignment the transferee can move for execution of the decree despite a subsequent adjustment under rule 2 between the original decree holder and the judgment debtor as has been held by the Hon'ble Supreme Court in the case of ***"Dhani Ram Gupta and Another Vs. Lala Sri Ram and Another"*** reported in ***(1980) 2 SCC 162*** wherein para 4 it has been held as under:-

> *"4. We are unable to read Order 21, rule 16 as furnishing any foundation for the basic assumption of the learned counsel for the respondent that property in a decree does not pass to the transferee under the assignment until the transfer is recognised by the court. Property in a decree must pass to the transferee under a deed of assignment when the parties to the deed of assignment intend such property to pass. It does not depend on the court's recognition of the transfer. Order 21, rule 16 neither expressly*

nor by implication provides that assignment of a decree does not take effect until recognized by the court. It is true that while Order 21, rule 16 enables a transferee to apply for execution of the decree, the first proviso to Order 21, rule 16 enjoins. that notice of such application shall be given to the transferor and the judgment-debtor and that the decree shall not be executed until the court has heard their objections, if any, to its execution. It is one thing to say that the decree may not be executed by the transferee until the objections of the transferor and the judgment-debtor are beard, it is an altogether different thing to say that the assignment is of so consequence until the objections are heard and decided. The transfer as between the original decree-holder and the transferee is effected by the deed of assignment. If the judgment-debtor has notice of the transfer, he cannot be permitted to defeat the rights of the transferee by entering into an adjustment with the transferor. If the judgment-debtor has no notice of the transfer and enters into an adjustment with the transferor before the transferee serves him with notice under Order 21, rule 16 the judgment-debtor is protected. This in our view is no more than plain good sense. In Dwar Buksh Sirkar v. Fatik Jali', the decree-holder represented to the Court that the judgment-debtor bad satisfied the decree by payment and wanted his execution applicaton to be disposed of accordingly. Before satisfaction could be recorded a transferee of the decree from the original decree-holder intervened and claimed that satisfaction could not be recorded as there was a valid transfer of the decree in his favour prior to the alleged payment by the judgment-debtor to the original decree-holder. The argument before the High Court was that the assignee could not prevent the recording of the satisfaction of the decree as he had not filed an execution application and got the assignment in his favour recognized. The High Court of Calcutta observed:

The only provision in the Code referring expressly to the assignment of a decree is contained in Section 232, and that no doubt contemplates a case in which the assignee applies for execution. In such a case the court may, if it thinks fit, after notice to the decree-holder and the judgment-debtor, allow the decree to be executed by the assignee. If, however, there is an assignment pending proceedings in execution taken by the decree-holder, I see nothing in the Code which debars the Code from recognising the transferee as the person to go on with the execution. The recognition of the court is no doubt necessary before he can execute the decree, but it is the written assignment and not the recognition which makes him the transferee in law. The omission of the transferee, if it was an omission, to make a formal application. for execution, was merely an error of procedure and does not affect the merits of the case. It is argued for the respondent that the transferee's title was not complete as express notice of the transfer had not been given to the judgment debtor. As already observed, the transfer, as between transferor and the transferee, is effected by the written assignment. If the judgment-debtor had no notice of the transfer and being otherwise unaware of it paid the money to the decree-holder, the payment was, of course, a good payment, and he cannot again be held liable to the transferee.

We express our agreement with the observations made by the Calcutta High Court."

13. In the light of two judgments of the Hon'ble Supreme Court and the facts of the present case it cannot be said that the execution case is barred by res judicata as the first execution case was dismissed on the point of technicalities and in the light of Order XXI Rule 16 C.P.C. the said land is transferred to Tata Iron & Steel Company Limited and subsequently second

execution case has been filed. The second execution is well maintained and the learned court has rightly passed the order. There is no illegality in the impugned order.

14. The judgment relied by Mr. Ambastha in the case of ***Dipali Biswas(supra)*** is concerned, in that case dispute was not there of subsequent transfer or transferee of the decree. The dispute was there of deciding of section 47 C.P.C. petition which was earlier rejected and subsequently second petition was filed in the light of that Hon'ble Supreme Court has held that the same is barred by res judicata. The facts of the present case is otherwise as has been discussed hereinabove.

15. In the case of ***K.A. Sukumaran (supra) ,*** on merit the first execution case was decided and subsequently second execution case was filed in the light of that background the Kerala High Court has been pleased to hold that the case was barred by res judicata and as has been discussed hereinabove so the present case is concerned, the facts are and in view of above this judgment is not helping the petitioner as has been discussed hereinabove.

16. In view of above facts, reasons and analysis this Court finds that there is no illegality in the impugned order. Accordingly, this petition is dismissed. Pending I.A, if any, stands dismissed.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/A.F.R.