

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.584 of 2025

1. Manoj Kumar Son of Late Ramdeo Kumar Resident of Village Saidpur, Basa Tola Samharpur, P.S.- Gopalpur, P.O. Saidpur, Goiar, District- Bhagalpur.
2. Santosh Kumar, Son of Late Ramdeo Kumar, Resident of Village Saidpur, Basa Tola Samharpur, P.S.- Gopalpur, P.O. Saidpur, Goiar, District- Bhagalpur.

... .. Petitioners

Versus

1. Krishna Mohan Kumar Son of Sri Madan Mohan Kumar, Resident of Village Saidpur, Basa Tola Samharpur, P.S.- Gopalpur, P.O. Saidpur, Goiar, District- Bhagalpur.
2. Ram Mohan Kumar, Son of Sri Madan Mohan Kumar, Resident of Village Saidpur, Basa Tola Samharpur, P.S.- Gopalpur, P.O. Saidpur, Goiar, District- Bhagalpur.
3. Neha Kumari, Daughter of Ramdeo Kumar, Resident of Tetrai, P.S.- Naugachiya, District- Bhagalpur.
4. Sikha Kumari, Daughter of Ramdeo Kumar, Resident of Tetrai, P.S.- Naugachiya, District- Bhagalpur.
5. Priyani Kumari, Daughter of Ramdeo Kumar, Resident of Tetrai, P.S.- Naugachiya, District- Bhagalpur.
6. Raghav Kumar, Son of Ramdeo Kumar, Resident of Tetrai, P.S.- Naugachiya, District- Bhagalpur.
7. Shrey Kumar, Son of Ranjit Ray, Resident of Village Shahpur, P.O. Rkariya, P.S. Shambuganj, District- Banka.
8. Janki Devi, Wife of Late Buchkun Kumar, Resident of Village- saidpur Basa Tola, Samharpur, P.S. Gopalpur, District Bhagalpur.
9. Shashi Kumar, Son of Late Buchkun Kumar, Resident of Village- saidpur Basa Tola, Samharpur, P.S. Gopalpur, District Bhagalpur.
10. Usha Kumari @ Anita, Daughter of Late Buchkun Kumar, Resident of Village- saidpur Basa Tola, Samharpur, P.S. Gopalpur, District Bhagalpur.
11. Pankaj Kumar, Son of Late Buchkun Kumar, Resident of Village- saidpur Basa Tola, Samharpur, P.S. Gopalpur, District Bhagalpur.
12. Reshma Bhardwaj, Daughter of Late Buchkun Nagar, Resident of Village- saidpur Basa Tola, Samharpur, P.S. Gopalpur, District Bhagalpur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. J. S. Arora, Sr. Advocate Mr. Rakesh Kumar, Advocate Mr. Himanshu Shekhar, Advocate Ms. Supriya Kumari, Advocate
For the Respondent/s	:	Mr. Ram Sumiran Singh, Advocate



CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
Date :14-10-2025

The present civil miscellaneous petition has been filed by the petitioners for setting aside the order dated 05.03.2025 passed by the learned Sub Judge-1st, Naugachhia in Title Execution Case No. 02 of 2006, whereby and whereunder the learned executing court held that the said execution case has been filed within the statutory period of 12 years.

02. Briefly stated, facts of the case are that the respondents 1st set are the decree holders and petitioners and respondents 2nd set are the descendants of the original judgment debtors. The respondents 1st set filed Title Suit No. 100 of 1982 for a decree of specific performance against the defendants of that suit for enforcement for an agreement for sale for executing a sale deed after payment of remaining amount of consideration money. The said suit was decreed on 24.05.1991 with a direction to the respondents 1st set to get the sale deed executed within a period of 60 days. Pursuant thereto, the plaintiffs/decreed holders/respondents 1st set got the sale deed executed after depositing the consideration money on 20.07.1991. The petitioners thereafter filed a miscellaneous case under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (for short 'the Code) against the said decree vide Misc. Case No. 02



of 1992, which was dismissed on 25.06.1993. Against the said order of dismissal, the petitioners then preferred a miscellaneous appeal bearing Misc. Appeal No. 16 of 1993, which was dismissed for non-prosecution on 11.10.1996. For execution of decree of Title Suit No. 100 of 1992, the decree holders filed execution case in the year 2006 bearing Execution Case No. 02 of 2006 for executing the said decree and declaration of decree of possession. The petitioners who are the judgment debtors appeared in the said case and filed an objection challenging the maintainability of the said case. Besides other grounds, question of limitation was also raised regarding maintainability of execution case on 24.04.2024 by the petitioners. The learned executing court, after hearing the parties, vide order dated 05.03.2025, rejected the objection of the petitioners and the said order is under challenge before this Court.

03. Learned senior counsel, Mr. J. S. Arora, appearing on behalf of the petitioners submitted that the impugned order is bad in the eyes of law and suffers from manifest illegality. The learned executing court has not considered that the execution case was filed after 15 years of passing of the decree and statutory period of limitation being 12 years, on face of it, the execution case, is hopelessly barred by limitation. Therefore, the



learned executing court committed jurisdictional error. Learned executing court further failed in its responsibility of discharging the statutory duty casts upon it to consider the effect of limitation in view of Section 3 of Limitation Act. The learned executing court has further not appreciated that once a decree is passed, it becomes executable from the date of decree itself, unless its operation of execution was stayed by any Court. Learned senior counsel further submitted that it is immaterial that who has raised the question of limitation but what is material is whether there is substance in the question brought to the notice of the Court regarding maintainability of the case. Learned senior counsel further submitted that the learned executing court also failed to appreciate that filing of a miscellaneous case under Order 9 Rule 13 of the Code and any appeal against the dismissal of the said case would not stand in the way of filing of execution case or execution relating to decree in question nor shall stand in the way of executability of the said decree. Since the execution case became barred by limitation, the learned executing court committed jurisdictional error by not appreciating that once the period of limitation expired, the enforceability/executability of the decree became barred and, in these circumstances, execution case was not



maintainable. The learned executing court has failed to follow the mandate of Article 136 of the Limitation Act, limitation of 12 years would start when the decree and orders became enforceable and the present decree became enforceable on 24.05.1991 itself. Therefore, the impugned order is not sustainable as it is completely illegal and against the law.

04. Mr. Arora further submitted that though the objection has been taken by the petitioners under Order 21 Rule 97 r/w Section 151 of the Code, the petitioner being party to the proceeding could not have taken objection under Order 21 Rule 97 of the Code but wrong mentioning of provision is not fatal to the consideration of the application if power to pass such an order is available with the court. Therefore, wrong mentioning of provision is not fatal to the cause of the petitioners. In this regard, learned senior counsel referred to the decision of the Hon'ble Supreme Court in the case of *Pruthvirajsinh N Jadeja (D) By Lrs. vs Jayeshkumar Chhakaddasm Shah, (2019) 9 SCC 533* wherein the Hon'ble Supreme Court held that it is well settled law that mere mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court. Another decision relied on by the learned senior counsel in the case of *P. K. Palanisamy Vs. N.*



Arumugham and another, (2009) 9 SCC 173, wherein the Hon'ble Supreme Court held that only because a wrong provision was mentioned by the appellant, the same, in their opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. The Hon'ble Supreme reiterated that it is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor. While making this observation, the Hon'ble Supreme Court referred to the decision in the case of *Ram Sunder Ram vs Union Of India & Ors, (2007) 13 SCC 255*, wherein it has been held that if an authority has a power under the law, merely because while exercising that power the source of power, is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. This observation was made quoting *N. Mani v. Sangeetha Theatre and Ors. (2004) 12 SCC 278*.

05. On the point of commencement of limitation period of 12 years, Mr. Arora referred to the decision of Hon'ble



Supreme Court in the case of ***Ram Bachan Rai & Ors. vs. Ram Udar Rai, 2006 (9) SCC 446*** and submitted that facts of the case are almost similar to the facts of the said case before the Hon'ble Supreme Court. In the case before the Hon'ble Supreme Court, the suit was decreed *ex parte* on 3.5.1976 as the defendants did not appear on the date fixed. No appeal was, however, filed against the aforesaid judgment and decree. The appellants before the Hon'ble Supreme Court, who were the judgment debtors, filed an application under Order 9 Rule 13 of the Code for setting aside the *ex parte* decree which was dismissed for default on 14.7.1978. The said application was not restored by the trial court and a Miscellaneous Appeal filed also stood dismissed on 10.1.1987. The Civil revision filed against the order of dismissal was also dismissed on 6.4.1987. At no stage any stay was granted by any Court and the respondents as decree holders filed an application for execution on 5.4.1991. When symbolic possession was taken by the decree holders, the judgment debtors filed objection under Section 47 of the Code saying that the decree was not legally enforceable as it was barred by time. The learned Subordinate Judge dismissed the objection holding that the period of twelve years had to be counted from the date of dismissal of the Civil Revision by the



High Court, i.e., from 6.4.1987 as the ex- parte decree had merged in it. Against the dismissal of Civil Revision, the appellant approached the Hon'ble Supreme Court. The Hon'ble Supreme Court relied on the decision of three Judge Bench in the case of *Dr. Chiranjil Lal (D) by Lrs. V. Hari Das (d) by Lrs., (2005 (10) SCC 746)*. In the aforesaid facts and circumstances, the Hon'ble Supreme Court held that the application for execution filed on 5.4.1991 was clearly time barred having been filed beyond the period of twelve years prescribed under Article 136 of the Limitation Act and, thus, held that the High Court as well as the Executing Court committed illegality in coming to a conclusion that it was not barred by limitation.

06. Mr. Arora next referred to the decision in the case of *Bimal Kumar & Another vs. Shakuntala Debi & Others, (2012) 3 SCC 548*, wherein the Hon'ble Supreme Court held that the decree was a final decree and, therefore, it was immediately executable. As at no point of time, there was any order by any court directing stay of operation of the judgment and decree passed in partition suit and the question for consideration before the Hon'ble Supreme Court was whether the period during which the suit and the appeal preferred by the appellants remained pending has to be excluded for the purpose



of limitation. The Hon'ble Supreme Court referred to the decision in the case of ***Ratan Singh vs. Vijay Singh, AIR (2001) 1 SCC 469***, wherein it has been held that normally a decree or order becomes enforceable from its date. But cases are not unknown when the decree becomes enforceable on some future date or on the happening of certain specified events. The Hon'ble Supreme Court further held that filing of an appeal would not affect the enforceability of the decree, unless the appellate court stays its operation. But if the appeal results in a decree that would supersede the decree passed by the lower court and it is the appellate court decree which becomes enforceable. When the appellate order does not amount to a decree there would be no supersession and hence the lower court decree continues to be enforceable. The Hon'ble Supreme Court also referred to the case of ***Ram Bachan Rai & Ors.*** (supra). Thus, having regard to facts and judicial pronouncement before it, the Hon'ble Supreme Court reached the conclusion that the initiation of execution proceedings was indubitably barred by limitation and the appeal was allowed.

07. Mr. Arora next referred to the decision of a Division Bench of this Court in the case of ***Branch Manager, Central Bank of India vs. M/s. A.M. Brothers***, reported in 2013



(3) **PLJR 807**, wherein the Hon'ble Division Bench referred to the cases of **Bimal Kumar & Another** (supra) and **Ratan Singh** (supra) and held that the ex parte decree passed in 1992 continued to be enforceable from the date of decree itself and there was no stay at any stage. The Hon'ble Division considering the hardship arising out of non-enforceability of a decree on the ground of limitation and public interest being suffered because of legal technicality, rejected such argument in view of the doctrine "dura lex sed lex" which means that "the law is hard but it is the law". The Hon'ble Division Bench further referred to the decision in the case of **Madamanchi Ramappa & Anr vs Muthalur Bojjappa, AIR 1963 SC 1633**, wherein it has been held what is administered in courts is justice according to law and consideration of fair play and equity, however, important they may be, must yield to clear and express provisions of the law. Further, in **India House Vs. Kishan N. Lalwani, (2003) 9 SCC 393**, the Hon'ble Supreme Court held that the period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable consideration.

08. Thus, the learned senior counsel submitted that the impugned order is completely illegal and hence, the same needs



to be set aside.

09. Learned counsel appearing on behalf of the respondents 1st set vehemently opposed the contention of the learned senior counsel for the petitioners. Learned counsel for the respondent 1st set submitted that the judgment debtors filed an application viz. under Order 21 Rule 97 r/w Section 151 of the Code under some misconception. The judgment debtors are not allowed to take objection in the aforesaid provision. They are not stranger and they cannot claim in Executing Court to decide their right, title and possession. Therefore, the application was not maintainable and it was rightly rejected. The question of limitation could not be raised after the execution of the sale-deed and any objection on this account is barred by doctrine of estoppel, waiver and acquiescence. Learned counsel further submitted that against the *ex parte* decree, the judgment debtors preferred an application under Order 9 Rule 13, but miscellaneous case of the judgment debtor has been dismissed on 25.06.1993. Thereafter, Misc. Appeal No. 16 of 1993 was filed by the judgment debtors and the same was also dismissed on 11.10.1996 in default. Meanwhile, the decree holders have deposited the rest consideration amount within statutory period as directed by the judgment of the learned trial court. In such



circumstances, period of limitation under Article 136 of the Limitation Act would come into play from the date of 11.10.1996 and the judgment and decree of the learned trial court merged with the decree of the appeal and from the date of dismissal of the said appeal, limitation period would start. Therefore, the execution application was filed well within the period of limitation.

10. In support of his contention, learned counsel for the respondent relied on a decision of learned Co-ordinate Bench in the case of *Sudarshan Prasad Vs. Smt. Rajpati Devi (Civil Misc. Jurisdiction No. 157 of 2020, decided on 10.12.2024)*. Learned counsel for the respondents submitted that the issue before the learned Co-ordinate Bench was almost similar. The respondent therein filed a suit bearing Title Suit No. 14 of 1994 for specific performance of contract and the suit was decreed *ex parte* against defendant vide judgment and decree dated 09.01.1998. The *ex parte* decree was challenged by filing Miscellaneous Case No. 13 of 1998 under Order IX Rule 13 of the Code but the said miscellaneous case was dismissed on 27.08.1999. The defendant, thereafter, challenged the said order in miscellaneous appeal, which was also dismissed on 25.08.2000. Against the aforesaid order, the defendant preferred



a civil revision before this Court, which was also dismissed on 31.08.2006. Thereafter, in the execution case filed by the decree holder, maintainability of execution case was challenged on the ground of limitation. Learned counsel further submitted that the objection on the ground of maintainability of execution case was rejected by the learned executing court which was challenged in Civil Miscellaneous Jurisdiction No. 157 of 2020. Learned counsel next submitted that the decisions in the case(s) of *Ram Bachan Rai* (supra), *Ratan Singh* (supra), *Branch Manager, Central Bank of India* (supra) were cited in support of his contention by the petitioner therein but the learned Co-ordinate Bench, after discussing a number of case laws on the point of commencement of period of limitation, relied on the decision of Hon'ble Supreme Court in the case of *Kunhayammed Vs. State of Kerala, (2000) 6 SCC 359* and also the Division Bench decision of this Court in the case of *Ram Murti Choudhary @ Ram Murat Prasad Chaurasiya Vs. Ram Nihora Choudhary, (2017) 2 PLJR 136*, dismissed the civil miscellaneous petition holding that the dismissal of the civil revision would amount to merger of a decree and the execution petition was not found barred by limitation. Learned counsel next submitted that decision of the Co-ordinate Bench in the



case of ***Sudarshan Prasad*** (supra) has been affirmed by the Hon'ble Supreme Court **vide order dated 07.02.2025** passed in **Special Leave to Appeal (C) No(s). 2765 of 2025** whereby and whereunder the Hon'ble Supreme Court showed its disinclination to interfere with the impugned judgment passed by the Co-ordinate Bench of this Court.

11. Learned counsel for the respondent further submitted that in the light of decision of Hon'ble Supreme Court in the case of ***Kunhayammed*** (supra), the dismissal order of the appellate court would merge with the decree of trial court and the limitation period would start from the date of dismissal of the appeal. Therefore, the execution case of the respondent is not time barred. Learned counsel further submitted that it is the substance of the petitioners' application and not the mere nomenclature of the case and if any order is challenged before a Superior Court, then it is an appeal against the order of lower court and the mere nomenclature would not change the nature of the appeal. Placing strong reliance on the decision in the case of ***Sudarshan Prasad*** (supra), learned counsel submitted that dismissal of miscellaneous case against an *ex parte* decree was challenged by the judgment debtor/petitioner before the appellate court by filing miscellaneous appeal, the order of the



learned trial court has merged with the decision of the appellate court and for this reason, the execution case cannot be said to be barred by limitation. Thus, the learned counsel submitted that there is no merit in the present petition and the impugned order needs no interference by this Court.

12. I have given my thoughtful consideration to the rival submission of the parties in the light of peculiar facts of the case.

13. Admittedly, the Title Suit No. 100 of 1982, filed by the plaintiffs/decree-holders for a decree of specific performance for enforcement for an agreement for sale for executing a sale deed after depositing the consideration money on 20.07.1991, decreed on 24.05.1991. The miscellaneous case filed by the petitioners under Order IX Rule 13 of the Code vide Misc. Case No. 02 of 1992 came to be dismissed on 25.06.1993. Thereafter, the petitioners preferred Misc. Appeal No. 16 of 1993, which was also dismissed on 11.10.1996, though for non prosecution. The execution case has been filed in the year 2006. The challenge to the Execution Case No. 02 of 2006 is on the ground that the limitation period of 12 years started from the date when the *ex parte* decree was passed, i.e. on 24.05.1991, and came to an end in the year 2003 whereas the execution has



been filed in the year 2006. However, the learned counsel for the respondents 1st set contended that the decree of the learned trial court merged with the order of the appellate court dismissing Misc. Appeal No. 16 of 1993 and, therefore, filing of execution case in the year 2006 was well within the limitation period of 12 years. Now, challenge to the order of the learned executing court by the petitioner is based on the reliance placed by the learned senior counsel on the decisions in the case(s) of ***Ram Bachan Rai*** (supra), ***Ratan Singh*** (supra), ***Branch Manager, Central Bank of India*** (supra). However, the learned Co-ordinate Bench in the case of ***Sudarshan Prasad*** (supra) have considered these authorities. It was observed by the learned Co-ordinate Bench that ***Ratan Singh*** (supra) has been overruled by the Hon'ble Supreme Court in the case of ***Shyam Sundar Singh Vs. Pannalal Jaiswal, 2005(1) SCC 436***. Thereafter, taking note of the Hon'ble Division Bench decision of this Court in the case of ***Ram Murti Choudhary @ Ram Murat Prasad Chaurasiya*** (supra), the learned Co-ordinate Bench observed that this reference has been decided while relying upon the decision in the case of ***Kunhayammed*** (supra). Paragraph Nos. 32, 41 and 44 of ***Kunhayammed*** (supra) read as under:

“32. It may be that in spite of having



granted leave to appeal, the Court may dismiss the appeal on such grounds as may have provided foundation for refusing the grant at the earlier stage. But that will be a dismissal of appeal. The decision of this Court would result in superseding the decision under appeal attracting doctrine of merger. But if the same reasons had prevailed with this Court for refusing leave to appeal, the order would not have been an appellate order but only an order refusing to grant leave to appeal.

41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and



dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior



jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or



authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

14. The learned Co-ordinate Bench in the case of ***Sudarshan Prasad*** (supra) held in Paras-29 and 30 as under:

“29. It is well settled that it is the substance of the petition/application and not the mere nomenclature of the case chosen by the parties that has determinative value. In my



view, if any order is challenged before a superior Court then it is an appeal against the order of the lower Court and the mere nomenclature will not change the nature of the appeal. In the present case also, the ex parte decree of the Munsif was challenged before the learned District Judge by filing a Miscellaneous Appeal, which was dismissed and the same was thereafter challenged/appealed before the High Court under Civil Revisional Jurisdiction though the nomenclature is civil revision but, in fact, it is an appeal against the order passed by the District Judge. In the present case, against the order of appeal, a revision petition has been filed before this Court and in the revision, the order of the appeal has been affirmed and therefore, the decision of the subordinate Court i.e. Munsif has merged in the decision of the superior forum i.e. in the order of this Court and therefore, the same is capable of enforcement in the eye of law.

*30. In view of the aforesaid discussions as well as in view of the decisions rendered in the case of **Kunhayammed vs. State of Kerela (supra)** and **Ram Murti Choudhary @ Ram Murat Prasad (D.B) (supra)** dismissal of the civil revision will amount to merger of a degree and the same cannot be said to be barred by limitation. Therefore, once it is held that the appellate decree has merged with the*



revisional order, the period of limitation for the execution of decree will start from the date of dismissal of the civil revision and therefore, the execution case filed by the decree holder i.e. respondent-plaintiff is well within the period of limitation.

15. The decision of the learned Co-ordinate Bench in the case of ***Sudarshan Prasad*** (supra) was challenged before the Hon'ble Supreme Court in **Special Leave to Appeal (C) No(s). 2765 of 2025** and the said Special Leave to Appeal has been dismissed vide order dated 07.02.2025, thus, affirming the reasoning adopted by the learned Co-ordinate Bench. The fact of the present case are similar to the case before the learned Co-ordinate Bench and adopting the same reasoning and in the light of the decision rendered by the Hon'ble Supreme Court in the case of ***Kunhayammed*** (supra), it can be safely concluded that the decree of the learned trial court merged with the order of the learned appellate court and the period of limitation for execution of decree would start from the date of dismissal of Misc. Appeal No. 16 of 1993. Therefore, Execution Case No. 02 of 2006 filed by the decree holders/respondent 1st set is well within the period of limitation.

16. Therefore, in the light of discussion made here-in-before, I do not find any infirmity in the impugned order dated



05.03.2025 passed by the learned Sub Judge-1st, Naugachhia and the same is hereby affirmed. Accordingly, the present petition is dismissed.

17. The stay granted vide order dated 13.08.2025 stands vacated.

18. Pending interlocutory applications, if any, stand disposed of.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	13.08.2025
Uploading Date	14.10.2025
Transmission Date	NA

