

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1870 of 2014

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Dhudhuli Pathak

.... Petitioner/s

Versus

Kedar Nath Sharma

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 17-12-2015 Heard the learned counsel for the petitioner and learned
counsel for the respondent.

By the impugned order dated 19.07.2013 passed by Sub
Judge IV, Saran at Chapra, the learned Court below refused to stay
Money Suit No.2 of 2009 during the pendency of Title Suit No.37
of 2007.

The learned counsel for the petitioner submitted that the
property involved in both the suits are same and in fact, this
petitioner and the respondent are defendant in Title Suit No.37 of
2007, therefore, the money suit filed by the present respondent i.e.
Money Suit No.2 of 2009 should be stayed under Section 10 of the
Code of Civil Procedure but the Court below wrongly by the
impugned order refused to stay the further proceeding in money
suit. The learned counsel placed Section 10 of the C.P.C. and
submitted that there is a bar to try a suit by a Court if the issue

involved in previously instituted suit is involved in the subsequent suit filed by any of the party.

On the other hand, the learned counsel for the respondent submitted that in fact, money suit has been filed by the present respondent for realization of the consideration amount paid by the respondent to the present petitioner. The plaintiff of Title Suit No.37 of 2007 is not a party to this money suit and the said suit is between nephew of the petitioner and the present petitioner wherein the present respondent has been added as defendant.

From perusal of the impugned order, it appears that the Court below found that the nature of both the suits are different. The present money suit has been filed by the respondent for realization of Rs.70,000 paid by the plaintiff to the present petitioner who is defendant in the money suit. So far title suit is concerned, the nephew of the present petitioner has filed the same claiming relief against the present petitioner i.e. he is claiming share in the property which was purchased by the plaintiff of money suit from the present petitioner.

In view of the fact that the relief claimed in both the suits are different and the parties are different and the finding of one suit will never operate as res judicata in other suit, therefore,

there is no question of staying further proceeding of money suit arises and the Court below has rightly rejected the application.

Thus, in supervisory jurisdiction, the impugned order cannot be interfered with and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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