

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4423 of 2014**

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1. Lalan Kumar Mehtha Son Sri Narayan Prasad Mehtha Resident Of  
Mohalla - Tinkothiya, P.O. Ramna, P.S. Mithanpura, District - Muzaffarpur

.... .... Petitioner/s

Versus

1. Atul Kumar Son Of Naresh Prasad Bhagat Resident Of Mohalla - Nai  
Bazar Town, P.O. P.S. Muzaffarpur Town, District - Muzaffarpur

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Arun Kumar Prasad

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**

**ORAL ORDER**

2      13-01-2016

Heard learned counsel for the petitioner.

This application, under Article 227 of the Constitution of India, has been filed by the petitioner against the order dated 14.08.2013 passed by the Munsif (East) Muzaffarpur in Eviction Suit No. 31 of 2006, whereby the court below rejected the application filed by the petitioner under Section 10 of the Code of Civil Procedure praying for stay of proceeding of eviction suit for want that the suit filed by the petitioner for specific performance of contract is pending being Title Suit No. 316 of 2006.

Perused the order passed by the court below. The court below has held that the issues involved in the present eviction suit and the suit for specific performance of contract are different and, accordingly, rejected the application.

The Hon'ble Supreme Court, in the case of *National Institute of Mental Health and Nureao Science Vs. C. Parmeshwara* reported in *AIR 2005 SC 242*, has interpreted Section 10 of the Code of Civil Procedure and held that 'The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit or not. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying to parallel suits between the same parties in respect of the same matter in issue. Since the suits herein are different and the issues involved therein are also different and that if one suit is decided, it will never operate as *res judicate*. There is no question of stay of further proceeding of eviction suit arises. Accordingly, the impugned order needs no interference in supervisory jurisdiction. Thus, this writ application is dismissed.

**(Mungeshwar Sahoo, J.)**

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