

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.916 of 2016**

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Most. Pramila Kuer @ Pramila Devi

.... Appellant/s

Versus

Sanjeev Kumar & Anr

.... Respondent/s
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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh

For the Respondent/s : Mr.

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

2 20-09-2016

Heard the learned counsel, Ms. Vagisha Pragya

Vacaknavi for the petitioner.

Perused the impugned order dated 07.06.2016 passed by
the learned Sub Judge VII, Muzaffarpur in Title Suit No.1055 of
2013.

It appears that Partition Suit No.105 of 1968/66 of 1973
has been filed by the plaintiffs-respondents for partition of the
entire suit property. This present suit being Title Suit No.1055 of
2013 has been filed by the plaintiffs for declaration of the sale
deed said to have been executed by this petitioner is illegal and
void document. The present petitioner filed application under
Section 10 C.P.C. before the Court below in present Title Suit
No.1055 of 2013 praying for stay of the suit during the pendency
of the First Appeal No.253 of 1975 arising out of the Title Suit
No.105 of 1968. By the impugned order, the Court below has

rejected this application holding that the reliefs claimed in both the suits are different.

From perusal of the relief claimed in the present suit, it appears that the plaintiff has filed the suit for declaration simplicitor regarding the sale deed dated 04.07.2012 as illegal and void, therefore, there is no subject matter in the present suit.

The Hon'ble Supreme Court in the case of **National Institute of Mental Health and Neuro Sciences v. C. Parameshwara, AIR 2005 Supreme Court 242** has held that "the key words in S. 10 are "the matter in issue is directly and substantially in issue" in the previously instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, S. 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical." In the present case, the subject matter of partition suit is the entire suit property whereas the subject matter of the present suit is the declaration regarding the sale deed.

The Hon'ble Supreme Court recently in **AIR 2013 Supreme Court 1712(Aspi Jal and Anr. v. Khushroo Rustom Dadyburjor)** has again reiterated the same view as has been held

by the Hon’ble Supreme Court in the case of National Institute of Mental Health and Neuro Sciences(supra).

From perusal of the impugned order, it appears that the Court below in view of the settled principles of law rightly rejected the application as such, in my opinion, it is not a case for interference in supervisory jurisdiction.

Accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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