

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6290 of 2016

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Sri Sachidanand Singh

.... Petitioner/s

Versus

Rajendra Prasad Sinha

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 27-07-2016

Heard learned counsel Mr. Manoj Kumar for the petitioner and learned counsel Mr. Ranjan Prasad Singh for the respondent.

The eviction suit has been filed by the respondent against the petitioner under the B.B.C. Act. In this eviction suit application was filed by the petitioner under Section 10 praying for stay of eviction suit on the ground that there is a partition suit being Title Suit No.273 of 2014 wherein also the subject matter of eviction suit is involved. The court below by the impugned order has rejected the same on the ground that the issue in both the suits are different and that entire suit property is not the subject matter of the eviction suit.

The Hon'ble Supreme Court in **A.I.R. 2005 Supreme Court 242 (National Institute of Mental Health and Neuro Sciences v. C. Parameshwara)** has held that Section 10 would

apply only if there is identity of the matter in issue in both the suits, meaning thereby that the whole of the subject matter in both the proceedings is identical.

In the present case, the question of relationship of landlord and tenant between the parties which is to be decided in eviction suit is at all involved in the previously instituted suit. Further whether the plaintiff has been able to prove any of the ground that eviction mentioned in Section 11 or elsewhere of the Act is also not involved in the previously instituted suit. Therefore, there is no question of application of Section 10 of the Code of Civil Procedure arises. The court below has, therefore, rightly rejected the application.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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