

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6857 of 2016

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Rajesh Kumar & Anr

.... Petitioner/s

Versus

Vhitranjan Mukherjee & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 08-08-2016

Heard learned Senior counsel, Mr. S.S. Dwivedi,
appearing for the petitioners and learned Senior counsel, Mr. K.N.
Chaubey, appearing for respondent Nos. 1 and 3.

2. Perused the order dated 14.01.2016 passed by the
learned Sub-Ordinate Judge, Motihari in T.S. No. 193 of 2012,
whereby the application filed by the present petitioners has been
filed under Section 10 of the C.P.C.

3. It appears that notices were issued after hearing the
petitioners by terms of the order dated 29.04.2016. At the time of
issuance of notice, it was submitted before this Court that in
earlier Partition Suit No. 41 of 1953, the property of Muzzafarpur
and Champaran were the subject matter of the partition suit and
preliminary decree was also passed. Subsequently, application was
filed for deletion of the property of Champaran from preliminary
decree and the property of the Champaran was deleted but the

property of both the places are there in the plaint. T.S. No. 193 of 2012 relates to the property of Champaran. Therefore, if the further proceeding in T.S. No. 193 of 2012 is not stayed, there will be conflicting decision and the earlier decision will operate as *res-judicata* in the subsequent suit.

4. Counter affidavit has been filed by the respondents. The judgment of the Partition Suit No. 41 of 1953 dated 31.01.1958 has been annexed thereto. From perusal of the judgment passed in Partition Suit No. 41 of 1953 it is abundantly clear that the plaintiff of the said suit had disclaimed the share in property of Champaran and, therefore, the court below passed the judgment on admission with respect to the property of Muzzafarpur. The final decree is proceeding. When the preliminary decree was prepared, the property of Champaran was also shown in the decree. Accordingly, an application was filed for deletion of the property of Champaran and the court below had allowed the same. Therefore, at present the position is that the property of Muzzafarpur and Champaran are there in the plaint but in the judgment only the preliminary decree has been passed with respect to the property of Muzzafarpur. No decision is there regarding the property of Champaran and the subsequent suit i.e T.S. No. 193 of 2012 relates to the property of Champaran.

5. In such view of the matter the learned court below has rightly rejected the application under Section 10 of the C.P.C. as the subject matter of both the suits are not identical and, therefore, any decision in the earlier suit (now only final decree proceeding is going on) will not operate as *res judicata* in the subsequent suit unless it is decided to the effect that the judgment and decree passed in the earlier suit was also with respect to the property of Champaran. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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