

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16042 of 2014

=====

Kailash Prasad

.... Petitioner/s

Versus

Om Prakash Narayan Sinha @ Babuaji @ Opns Ashok Teyendradhar

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dipak Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 04-01-2016 **1.** Perused the office note dated 17.12.2015.

2. The learned counsel for the petitioner as well as the learned counsel for the respondent submitted that the writ application itself may be heard on merit in admission matter. Accordingly, I heard them on merit in admission matter.

3. The defendant petitioner had filed this application under Article 227 of the Constitution of India for setting aside the order dated 22.08.2014 passed by the learned Munsif Barh (Patna) in Title Eviction Suit No.3 of 2013 whereby the Court below has rejected the application filed by the defendant petitioner under Section 10 of the Code of Civil Procedure.

4. It appears that the plaintiff respondent filed the aforesaid Title Eviction Suit No.3 of 2013 against the tenant defendant petitioner for eviction of the letter on the ground of



personal necessity. The defendant petitioner filed contesting written statement after obtaining leave. Thereafter, an application under Section 10 CPC was filed praying for stay of the further proceeding of this eviction suit on the ground of pendency of First Appeal No.100 of 2013 before the Patna High Court on the ground that in the said First Appeal arising out of the suit filed by the plaintiff for declaration of title, the defendant petitioner are also parties. The Court below after hearing both the parties has rejected this prayer by the impugned order.

5. The learned counsel, Mr. Neeraj Kumar, for the petitioner submitted that in the title suit, the present petitioner tenant is also a party wherein the question of title of the plaintiff respondent is to be decided. The property is the same and the parties are also same, therefore, in view of the decision of the Patna High Court reported in **2005 (3) PLJR 535 Smt. Balkeshwari Devi Vs. Laxmi Narain Singh.**

6. On the other hand, the learned counsel, Mr. Dronacharya, appearing on behalf of the plaintiff respondent submitted that in fact the title suit was filed by the plaintiff praying for declaration of title against his father and other co-sharer. In the title suit, the present petitioner was added as party



defendant because he was tenant in the suit premises. No relief has been claimed against the defendant petitioner by the plaintiff in the aforesaid suit. The said suit has already been decreed in favour of the plaintiff. Against the said decree First Appeal is pending before the High Court. So far present eviction suit is concerned, it is filed under the Special Act, i.e., Bihar Building (Lease, Rent and Eviction) Control Act, 1982, therefore, the question of title which is involved in the earlier suit will not be decided against in this eviction suit.

7. Perused the order passed by the Court below. The Court below has found that the issue involved in the earlier suit is different than the present suit. It is admitted fact that no relief has been claimed by the plaintiff in the earlier suit against this defendant. The defendants are claiming that there is no relationship of landlord and tenant between the plaintiff and the tenant. In such circumstances, if in fact there is no relationship of landlord and tenant then automatically, the plaintiff's eviction suit will be dismissed. So far this issue which is to be decided in this eviction suit is concerned, it is not involved in the earlier suit which is subject matter of First Appeal No.100 of 2013.

8. So far the decision relied upon by learned counsel for



the petitioner is concerned, it appears that in that case, both the suits were filed with respect to the same subject matter and the parties were also same and in that case, the ingredients of Section 10 CPC was applicable. Both the suits were filed under general law. In the present case, it is not the fact the earlier suit is filed under general law and the present suit has been filed under the Special Act.

9. The Hon'ble Supreme Court in the case of *National Institute of Mental Health and Nureao Science Vs. C. Parmeshwar AIR 2005 SC 242* has interpreted Section 10 of the Code of Civil Procedure has held that **'the object of Section 10 is to prevent course of concurrent jurisdiction from simultaneously trying to parallel suits between the same parties in spite of the same matter in issue. The fundamental test to trying Section 10 is whether of final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical.'**

10. In view of the above facts and circumstances of the case, there is no illegality in the order and thereby no prejudice has

been caused to the petitioner nor it occasioned any failure of justice. Therefore, in exercise of supervisory jurisdiction, the impugned order cannot be interfered with. Thus, this writ application is hereby dismissed.



(Mungeshwar Sahoo, J)

Sanjeev/-

U			
---	--	--	--