

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5207 of 2014

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Ram Chandra Mahato & Ors

.... Petitioner/s

Versus

Brahmdeo Mahato & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 28-01-2016 **1.** Heard the learned counsel, Mr. Harendra Kumar, for the
petitioner.

2. This application under Article 227 of the Constitution of
India has been filed by the petitioners for setting aside the order
dated 14.08.2013 passed by learned Munsif, Pupri at Sitamarhi in
Title Suit No.05 of 2012 whereby the Court below rejected the
petitioner's application under Section 10 CPC for stay of the title
suit No.5 of 2012.

3. It appears that partition suit No.6 of 2005 was filed by
the petitioners against the defendants. The suit was dismissed.
Thereafter, the petitioners filed title appeal No.47 of 2010. In the
meantime, the plaintiff respondent No.1, Bhahmdeo Mahto, filed
title suit No.5 of 2012 for declaration of title with respect to the
property which he has purchased from Sheo Dayal Mahto, his own

uncle. The Court below by the impugned order has rejected the application on the ground that these issues involved in the partition suit giving rise to the appeal and the issue involved in the present suit which has been filed by Bhahmdeo Mahto are different.

4. The learned counsel for the petitioner relying on the decision of this Court in the case of *Sri Ram Tiwary Vs. Bholi Devi 1994 BBCJ 65* submitted that in the similar situation, this Court had directed that the further proceeding in subsequent suit should be stayed. Further, the learned counsel submitted that if the subsequent suit is allowed to continue, there will be conflicting decision.

5. Perused the decision relied upon by the petitioner. It appears that in that case partition suit was filed wherein the relief was claimed for declaration that the sale deed executed by Anil Kumar Chaudhary in favour of transferee are illegal and void. In the present case, it is admitted fact that the sale deed of Bhahmdeo Mahto is not under challenge which is of the year 1970 and this intersee transaction between the heirs of Krishna Mahto.

6. 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 held that ‘the object of Section 10 is to prevent course of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. 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.

7. In the present case, even if earlier suit, which is now sub judiced before the appellate Court, will be allowed then only the petitioner will be entitled to a share in the property. In such view of the matter that will never operate as res judicata in the subsequent suit because the subsequent suit has been filed for declaration of title on the basis of the registered sale deed of the year 1970 which is not under challenge in the partition suit. Thus, the Court below has rightly rejected the application. Therefore, no case for interference in supervisory jurisdiction is made. Accordingly, this writ application is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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