

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2458 of 2016

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Md. Sikandar Raine @ Sikandar Azam & Anr

.... Petitioner/s

Versus

Sakeela Begum

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Shankar Sahay

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 06-04-2016 1. Heard the learned counsel, Mr. Ravi Shankar Sahay, for the petitioner.

2. By the order dated 22.07.2015, the learned Sub Judge Ist, Sasaram rejected the application filed by the petitioner under Section 10 of the Code of Civil Procedure praying for stay of Eviction Suit No.4 of 2010 during the pendency of Title Suit No.627 of 2009.

3. It appears that the said application was filed by the present petitioner for stay of eviction suit on the ground that the petitioner has already filed title suit No.627 of 2009 praying therein to declare sale deed in favour of the plaintiff's of eviction suit as void sale deed and that sale deed, title never passed to the plaintiff of the eviction suit. The Court below by the impugned

order rejected the said prayer recording finding that the properties are different and also the parties are different.

4. 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 to parallel suits between the same parties in respect 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.'

5. In the present case, admittedly so far eviction suit is concerned, the subject matter of the same is not the entire subject matter of the title suit filed by the plaintiff. The issue involved in eviction suit is not involved in the title suit. The title suit is being tried by the Court constituted under the Bengal and Assam Civil Court Act, 1887 under General law whereas the eviction suit is being tried by the Court under the Special Act, i.e., Bihar Building (Lease, Rent & Eviction) Control Act, 1982.

6. In such view of the matter, I find no reason to interfere with the impugned order passed by the Court below.

7. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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