

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4316 of 2016

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Sk. Abdul Manan @ Sk. Manan

.... Petitioner/s

Versus

Sk. Md. Iliayas & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Kumar Shrivastva

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

4 19-12-2016 Heard the learned counsel, Mr. Akhileshwar Kumar Shrivastava for the petitioner and the learned counsel, Mr. Khatim Reza for the respondents.

It appears that earlier notices were issued in admission matter on 19.07.2016. The respondents have appeared.

This application has been filed under Article 227 of the Constitution of India for setting aside the order dated 02.02.2016 passed by learned Sub Judge, Narkatiaganj, West Champaran in Title Suit No.137 of 2005 whereby the learned Court below rejected the application under Section 10 of the Code of Civil Procedure filed by the petitioner praying for stay of further proceeding of the suit till the disposal of Title Suit No.8 of 2004.

It appears that said Title Suit No.8 of 2004 has been filed for declaration of title over Khata No.44, Plot No.1414 measuring 15 katha 2 dhurs. The defendants in the said suit are



only three. The subsequent suit has been filed by the respondent and others for declaration of title with respect to many properties including Khata No.44, Plot No.1414 measuring 15 kathas 2 dhurs. Therefore, admittedly, so far title suit of the year 2004 is concerned, only one plot is involved whereas in title suit of the year 2005, there are many plots. So far title suit of the year 2004 is concerned, there are only three defendants who have been made respondents in this writ application. There are many defendants in the suit of the year 2005 who have not been made respondents in this writ application.

The Hon'ble Supreme Court in the case of **National Institute of Mental Health and Neuro Sciences v. C. Parameshwara AIR 2005 Supreme Court 242** has held that "S. 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical" vide paragraph 8 of the decision. In the present case, admittedly, the subject matters of both the suits are not identical nor the parties are identical.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this writ application is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)

