

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.26 of 2016**

Pradip Sao & Ors

Versus

Sri Raj Kishore

.... Appellant/s

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Dwivedi

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 01-08-2016

Heard learned counsel, Mr. A.K. Dwivedi, appearing
for the petitioners.

2. Perused the impugned order dated 29.09.2015 passed
by the Additional Munsif-IV, Danapur in Title Eviction Suit No.
02 of 2016.

3. The defendants-petitioners have filed the application
under Section 10 C.P.C. praying for stay of the Eviction Suit No.
02 of 2016 till disposal of Partition Suit No. 164 of 2005. By the
impugned order, this application has been rejected.

4. Learned counsel for the petitioners submitted that the
petitioners prayed for stay of this eviction suit alleging that the
subject matter of eviction suit is also the subject matter of Partition
Suit No. 164 of 2005, which is between the same parties but the
court below instead of considering the pleading in Partition Suit
No. 164 of 2005, considered the pleading of Partition Suit No. 154

of 1982 and has rejected the application.

5. In this civil miscellaneous application, the plaint of Partition Suit No. 164 of 2005 and plaint of Eviction Suit No. 02 of 2016 have been annexed.

6. In the partition suit, there are three plaintiffs and nine defendants whereas in the eviction suit, only one plaintiff is there and there are only three defendants. Therefore, the parties are not identical. The subject matter of partition suit is entirely different than the subject matter of eviction suit. In the partition suit, the plaintiffs of the suit claimed that the suit house (Schedule-1) was purchased by the joint family fund in the name of the plaintiff of Eviction Suit No. 02 of 2016 but so far Eviction Suit No. 02 of 2016 is concerned, only one property is involved. Admittedly, this property is standing in the name of plaintiff of eviction suit as has been admitted by the plaintiffs of the partition suit. No doubt in the order-sheet, there is some typing mistakes regarding the number of the partition suit but that by itself is not sufficient to set aside the order, particularly, when the plaints of both the suits are available here.

7. It may be mentioned here that so far the partition suit is concerned, in that case, question of title is involved and this question of title is entirely a foreign material for deciding the

dispute regarding the relationship of landlord and tenant in Eviction Suit No. 02 of 2016.

8. The Hon'ble Supreme Court in the case of ***Rajendra Tiwary Vs. Basudeo Prasad & Anr.*** reported in ***AIR 2002 SC 136*** considering the provisions of Bihar Building Lease and Eviction Control Act, 1982 held that the scope of the inquiry before the Court was limited to the question, as to whether the grounds for eviction of the tenant have been made out under the Act. The question of title of the parties to the suit premises is not relevant at all. Therefore, the question of title cannot be decided in eviction suit. So far the question of *res-judicata* is concerned, the Hon'ble Supreme Court in the case of ***National Institute of Mental Health Vs. C. Parameshwara*** reported in ***AIR 2005 SC 242*** has held that Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject matter in both the proceedings is identical.

9. In view of the settled proposition of law, I find no reason to interfere with the orders passed by the courts below in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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