

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.834 of 2013

- =====
1. Chhabinath Tiwary
 2. Jagbali Tiwary

Both sons of late Ram Lakhan Tiwary, r/o-Mauza-Daridih, p.s- Sikharhatta,
p.o. – Mansagar, distt - Bhojpur

.... Petitioner/s

Versus

1. Murlidhar Tiwary
2. Binkatesh Tiwary
3. Siya Ram Tiwary

All sons of late Madhav Sharan Tiwary

4. Most. Jiyacha Kaur w/o Late Madhav Sharan Tiwary

All r/o vill – Daridih, p.s.-Sikharahatta, p.o.- Mansagar, distt – Bhojpur

5. Gopaljee Tiwary adopted son of Sadhu Sharan Tiwary, r/o – Daridih, p.s.
– Sikharahatta, p.o. – Mansagar, distt – Bhojpur at present residing in moh –
Khusrupur, p.s. – Kotwali, town and Distt – Ara.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Kamal Deo Sharma, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5. 03-03-2016

Heard learned counsel for the petitioners.

In spite of notice, none of the respondents appeared.

What is non-permissible cannot be allowed on any pretext is the basic argument raised on behalf of the petitioner while challenging the order dated 11.06.2012 passed by Sub-Judge VIth, Bhojpur at Ara in title suit no. 407/2001.

To justify such submission, it has been submitted that once, learned lower Court, while adjudicating upon a prayer made under Section 10 of the Civil Procedure Code held that the reliefs so sought for, the nature of dispute, cause of action of present title



in connection with the suit no. 313/2000 happens to be distinct to each other, and further negating the plea in terms of Section 10 of the Civil Procedure Code, declined to accede simultaneously, directed that both the cases should be disposed of conjoint; appears to be in conflict so, in true sense, the learned lower Court had allowed the prayer in terms of Section 10 of the Civil Procedure Code irrespective of the finding so recorded by the learned lower Court itself. To substantiate such plea, the learned counsel for the petitioner also referred the case of **National Institute of M.H. & N. S. Vs C. Parameshwara** reported in **2005 AIR page 242 (SC) paragraph 8** wherein it has been held:-

“The object underlying section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of section 10 is to prevent Courts 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. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, section 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.”

Without advertent to detail discussion over Section 10 of the Civil Procedure Code and making scrutiny of the finding of the learned lower Court on that very score it has been perceived that one suit happens to be the year 2000 and another of the year 2001. The order impugned happens to be of the year 2012 while we are sitting in the year 2016 and, without giving further opportunity to the parties to lock their horns, the learned lower Court is directed to proceed with the trial and conclude both the trials that means to say title suit no. 313/2000 and title suit no. 407/2001 within six

months by two distinct judgement on the same date. The learned District & Sessions Judge Bhojpur at Ara is directed to keep vigil over both the two cases, so that it should not go to different Courts on transfer, if any. The office is directed to communicate the District & Sessions Judge Bhojpur at Ara for proper surveillance as well as the learned lower Court for proper compliance.

With the aforesaid observation, the instant petition is disposed of.

(Aditya Kumar Trivedi, J.)

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