

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.973 of 2016**

=====

Nand Kishore Sharan & Anr

.... Appellant/s

Versus

Rabindra Kishore Sharan & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Anil Kumar Dwivedi

For the Respondent/s : Mr.

=====

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

ORAL ORDER

3 19-11-2016

Heard the learned counsel for the petitioners.

Perused the impugned order dated 10.06.2016 passed by Sub Judge III, Danapur in Title Suit No.57 of 2009 whereby the learned Court below rejected the application filed by the petitioner under Section 10 of the Code of Civil Procedure praying for stay of further proceeding in Title Suit No.57 of 2009 during the pendency of the Title Appeal No.38 of 2010 arising out of Title Suit No.60 of 1995.

It appears that earlier suit was filed for declaration of title with respect to schedule II of that suit of the year 1995. The subsequent suit of the year 2009 has been filed for partition. No doubt, the parties are same but admittedly the properties are not same. Some of the properties, which are subject matter of partition suit, are not the subject matter of suit for declaration of title filed

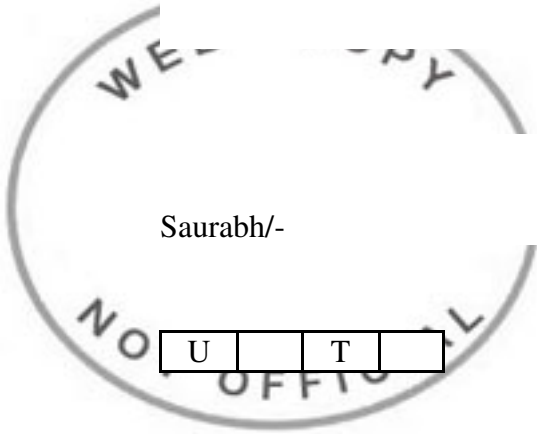
in the year 1995.

From perusal of the impugned order, it appears that the Court below clearly recorded finding that some plots of partition suit are not the subject matter of the suit of the year 1995. It is not specifically pleaded or stated by the petitioner that all the properties of previous suit are the subject matter of the subsequent suit. Moreover, the reliefs claimed are different. The earlier suit was filed by the mother for declaration of title. Admittedly, mother has died and now both the parties have inherited the property of the mother.

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 "the key words in section 10 are "the matter in issue is directly and substantially in issue" in the previously instituted suit. The words "directly and substantially in issue" are used in contra-distinction 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."

In the present case, in view of the finding recorded by the trial court the subject matters are not identical. Therefore, I

find no reason to interfere with the impugned order and
accordingly, this civil miscellaneous application is dismissed.



Saurabh/-

U		T	
---	--	---	--

(Mungeshwar Sahoo, J)