

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15112 of 2015**

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Sampatti Devi & Ors

.... .... Petitioner/s

Versus

Lalita Devi & Ors

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Amarendra Kumar

For the Respondent/s : Mr.

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

4 27-06-2016

Heard learned counsel Mr. Sanjay Parasmani on behalf of the petitioners and learned counsel Mr. Chandrakant for the respondents.

The learned Subordinate Judge-VI, Siwan by the impugned order dated 25.05.2015 rejected the petitioners' application under Section 10 of the Code of Civil Procedure and thereby refused to stay the subsequent suit being Title Suit No.894 of 2013 during the pendency of Title Suit No.826 of 2012.

Perused the order passed by the court below. It is admitted fact that the earlier suit filed by the petitioners is for declaration of title with respect to gifted property only. So far subsequent suit i.e. of the year 2013 is concerned, it is a partition suit wherein the entire family property is included including the subject matter of the earlier title suit. Now, therefore, if any decision is given in the earlier suit that will operate as res-judicata

in the subsequent suit with respect to the property covered by the gift only and not on the entire property. The Hon'ble Supreme Court in the case of **National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, A.I.R. 2005 Supreme Court 242** has held that 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 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, the whole of the subject matter in both the proceedings is identical. In the present case, admittedly this is not the fact.

Therefore, I find no reason to interfere with the impugned order whereby the learned court below refused to stay the subsequent suit. Thus, this writ application is dismissed.

Harish/-

(Mungeshwar Sahoo, J)

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