

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4664 of 2014

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Jai Prakash Narain Gupta

.... Petitioner/s

Versus

Sri Thakur Baba Maheshwar Nath Jee

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 20-01-2016

Heard learned counsel Mr. Pramod Kumar Singh for the petitioner.

By the impugned order dated 02.12.2013 the learned Execution Munsif, Muzaffarpur rejected the application filed by the petitioner for stay of Eviction Suit No.02 of 1995 on the ground that the petitioner had already filed the suit for specific performance of contract being Title Suit No.177 of 1994.

Perused the order passed by the court below. The court below found that the issue in the previous suit is different and the issue in the eviction suit is different. It may be mentioned here that the Hon'ble Supreme court in the case of **National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, A.I.R. 2005 SC 242** incorporated section 10 of the Code of Civil Procedure and held that 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. In the present case, in view of the aforesaid settled proposition of law it cannot be said that the issue involved in the suit for specific performance will operate as res-judicata in the subsequent eviction suit. It cannot also be said that both the courts have concurrent jurisdiction. Admittedly the suit filed by the petitioner is under general law whereas the eviction suit is governed by the special statute of the State.

In view of the above facts and circumstances I do not find any merit to interfere with the impugned order in supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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