

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2428 of 2014

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Ram Babu Prasad

.... Petitioner/s

Versus

Achche Lal Sah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 07-01-2016

Heard the learned counsel for the petitioner.

By the order dated 02.11.2013, the learned Additional Munsif-X, Muzaffarpur in Eviction Suit No. 1 of 2010 rejected the application filed by the petitioner under Section 10 of the Code of Civil Procedure for stay of the eviction suit till the disposal of Title Suit No. 193 of 2010.

The Court below relying on the decision of this Court in 1987 PLJR 724 held that the matter in issue in title suit and matter in issue in the eviction suit are not same and therefore, rejected the application under Section 10 C.P.C.

It may be mentioned here that the eviction suit is filed under the special Act i.e Bihar Building (Lease, Rent and Eviction) Control Act. So far the title suit is concerned, it is filed under general law. Therefore, the Court dealing with the eviction suit has got no jurisdiction to try the question of title in eviction suit.

The Hon'ble Supreme Court in the case of **National Institute of Mental Health Versus C. Parmeshwar AIR 2005 SC 242** has held that **'the object of Section 10 is to prevent Courts of concurrent jurisdiction from simulteneously trying to 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 admittedly the Court dealing with eviction suit can not try the question of title as has been held by the Hon'ble Supreme Court in the Case of ***Rejendra Tiwari Vrs. Basudeo Prasad AIR 2002 Supreme Court 136*** wherein the Hon'ble Supreme Court has held that the question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the term "landlord" and "tenant" in (Clause-F) and (Clause-H) respectively of Section 2 of the Act.

In view of the matter, the Court below has rightly rejected the application, therefore, the same can not be interfered with in supervisory jurisdiction. Thus this writ application is dismissed.

ravi/-

(Mungeshwar Sahoo, J)

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