

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.312 of 2019

Hiralal Sah son of Late Piyari Sah, resident of Village Lulha Dhanao, P.O.-
Dhanao, P.S. Baniapur, District- Saran.

... .. Petitioner

Versus

1. Daroga Sah sn of Late Triveni Sah, Resident of Village Lulha Dhanao, P.O.
Dhanao, P.S. Baniapur, District- Saran.

Plaintiff/Respondent

2. Dhrupeo Sah. son of Late Satyadeo Sah.
3. Ramji Sah, son of Late Satyadeo Sah,
4. Chamela Kuer wife of Late Satyadeo Sah.
5. Jawahir Sah son of Late Piyari Sah.
6. Jawahir Sah Son of Late Gorakh Sah,
All ar residents of Village Lulha Dhanao, P.O. Dhanao, P.S.
Baniapur, District- Saran.

... ..Defendants- Respondents

Appearance :

For the Appellant/s : Mr.Ashok Kumar Mishra, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 02-05-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 22.11.2018 passed by the Sub Judge-V, Chapra in Title Suit No.364 of 2015 whereby he has rejected the petition filed by the defendants under Section 10 of the Code of Civil Procedure (for short 'CPC') for stay of the suit during the pendency of the Title Suit No.77 of 2000.

2. The contention of the petitioner is that earlier Title Suit No.77 of 2000 has been filed in the Court of Munsif



between the same parties. In the said case the decision is still pending. However, the instant case has been filed in the year 2015 in respect of the same suit land. He contended that since two parallel trial were going on, the petitioner, who is defendant in Title Suit No.364 of 2015, has filed an application under Section 10 of the CPC for stay of the suit so that conflicting decision may not be passed by the two courts. Learned counsel for the petitioner contended that the said application of the petitioner has been rejected on erroneous ground.

3. On perusal of the order impugned, I find that a rejoinder was filed by the plaintiff against the contention of the petitioner before the trial court in which it was contended that the former case pending in the court of Munsif vide Title Suit No. 77 of 2000 about 17 Dhurs of land is in dispute whereas in Title Suit No. 364 of 2015 the dispute is about 2 Kathas of land.

4. Having considered the rival submissions, the court below dismissed the application filed by the defendant-petitioner under Section 10 of the CPC taking into consideration the objection raised by the plaintiff as also the fact that certain portions of land i.e., subject matter of the dispute in Title Suit No.364 of 2015 was sold through sale deed executed in the year



2015.

5. The object of Section 10 of the CPC is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same party in respect of the same matter in issue. In order to attract Section 10 of the CPC, it is to be tested whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. This Section would apply only in the cases where the matter in issue is directly or substantially the same in the previous suit.

6. Here in the instant case admittedly in the suit i.e., Title Suit No.77 of 2000, the dispute relates to 17 Dhurs of land whereas in Title Suit No.364 of 2015 the dispute relates to two Kathas of land. That apart, certain portions of land were transferred in favour of the plaintiff subsequent to filing of Title Suit No.77 of 2000. In that view of the matter, it cannot be said that the matter in issue in Title Suit No.364 of 2015 is directly or substantially the issue in Title Suit No.77 of 2000.

7. In that view of the matter, if the court below has rejected the application filed by the petitioner under Section 10 of the CPC, no illegality can be found in the order impugned. Accordingly, I am not inclined to interfere with the order



impugned in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

8. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
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