

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.243 of 2019**

1. Prakash Kumar Jha Male, aged about 67 years S/o Late Banwari Jha, resident of Mirchaibari, Hridayaganj, Mithila Tola, Police Station -Sahayak, Post office and District Katihar
2. Prabhat Kumar Jha Male aged about 57 years, S/o Late Banwari Jha Resident of Mirchaibari, Hridayaganj, Mithila Tola, Police Station -Sahayak, Post office and District Katihar
3. Pradeep Kumar Jha Male, aged about 51 years S/o Late Banwari Jha, resident of Mirchaibari, Hridayaganj, Mithila Tola, Police Station -Sahayak, Post office and District Katihar
4. Dilip Kumar Jha Male aged about 49 years S/o Late Banwari Jha, resident of Mirchaibari, Hridayaganj, Mithila Tola, Police Station -Sahayak, Post office and District Katihar

... .. Defendants/Petitioners

Versus

Punita Jha Female aged about 49 years, w/o Amarnath Jha, resident of village Dighri, Post Office -Dighri, P.S Korha District katihar

... .. Respondents

Appearance :

For the Petitioners : Mr. Jibendra Mishra, Advocate
For the Respondents : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 19-04-2019

Heard learned counsel for the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for quashing the order dated 10.12.2018 passed by learned Sub-Judge-VII,



Katihar in Title Suit No. 341 of 2015 whereby the application filed by the defendants-petitioners under Section 10 of the Code of Civil Procedure (for short 'CPC') seeking stay of the suit has been rejected.

3. Learned counsel appearing for the petitioners submitted that the plaintiff-opposite party filed title suit claiming title over the land involved in the suit by virtue of adverse possession against the defendants-petitioners bearing Title Suit No. 341 of 2015. The suit land in question is 0.08 decimals and 8 karis land of Plot No. 2542 of Khata No. 1163 of Mauza- Dalan, P.S.- Sahayak in the district of Katihar. After service of summon, the defendants-petitioners appeared in the suit and filed their written statement. The defendants-petitioners claimed their right, title, interest and peaceful possession. After filing of the written statement, issues were also framed in the said suit. The defendants-petitioners then moved a petition under Section 10 of the CPC for stay of the suit on the ground that there is already one title suit vide Title Suit No. 131 of 2008 pending consideration in which plaintiff Kalu Uraon and seven others also claimed title over the lands including the suit land of the suit filed by the plaintiff-opposite party. In that case also, the present petitioners are defendants. On the basis of the aforesaid submissions, learned



counsel for the petitioners submitted that the order passed by the court below is legally not sustainable. Since the suit land is already part of the suit land of the previously instituted suit and title, interest and possession over the same is claimed by the plaintiffs of the previous suit, the present suit ought to have been stayed by the trial court. He has further contended that the trial court ought to have considered that in the subsequent suit, the matter in issue, is substantially the same, as in the previously instituted Title Suit No. 131 of 2008.

4. Having heard learned counsel for the petitioners and carefully perused the record, I find no merit in this application.

5. Section 10 of the CPC provides that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed, or in any court beyond the limits of India established, or continued by the Central Government and having like jurisdiction, or before the Supreme Court.



6. It would be evident from perusal of Section 10 of the CPC that where a suit is instituted in a court to which the CPC applies, the court shall not proceed with the trial of the suit, if the matter in issue in the suit is directly and substantially in issue in a previously instituted suit between the same parties and the previously instituted suit is pending- (i) in the same court in which the subsequent suit is brought; or in any other court in India; or (iii) in any court beyond the limits of India established or continued by the Central Government; or before the Supreme Court.

7. Thus, it would be evident that the object of Section 10 of the CPC is to prevent courts of different jurisdiction from simultaneously trying parallel suits in respect of the same matter in issue. The object is to avoid recording of conflicting findings in more than one proceeding where the matter in issue is directly and substantially the same between the same parties.

8. In the instant case, cause of action in both the suits are different and even the parties are different. The subject matter are also different. Thus, no case for stay of the suit was made out. The instant suit filed by the plaintiff-opposite party is for declaration of title by law of adverse possession by a third person whereas declaration of title simplicitor in between the



parties in which the plaintiff-opposite party is not involved is the subject matter of the earlier suit. Thus, the trial court has rightly held that Section 10 of the CPC is not applicable and has rejected the prayer of the petitioner.

9. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.04.2019
Transmission Date	NA

