

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1523 of 2018

1. Lal Bahadur Mahto, Son of Late Feku Mahto, Resident of Village Post-Dilawarpur, P.S. Bihta, District Patna.
2. Mostt. Sumita Kuer, W/o Late Lal Verma, Resident of Village Post-Dilawarpur, P.S. Bihta, District Patna.

... .. Petitioner/s

Versus

1. Ravi Ranjan Kumar (Minor)
2. Acchaya Kumar (Minor)
3. Sumit Kumar (Minor), Son of Late Chandra Shekhar Kumar.
4. Sourav Kumar Minor, Son of Shri Ashish Ranjan Kumar,
All minor under natural guardianship of their grand father Sri Kameshwar Prasad, Resident village Harpura, Post- Mohammadpur, P.S. Bikaram, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

5 25-01-2023 This Civil Miscellaneous Application has been filed against the order dated 17.04.2018 passed by the Subordinate Judge-I, Danapur whereby the petition dated 17.02.2018 filed on behalf of defendants/petitioners under Section 10 and 151 C.P.C. has been dismissed.

2. Heard learned counsel for the petitioners and perused the petition and documents on record.

3. The facts, in brief, are that the petitioners of this case sold Schedule 1 property to the plaintiffs/respondents on receiving total consideration amount of Rs. 12,50,000/- in



favour of plaintiffs vide registered sale deed dated 30.01.2014 stating that sale is free from all defects and from any type of litigation and it is alleged that believing on that the defendants purchased the same. However he has received summon from the Court of Sub-Judge, Danapur and came to know that property sold by defendants with plaintiffs is subject matter of that suit and plaintiffs of that case and defendants of this case fought the matter before survey office in 2005 but the defendants did not disclose the same at the time of sale and suppressed the fact that property under sale deed is not free from all defects of title and so defendants/petitioners are liable to refund Rs. 13,77,800/- (received consideration amount and expenses on stamp duty etc.).

4. As per the petition, T.S. No. 263/14 is pending before the trial court in which plaintiffs and defendants of the Money Suit No. 48/15 are also parties and the plaintiffs in T.S. No. 263/14 is also claiming their title on the suit property which is the subject matter on which the Money Suit is based.

5. Learned counsel for the petitioners submits that since in both the said suits the parties and suit property are common accordingly, the proceeding in subsequent money suit may be stayed till disposal of the Title Suit No. 263/2014. He



further submits that impugned order has been passed illegally by the trial court without considering that money suit will not survive till disposal of the earlier Title Suit. No. 263/2014 and the impugned order has been passed without assigning the valid and cogent reason.

6. The learned trial court in its impugned order observed that the present suit has been brought for return of money but T.S. No 263/2014 is related to title, in both the suit the parties are not the same and cause of action are also different. It is also observed that the proceeding in this case is in final stage accordingly, the application under Section 10 C.P.C. filed by defendant is not liable for acceptance and accordingly, dismissed the application.

7. In T.S. No. 263/14 plaintiffs/petitioners are defendants 3rd set and respondents are defendants 4th set. Plaintiffs and defendants 1st set and 2nd set are not party in the said suit. The nature of both suit are also different. The procedure of both suits are different and the petition under Section 10 C.P.C. has been filed when the Money Suit is in final state.

8. Section 10 of C.P.C. bars the two parallel litigation between the same parties on the same cause of action to avoid



multiplicity of proceedings and harassments to the parties. It requires that matter in the issue in the later suit must be directly and substantially the same as in the previous suit. It is not applied when issues in both suits are distinct and different. It avoids two contradictory decisions on the same subject matter. This Section is inserted in the C.P.C. with the purpose that the defendant should not suffer twice for the same cause of action. The test for applicability of Section 10 C.P.C. is whether the final decision in a previously instituted suit would operate as res-judicata in the subsequent suit.

9. Considering the aforesaid facts and circumstances and in view of the law as discussed above, this Court finds that the impugned order does not require any interference by this Court.

10. Accordingly, this Civil Miscellaneous Application is dismissed.

(Sunil Dutta Mishra, J)

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