

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.279 of 2018

Kaladhar Jha Son of Late Madhukant Jha, Resident of Village-Goraul, P.O.
and P.S. Goraul, District Vaishali

... .. Petitioner/s

Versus

1. Pramod Jha and Anr
2. Saroj Kumar Jha @ Subodh Jha. Both Son of Late Jugeshwar Jha Resident
of Village P.O. and P.S. Goraul, District Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Srinandan Prasad Singh, Sr. Adv. Mr. Atul Prakash, Adv. Mr. Rana Veer Prawar, Adv.
For the Respondent/s	:	Mr. Chandra Mauli Chaurasia, Adv.
For the State	:	Mr. Madan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

20 04-09-2023

1. Heard learned counsel for the parties.

2. The present application has been filed against the order dated 14.11.2017 passed by learned Sub-ordinate Judge, IV, Vaishali, Hajipur in Title Suit No. 1208 of 2013, by which he has allowed the application filed by the original defendant-respondent under Section 10 of the C.P.C. and directed for the stay of Title Suit No.1208 of 2013 till the disposal of Title Suit No.395 of 2000. The petitioners, who are the plaintiff of Title Suit No.1208 of 2013, have filed the aforesaid Title Suit for declaration of title of the plaintiff-petitioner over the land described in Schedule 1 of the plaint.

3. Learned senior counsel for the petitioner has submitted that the respondent has also filed Title Suit No. 395 of 2000 for declaration of his title over lands described in Schedule 1 of the plaint along with ancillary reliefs. He has



relied on paragraph nos. 4 and 5 of the plaint of Title Suit No. 395 of 2000 and has submitted that the original defendants of Title Suit No. 1208 of 2013 have admitted the share of 7 decimal of land of the petitioner.

4. Learned Senior Counsel for the petitioner further submits that the original defendant – respondent had filed an application on 07.08.2015 under section 10 of CPC in Title Suit no. 1208 of 2013 for stay of further proceeding in the Suit till disposal of Title Suit no. 395 of 2000 and a rejoinder to the same was also filed on behalf of the petitioner on 14.08.2015. The said application was rejected by the Trial Court by an order dated 03.03.2016, against which the respondent filed Civil Miscellaneous Case No. 218 of 2016 which was dismissed as withdrawn by order dated 22.03.2017. Again, a similar petition under section 10 of CPC for stay of further proceeding in Title Suit No. 1208 of 2013 till disposal of Title Suit No. 395 of 2000 was filed by the original defendant-respondent. The trial Court after hearing the parties has allowed the said petition by the impugned order dated 14.10.2017 and has stayed further proceeding in Title Suit No.1208 of 2013 till disposal of title suit no. 395 of 2000.

5. Learned counsel for the petitioner has



submitted that the Trial Court had no jurisdiction to review its own order dated 03.03.2016 (Annexure 3) which was affirmed by this Court by order dated 22.03.2017 (Annexure 4), therefore, the impugned order is fit to be set aside.

6. Learned counsel for the original defendant-respondent submits that after dismissal of the application under Section 10 of the C.P.C. till this Court, the original defendant filed an amendment application and the same was allowed and thereafter, the defendants again filed an application under Section 10 of the C.P.C. and whereafter, the impugned order has been passed. He also submitted that an application filed under Section 10 of the CPC application after amendment is maintainable as the facts have changed.

7. I have considered the submissions of the parties.

8. The Title Suit No. 1208 of 2013 has been filed by the petitioner, in which there are two defendants namely Pramod Jha @ Pramod Kumar Jha and Saroj Kumar Jha @ Subodh Jha, whereas in the second case i.e. Title Suit No. 395 of 2000, the plaintiffs are Pramod Jha @ Pramod Kumar Jha and Saroj Kumar Jha @ Subodh Jha and there are more than 20 defendants. Initially, the petitioner was not a defendant in the



case but he was substituted later.

9. It will be relevant to quote section 10 of the C.P.C., which reads as under:

*10. Stay of suit.- 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 [Supreme Court].”*

10. In the present case, the application was earlier dismissed by the Trial Court on 03.03.2016 and the same was challenged before this Court in Civil Misc. No.218 of 2016, which was withdrawn. The order dated 22.03.2017 passed by this Court in Civil Misc. No. 218 of 2016 reads as under:

*“Mr. Chandra Mauli Chaurasia, learned counsel appearing for the petitioners seeks permission to withdraw this application.
Permission is accorded.
The application is dismissed as withdrawn.”*

11. From the order dated 22.03.2017 it is apparent that the petitioners had withdrawn the application and,



therefore, the order dated 03.03.2016 had become final. While withdrawing the application, Pramod Jha @ Pramod Kumar Jha and Saroj Kumar Jha @ Subodh Jha, petitioners in the earlier Civil Misc. application, did not take any permission from this Court for filing a fresh application under Section 10 of the C.P.C. Moreover, for staying the further proceeding of the suit under Section 10 of the C.P.C. the parties in both the suits should be same or the parties are litigating under the same title. In the present case, in the first suit, there are twenty parties and in the second suit there are only two parties and all the parties do not seem to be same. Moreover, in paragraph 9 of their plaint, the respondents have themselves said that since Kishori Jha and Naubat Lal Jha had already substituted in place of Devi Jha and partitioned their share in family property, they have no interest in the land dispute as such they are also not necessary defendants in the partition suit, meaning thereby, that the petitioners were not a necessary party though subsequently the petitioners have been added in the suit by amendment.

12. In view of the fact that the application under Section 10 filed by the petitioner was earlier rejected vide order dated 03.03.2016 and the same was challenged before this Court in Civil Miscellaneous Case, which was withdrawn without any



leave to file a fresh application under Section 10 of the C.P.C., the respondents cannot be allowed to re-agitate the matter. The application under Section 10 of the C.P.C. should not have been entertained by the Subordinate Judge.

13. This application is dismissed.

(Sandeep Kumar, J)

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