

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.343 of 2025

Smt. Purimila Devi @ Pramila Devi W/o- Chhabila Chaudhary, R/o- Village- Nautan Dube, Ward No. 14, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.

... .. Petitioner/s

Versus

1. Umashankar Choudhary Son of Late Shalik Choudhary, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
2. Shiv Raut Son of Late Rampreet Raut, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
3. Bikrama Raut Son of Late Rampreet Raut, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
4. Bhagirathi Raut Son of Late Rampreet Raut, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
5. Amar Raut Son of Late Rampreet Raut, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
6. Sohan Raut Son of Late Rampreet Raut, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
7. Khobhari Sharma Son of Late Jhariman Sharma, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
8. Veer Sharma Son of Late Jhariman Sharma, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
9. Hari Sharma Son of Late Jhariman Sharma, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.
10. Sunil Sharma Son of Late Jhariman Sharma, R/o- Village- Nautan Dube, Khairatola, P.S. Nautan, District- West Champaran, Bihar- 845438.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Sinha, Advocate Mr. Ashok Kumar Gupta, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 01-07-2025

The record taken up on mentioning being made on behalf of the petitioner.

2. Heard learned counsel for the petitioner and I



intend to dispose of the instant petition at the stage of admission itself.

3. The petitioner is aggrieved by the order dated 10.07.2024 passed by the learned Munsif, Bettiah, West Champaran in Title Suit No. 67 of 2016 whereby and whereunder the learned trial court stayed the proceeding of Title Suit No.67 of 2016 by allowing the petition dated 22.08.2022 filed by the respondent/defendant 1st set under Section 10 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

4. The learned counsel for the petitioner submits that the respondents 2nd set initially filed Title Suit No. 286 of 2015 claiming property of *Khata* No. 575, *Khesra* No.6610, Area 2 *Katha*, which was executed in favour of the petitioner through registered sale deed dated 19.06.2015. The plaintiff of Title Suit No. 286 of 2015 claimed that the original landlords Bhosdi Raut and Devbali Raut vide registered sale deed dated 08.06.1945 sold out 3 Katha 15 Dhur of land to Sheikh Kasim, but due to mistake of scribe in place of *Khesra* No. 6610, *Khesra* no.6609 was recorded, but the boundary was correct. Subsequently, a part of the said land was purchased by the plaintiff, but the mistake in mentioning the wrong *Khesra* number continued. On the other hand, the petitioner filed Title Suit No. 67/2016 against



the defendants/respondents of the present case and the claim of the petitioner is that the sale deed of the plaintiff mentioning *Khesra* No. 6609 is correct and the land purchased by the petitioner bearing *Khata* No.575, *Khesra* No. 6610, Area 2 Katha which the petitioner purchased from the heirs of the original land owner is correct. The learned counsel further submits that the claim of the petitioner in a subsequent suit is that the sale deed of the plaintiff of Title Suit No. 286/2015 mentions the correct *Khesra* number which is 6609 and they have no concern with *Khesra* No. 6610. So the dispute in the two suits does not relate to the same issue. Therefore, the learned trial court committed an error in staying the subsequent suit.

5. Perused the record.

6. Perusal of record makes it amply clear that the parties to the suits are the same. Now, Section 10 of the Code 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] have 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].*

Explanation – The pendency of a suit in a foreign Court does not preclude the Courts in [India] from trying a suit founded on the same cause of action.”

7. Therefore, if the matter in issue is the same or substantially the same in both the suits, subsequent suit could be stayed.

8. The Hon’ble Supreme Court in the case of ***Aspi Jal & Anr. Vs. Khushroo Rustom Dadyburjor***, reported in **(2013) 4 SCC 333** held that if the decision of the first suit would act as *res judicata* in subsequent suit, then the subsequent suit is covered under the provisions of Section 10 of the Code and subsequent suit would not proceed. It would be appropriate to quote paragraphs 9 and 10 of the said decision:-

“9. Section 10 of the Code which is relevant for the purpose reads as follows:

*“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 the Supreme Court.

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. “no court shall proceed with the trial of any suit” makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from



simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.

10. The view which we have taken finds support from a decision of this Court in National Institute of Mental Health & Neuro Sciences vrs. C. Parameshwara, in which it has been held as follows:

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two 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. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject- matter in both the proceedings is identical.”

9. In the present case, perusal of record is very much apparent that both the parties are litigating with regard to title and ownership of *Khata* No. 575, *Khesra* No. 6610, Area 2 Katha and apart from that, there is no other dispute between the parties. So whole subject matter in both the proceedings is identical. If the first suit is decided, automatically the claim of the petitioner/defendant in the subsequent suit would become barred by *res judicata*. It is clear case attracting the provisions of Section 10 of the Code and the learned trial court, taking into consideration all the facts, rightly stayed the subsequent suit.

10. In the light of discussion made here-in-above, I have no hesitation in holding that the learned trial court has not committed any illegality or irregularity and there appears no



error of jurisdiction so as to interfere with the impugned order
and hence, the impugned order dated 10.07.2024 is affirmed.

11. Finding no merit in the present petition, the same
is dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.07.2025
Transmission Date	NA

