IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.272 of 2023

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Saheb Rai @ Saheb Ray S/o Late Dina Nath Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District-Saran

... ... Petitioner/s

Versus

1. Kameshwar Rai Son of Late Nagina Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.
2. Rameshwar Rai S/o Late Nagina Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.

3.1. Manager Rai, Son of late Ashrafi Rai, Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

3.2. Mandrika Rai, Son of late Ashrafi Rai, Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

3.3. Most. Sita Devi, Wife of late Chandeshwar RAi, Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

3.4. Rajan Kumar, Son of late Chandeshwar Rai Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

3.5. Neha Kumari, D/o of late Chandeshwar Rai, Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

3.6. Rekha Devi, D/o of late Chandeshwar Rai, Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

4. Bhola Rai Son of Late Kailash Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.
5. Gorakh Rai Son of Late Kailash Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.
6. Wakil Rai Son of Late Kailash Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.
7. Baban Rai Son of Late Baijnath Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.
8. Ram Babu Rai Son of Late Baijnath Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.
9. Jagar Nath Rai Son of Late Buddhu Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.

10.1. Santosh Rai, Son of late Ram Nath Rai, Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

10.2. Dharmendra Rai, Son of late Ram Nath Rai, Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

10.3. Jitendra Rai, Son of late Ram Nath Rai, Resident of Village and P.O.- Tejpurwa, P.S. Marhaura, District- Saran.

10. Vishal Rai, Son of late Ram Nath Rai, Resident of Village and P.O.-

4. Tejpurwa, P.S. Marhaura, District- Saran.

10. Usha Devi, D/o of late Ram Nath Rai, Resident of Village and P.O.-
5. Tejpurwa, P.S. Marhaura, District- Saran.

10. Pushpa Devi, D/o of late Ram Nath Rai, Resident of Village and P.O.-
6. Tejpurwa, P.S. Marhaura, District- Saran.

11. Sheo Nath Rai Son of Late Buddhu Rai Resident of Village and P.O. Tejpurwa, P.S. Marhaura, District Saran.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Nagendra Rai, Advocate
Mr. Navin Nikunj, Advocate
Mr.Koshalendra Rai, Advocate
For the Respondent/s : Mr.Arun Kumar Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
Date : 22-05-2025

The instant civil miscellaneous petition has been filed for setting aside the order dated 24.11.2022 passed by learned Sub Judge -I, Saran at Chapra in Title Suit No. 562 of 2020, whereby and whereunder the application dated 07.01.2022 filed by the defendant under Section 10 of the Code of Civil Procedure (in short 'the Code') with prayer to stay the proceeding in Title Suit No. 562 of 2020 has been rejected.

2. Briefly stated, the facts of the case are that the petitioner is defendant of Title Suit No. 562 of 2020 and the respondents are plaintiffs. The respondents have filed a title suit for declaration that in Plot No. 2551 under Khata No. 550, Mauza – Talpuraina, Police Station – Marhowrah, District –

Saran, the plaintiff nos. 1 and 2 have got 1/3 share, plaintiff nos. 3 to 11 have 1/3 share and defendant has 1/3 share and in Plot No. 2528 under Khata No. 664 of the same village plaintiff nos. 1 and 3 have got 9 1/3 katha, plaintiff nos. 3 to 11, 9 1/3 katha and 2 1/3 katha of defendant. Further declaration has been sought that judgment and decree dated 18.11.2019 and 29.11.2019, respectively passed in Title Suit No. 191 of 2018 were not binding upon the plaintiffs. From the plaint, it appears that one Badri Raut was the common ancestor of the parties who died leaving behind 3 sons Sakhi, Lakhi and Sewak. Defendant is the descendant of Sakhi Raut whereas plaintiffs Kameshwar Rai and Rameshwar Rai were the descendants of Sewak Raut and other plaintiffs are descendants of Lakhi Raut. A partition took place in the three branches in the year 1971 to the tune of 1/3 share and the branches started cultivating their land separately and some of the property jointly. But no partition by metes and bounds took place. As there was no partition of ancestral property by metes and bounds amongst the ancestors, when the defendant Saheb Rai started selling the properties without any partition, plaintiff nos. 1 and 2 brought partition suit before the learned Sub Judge, Saran for partition of the ancestral property vide Title

Partition Suit No. 65 of 2006 and the learned trial court decreed the suit in favour of plaintiff nos. 1 and 2. When the land of Khesra Nos. 2528 and 2551 was to be acquired for Marhowrah Diesel Locomotive Factory, the defendant Saheb Rai sought land possession certificate from the Circle Officer but the Circle Officer did not issue any certificate. Thereafter, even the appellate authority did not pass any order in favour of the defendant and observed that the defendant could file a case before the court of competent jurisdiction. Thereafter, defendant Saheb Rai filed a suit for declaration of 8 katha 5 dhur land of Plot No. 1551, Khata No. 599 and Plot No. 2528, Khata No. 664 vide Title Suit No. 367 of 2017. Subsequently, the plaintiffs came to know on 01.10.2020 that the defendant, by using forged papers, received the compensation amount of land acquisition. The plaintiffs also came to know that the defendant without making the plaintiffs party instituted a suit bearing Title Suit No. 191 of 2018 with regard to Plot Nos. 2528 and 2551 and got an ex-parte decree in his favour. Thus, in the light of the aforesaid facts, Title Suit No. 562 of 2020 has been instituted. The defendant appeared in the suit and filed his written statement denying the claim of plaintiffs about joint family acquisition of Plot Nos. 2528 and 2551 and also

denying the plea of partition amongst the three branches of Badri Raut in 1971. The defendant took the plea that there was partition amongst 3 sons of Badri Raut in Jyesth of 1940 and all the ancestors/khatiyani property were partitioned in 3 shares. The defendant furnished the details about exclusive right over Plot Nos. 2528 and 2551. The defendant further took the defence that Title Suit No. 191 of 2018 was filed against the State as in the land acquisition proceeding the State was claiming the land as its own. Thereafter, the defendant/petitioner filed a petition on 01.07.2022 under Section 10 of the Code stating therein that the subject matter of the dispute as well as prayer in the suit are same/substantially the same as in Title Suit No. 367 of 2017. The defendant/petitioner further claimed that the reliefs are substantially the same involving adjudication of substantially the same issue. Thus, the prayer was made to stay the subsequent suit, i.e., Title Suit No. 562 of 2020, under Section 10 of the Code. The plaintiffs/respondents filed rejoinder to the aforesaid petition on 10.02.2022 opposing the prayer for staying of Title Suit No. 565 of 2020. The learned trial court heard the parties and dismissed the petition vide order dated 24.11.2022 and the said order is under challenge before this

Court.

3. Learned counsel for the defendant/petitioner submitted that the impugned order is bad in law and untenable. It is a perverse order passed by a court which has failed to exercise its jurisdiction vested in it. The learned trial court has acted with material illegality in passing the impugned order. There is complete non-application of mind which is apparent from the observation made by learned trial court in the impugned order. The learned trial court has held that suit property and parties of both the suits are the same and title of the parties in both the suits is a core issue, still impugned order has been passed. The learned trial court has further committed error of record by misreading the material available on record for holding that Section 10 of the Code is not for staying an earlier suit pending disposal of the subsequent suit because the prayer was made for staying the subsequent suit pending disposal of earlier suit. Learned counsel further submitted that the learned trial court has erred in holding that issues are different and has misconstrued the pleadings to arrive at such a conclusion ignoring the fact that the matter in issue in both the suits are directly and substantially the same. The learned trial court did not apply the touchstone of Section 10 of the Code as

to whether decree in the earlier suit will be *res judicata* for the subsequent suit or not. Learned counsel further submitted that the earlier suit was filed by the defendant/petitioner for declaration of his title over the suit land of Plot Nos. 2528 and 2551. The respondents appeared in the suit and filed their written statement wherein they have claimed that all the 3 branches have 1/3 share in the suit property. So bringing another suit seeking partition of the same property and seeking declaration against the judgment and decree of Title Suit No. 191 of 2018 shows the matter in issue in both the suits are substantially the same. Therefore, there was no occasion for the learned trial court to hold that issues involved in both the suits are not the same and it recorded a wrong finding that Section 10 of the Code was not applicable. Thus, learned counsel submitted that the impugned order could not be sustained and the same needs to be set aside.

4. Learned counsel appearing on behalf of the respondents submitted that there is no infirmity in the impugned order and for this reason, the impugned order does not need any interference from this Court. Learned counsel further submitted that the plaintiffs/respondents have been claiming title over the suit land on the basis of settlement and

also sought relief for setting aside the judgment dated 18.11.2019 and decree dated 29.11.2019 on the ground that defendant/petitioner has fraudulently obtained the aforesaid judgment without impleading the plaintiffs/respondents as parties in Title Suit No. 191 of 2018. But the defendant/petitioner has been claiming the title over the suit land on the basis of exchange and has thus filed Title Suit No. 367 of 2017. During the pendency of this title suit, the defendant/petitioner fraudulently filed Title Suit No. 191 of 2018 against the State of Bihar and concealed the facts of Title Suit No. 367 of 2017 and fraudulently obtained the judgment and decree without impleading the plaintiffs/respondents as parties. Therefore, the issues of Title Suit No. 367 of 2017 and Title Suit No. 562 of 2020 are not the same. Learned counsel further submitted that though in both the title suits, the subject matter and parties are same but their cause of action for filing respective suits are different and for this reason, there could be no application of Section 10 of the Code in Title Suit No. 562 of 2020. Further, reliefs in the two title suits are different. In Title Suit No. 562 of 2020, relief has been sought for partition of the suit land and setting aside the judgment and decree passed in Title Suit No. 191 of 2018 but in Title Suit No. 367

of 2017, relief has been sought for declaration of right and title over the suit land. Therefore, the issues involved in the two suits are quite different and are not the same issue. Thus, learned counsel submitted that the learned trial court has properly appreciated the facts and the law and rightly rejected the claim of the defendant-petitioner. Therefore, there is no merit in the present petition and is fit to be dismissed.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. The issue involved in the present petition falls within a narrow compass. It is to be seen whether subsequent Title Partition Suit No. 562 of 2020 needs to be stayed and whether the learned trial court should not proceed in the matter in the light of pendency of Title Suit No. 367 of 2017 having regard to the provision of Section 10 of the Code. 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."

6. From the provision it is apparent that if the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties, or between the parties under whom they or any of them claim litigating under the same title where such suit is pending in a court of competent jurisdiction, the court shall not proceed with the trial of subsequent suit. The object underlying Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying the two parallel suits in respect of the same matter in issue. It is to avoid recording of conflicting findings on issues which are directly and substantially in issue in a previously instituted suit. The fundamental test to attract Section 10 is, whether that final decision being reached in the

previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 of the Code would be applicable only in case where the whole of the subject matter in both the suits is identical. In other words, the matter in issue is directly and substantially in issue in a previously instituted suit and the matter in issue could not incidentally or collaterally be issue in subsequent suit. Thus, Section 10 of the Code would be applicable 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 suits is identical. In other words whole of the subject matter in both the proceedings is identical. Reliance could be placed in this regard on the case of ***National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara***, reported in ***AIR 2005 SC 242***. Subsequently, the Hon'ble Supreme Court relied on ***National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara*** *(supra)* in the case of ***Aspi Jal & Anr. Vs. Khushroo Rustom Dadyburjor***, reported in ***(2013) 4 SCC 333*** and held in Paragraphs 9 and 10 under:-

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

7. Reverting to the facts of the case, admittedly suit property and the parties are same. So it is to be seen whether

matter in issue is directly and substantially the same in both the suits. In Title Suit No. 367 of 2017 the defendant/petitioner has sought the relief of declaration of his right and title over the suit property apart from facts of the suit and other relief deem fit and proper by the court. Now in Title Suit No. 562 of 2020, relief sought by the plaintiffs/respondents is for declaration of 1/3 share of the plaintiffs. Further, relief has been sought that the judgment and decree of Title Suit No. 191 of 2018 were not binding upon the plaintiffs/respondents. When the plaintiffs/respondents appeared in Title Suit No. 367 of 2017, they filed their written statement and in their written statement narrated the facts subsequently averred in the plaint of their Title Suit No. 562 of 2020 and in their written statement they have contested the claim of the defendant-petitioner and reiterated their claim about 1/3 share of the parties in the suit property. Title Suit No. 562 of 2020 has been filed with same prayer. So far as seeking relief against the judgment and decree of Title Suit No. 191 of 2018, the same is contingent upon declaration sought by defendant-petitioner in Title Suit No. 367 of 2017. If the defendant/petitioner succeeds, the plaintiffs/respondents would be unsuited and their claim against judgment and decree of Title Suit No. 191

of 2018 would fall flat. If the defendant/petitioner does not succeed in proving his claim in Title Suit No. 367 of 2017, by implication, the claim of the plaintiffs/respondents of 1/3 share of the properties would come to be upheld. It goes without saying that in every partition suit there is implicit declaration of title of the party, albeit, to the extent of share of the parties. Therefore, I am of the considered view that the matter in issue in Title Suit No. 562 of 2020 is substantially the same in Title Suit No. 367 of 2017 and the decision in Title Suit No. 367 of 2017 would operate as *res judicata* so far as declaration of title with regard to suit property is concerned. As already noted that if defendant/petitioner succeeds in proving his title, there would be no occasion for the plaintiffs/respondents to continue with the subsequent suit.

8. Having regard to the discussion made hereinbefore, I have no hesitation in holding that the learned trail court committed a serious error of jurisdiction while passing the impugned order and hence, the impugned order could not be sustained and the order 24.11.2022 is set aside and application dated 07.01.2022 filed by the defendant/petitioner is allowed.

9. Accordingly, the present petition stands allowed.

10. However, it is made clear that the observation made hereinbefore are only for the purpose of disposal of the present petition and are not comments on the merits of the case of the parties and will not cause prejudice to either sides.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	24.03.2025
Uploading Date	22.05.2025
Transmission Date	NA