IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.766 of 2019

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1. Urmila Mishra W/o Late Birendra Mishra R/o Village and PO and PS Sathi District-West Champaran, at present r/o Village Chilwaniya, P.S. Banjariya, PO Motihari, Dist.-East Champaran
2. Ajay Kumar Mishra S/o Late Birendra Mishra R/o Village and PO and PS Sathi District-West Champaran, at present r/o Village Chilwaniya, P.S. Banjariya, PO Motihari, Dist.-East Champaran
3. Abhay Kumar Mishra S/o Late Birendra Mishra R/o Village and PO and PS Sathi District-West Champaran, at present r/o Village Chilwaniya, P.S. Banjariya, PO Motihari, Dist.-East Champaran
4. Sanjay Kumar Mishra S/o Late Birendra Mishra R/o Village and PO and PS Sathi District-West Champaran, at present r/o Village Chilwaniya, P.S. Banjariya, PO Motihari, Dist.-East Champaran
5. Ranjana Pandey W/o Nitish Pandey and D/o Late Birendra Mihsra R/o Village-Rupahari,P.O. Kapurpadi, P.S. Sikarganj, Dist.-East Champaran

... ... Petitioner/s

Versus

1. Lal Babu Thakur S/o Late Singhasan Thakur R/o Village and P.S. Sathi, Dist.-West Champaran.
2. Lalita Devi W/o Bechuj Thakur, D/o Late Singhashan Thakur R/o Village-Matiyariya, P.O. Narkatiyaganj, P.S. Narkatyaganj, Dist.-West Champaran

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Chandra Kant, Advocate
Mr. Sudhanshu Prakash, Advocate
Mr. Navin Kumar, Advocate
For the Respondent/s : Mr. Shiv Kumar Dwivedy, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
Date : 31-07-2025

The instant civil miscellaneous petition has been filed by the petitioners for setting aside the order dated 08.04.2019 passed by the learned Munsif, Narkatiyaganj in Title Suit No. 12 of 2015 whereby and whereunder the learned trial court has allowed the petition filed by defendants/respondents under Section 10 of the Code of Civil Procedure (for short 'the Code').

2. Briefly stated, the facts of the case, as flowing

from the record, are that the father of the respondents filed Title Suit No. 75 of 2007 against the husband of petitioner no.1 and father of petitioner nos. 2 to 5 seeking preliminary decree of account and assessment of amount payable to the defendant and also for return of the mortgage deed of the plaintiff after taking back mortgage amount and also for delivery of the mortgaged property. Further, pursuant to the preliminary decree, passing of a final decree was also prayed for payment of all accounted and assessed amount by the plaintiff to the defendant. The original plaintiff stated in his plaint that he owned and possessed schedule 1 land of 3 *katha* 10 *dhur* and as he was in need of money, he entered into negotiation with the defendant to mortgage his schedule 1 land by executing a deed of *Bainama Basart Wapasi* for a consideration amount of Rs. 30,000/- and the defendant agreed to purchase the land with condition to return the land to the plaintiff on demand on the payment of price amount of Rs. 30,000/-. The plaintiff executed the deed on 07.11.2000. The plaintiff further stated that as no time was fixed for return of the land in the deed of *Bainama Basart Wapasi*, the land was to be returned by the defendant to the plaintiff at any time on demand by the plaintiff and payment of price money to the plaintiff by the defendant. After execution of the deed of

Bainama Basart Wapasi, the possession was delivered to the defendant. Thus, the plaintiff claimed that in fact the deed of *Bainama Basart Wapasi* is virtually a mortgage by conditional sale and the deed is a mortgage deed. Thereafter, the plaintiff claims he approached the defendant on 02.02.2007 and asked him to accept the price amount and execute a registered return deed and give back possession of the land as per terms and conditions of the mortgage deed but the defendant refused to accept the amount and execute a return deed to deliver back the possession of the land to the plaintiff. The plaintiff sent a notice to defendant by registered post on 05.02.2007 which was returned undelivered. Another notice was sent through registered post on 21.02.2007 to the address of the defendant and this registered cover was also returned undelivered. Thereafter, the plaintiff filed the present suit for the aforesaid reliefs. The defendant appeared and filed his written statement contesting the claim of the plaintiff. The defendant claimed that the deed was not a deed of mortgage with conditional sale and it was an outright sale deed. No time limit was given in the deed for return so it is clear that the claim of the plaintiff about deed of mortgage by conditional sale is not correct and he has got no right to file the suit for redemption. Meanwhile, during

pendency of Title Suit No. 75 of 2007, the plaintiff forcibly dispossessed the defendant and information about dispossession was given to the court by the defendant. The plaintiff admitted in the learned trial court that defendant has been dispossessed from the suit land and the court directed the plaintiff to inform the court about market price of crops.

3. During the pendency of Title Suit No. 75 of 2007, the petitioners of the present case, who are heirs/legal representatives of original defendant of Title Suit No. 75 of 2007, filed Title Suit No. 12 of 2015 submitting, *inter alia*, that Singhasan Thakur, the father of the defendants, executed a sale deed in favour of Virendra Mishra, the husband and the father of the plaintiffs, respectively and the father of the defendants delivered the possession of said land to Virendra Mishra who has been claiming the title and possession on the basis of sale deed dated 07.11.2000. Since no time limit was prescribed in the sale deed, when no action was taken by the father of the defendants within the time limit, the claim over the suit property became time barred. The plaintiffs/petitioners also claimed that Singhasan Thakur got an *ex parte* decree in Title Suit No. 75 of 2007 and a Misc. Case No. 12 of 2000 was allowed on 09.11.2014 and *ex parte* decree passed in Title Suit No. 75 of

2007 was set aside. The defendants/respondents started disturbing the possession of the plaintiffs/petitioners and cut the paddy crop from the land of the plaintiffs/petitioners on 09.11.2014 and took possession of the suit property. The defendants admitted that they have taken possession over the suit property and court proceeded for making valuation of the paddy crop cut by the defendants. Thus, the plaintiffs/petitioners claimed that they have been illegally dispossessed and the defendants encroached upon their land and sought relief of recovery of possession after declaring the possession of the defendants on the suit land as illegal. The defendants appeared in Title Suit No. 12 of 2015 and filed the written statement. In their written statement, the defendants claimed that the plaintiffs were never in possession of the land and it was in possession of the defendants and the deed was mortgage deed and it was not a sale deed. During pendency of the suit filed by the petitioners, defendants/respondents filed a petition on 25.05.2016 under Section 10 of the Code seeking stay in a proceeding of Title Suit No. 12 of 2015 as earlier Title Suit No. 75 of 2007 was still pending and the suit property and the parties were same. The plaintiffs/petitioners filed a rejoinder contesting the claim of the defendants/respondents. After hearing the parties, the learned

trial court allowed the petition filed by the defendants/respondents and stayed the Title Suit No. 12 of 2015 vide order dated 08.04.2019. The said order is under challenge before this Court.

4. Learned counsel for the petitioners submitted that the impugned order has been passed by the learned trial court is a non-speaking and cryptic order and thus, the learned trial court has failed to exercise the jurisdiction vested in it. The learned trial court completely failed to see that ingredients of Section 10 of the Code are not available and for this reason subsequent suit cannot be stayed. The learned trial court lost sight of the fact that the subsequent suit has been filed under Section 6 of the Specific Relief Act for recovery of possession of the land and for declaring the possession of the defendants as illegal and nothing more. The learned trial court ought to have considered that when the petitioners were dispossessed by the respondents then they have no remedy for recovery of possession in the first suit which has been filed by the plaintiffs for redemption of mortgage. Learned counsel further submitted that issues in the two suits are different and therefore, petition under Section 10 of the Code cannot be entertained. Learned counsel further submitted that in the first suit i.e., Title Suit No. 75 of 2007, the

said suit has been filed by the respondents seeking redemption of mortgage claiming the deed executed in favour of the husband and the father of the petitioners to be a deed of mortgage by conditional sale and not a deed of outright sale with condition of re-purchase. The respondents have also sought delivery of possession through the process of the court if the petitioners failed to execute a registered deed of return. But during pendency of their redemption suit, the respondents dispossessed the petitioners and the petitioners were compelled to file the suit under Section 6 of the Specific Relief Act which provides for recovery of possession. Learned counsel thus submitted that the issue involved in the subsequent suit is not the issue directly and substantially the same in the first suit. Even if the first suit is disposed of, it would not operate as *res judicata* for the subsequent suit. If the suit is decided in favour of the petitioners, there being no prayer or counter claim for recovery of possession, petitioners would be compelled to file a suit for recovery of possession. Moreover, proceeding under Section 6 of the Specific Relief Act is independent of title and the court has to only ascertain whether the plaintiff has been illegally dispossessed and for this reason a summary proceeding has been provided and the order has been made revisable. Even

if a suit under Section 6 of the Specific Relief Act fails, the plaintiff has option of filing another suit on the basis of title. The learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***I.T.C. Ltd vs Adarsh Coop. Housing Soc. Ltd***, reported in ***(2013) 10 SCC 169*** in support of his contention. Learned counsel next referred to the decision of a Co-ordinate Bench of this Court in the case of ***Sampati Devi & Ors. Vs. Lalita Devi & Ors.***, reported in ***2016 (4) PLJR 507*** wherein the learned Single Judge quoted the decision of the Hon'ble Supreme Court in the case of ***National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara***, reported in ***AIR 2005 SC 242 : 2005 (2) SCC 256,*** wherein it has been held that fundamental test to attract Section 10 of the Code is whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Learned Single Judge held that Section 10 of the Code would apply only if there is identity of the matter in issue in both the suits, meaning thereby, the whole subject matter in both the proceedings is identical. Learned counsel further submitted that if the decision of the earlier suit would not operate as *res judicata* in the subsequent suit, the learned trial court fell in error in staying the subsequent suit. Thus, the

learned counsel submitted that the impugned order is not sustainable and the same needs to be set aside.

5. Learned counsel appearing on behalf of the respondents vehemently contended that there is no infirmity in the impugned order and there is no occasion for this Court to interfere with the same. Learned counsel submitted that the father of the respondents namely, Singhasan Thakur filed Title Suit No. 75 of 2007 seeking a number of reliefs including direction to the plaintiff to return the mortgage deed after taking back the mortgage amount and also deliver to back the possession of the mortgage property after executing a return deed. The original defendant in that suit avoided service and the matter proceeded *ex parte* and the judgment and decree were passed by the learned trial court on 08.09.2009 and 12.09.2009, respectively. The decree holder filed Final Decree Case No. 3 of 2009 before the court and meanwhile the judgment debtor filed Misc. Case No. 12 of 2010 under Order 9 Rule 13 of the Code. Learned counsel further submitted that during pendency of the Misc. Case No. 12 of 2010, both the plaintiff and defendant of original suit died and their legal heirs have been substituted. During pendency of the case, the decree holder deposited the consideration amount before the learned trial court and came in

absolute possession of the land in question. On 16.05.2024, after hearing the parties, the learned trial court allowed the Misc. Case No. 12 of 2010. The learned counsel further submitted that since the deed in question was a mortgage deed, the original plaintiff was in possession and after the *ex parte* judgment, the plaintiff deposited mortgage amount before the court and thereafter came in possession as a title holder. Learned counsel further submitted that if the Redemption Title Suit No. 75 of 2007 is decided in favour of the plaintiff, the same would operate as *res judicata* against the claim of the defendants, the petitioners herein and the learned trial court has rightly stayed the subsequent suit. The main issue involved is whether the deed in question is mortgage deed or sale deed. Learned counsel further submitted that petitioners filed the present petition only to linger the matter and prayed for imposition of cost on the petitioners. Learned counsel further submitted that subject matter is the same/identical, the suit property is same and the parties are same, hence, all the ingredients of Section 10 of the Code are present and, therefore, the impugned order is just and proper and does not suffer from any illegality. Learned counsel, however, while concluding the argument, submitted that if the court is inclined to grant any relief to the petitioners after

finding that the subsequent suit should not have been stayed, this Court could order for amalgamation of both the suits and order for their trial side by side. Learned counsel submitted that the inherent power under Section 151 of the Code is available to court to make such order for ends of justice to prevent the misuse of the process of the court. In support of his contention, learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal*** reported in ***AIR 1962 SC 527.*** Thus, the learned counsel submitted that there is no infirmity in the impugned order and the order needs no interference.

6. By way of reply, learned counsel for the petitioner submitted that the plaintiff is the master of his own suit and still he kept his suit pending for 11 years and the plaintiff cannot blame the defendant for causing delay in the matter.

7. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

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 1 [India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of 1 [India] established or continued by 2 [the Central Government 3***.] and having like jurisdiction, or before 4 [the Supreme Court].”*

8. In the case of ***National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara,*** (supra), in Paragraph No. 8, the Hon’ble Supreme Court observed as under:

*“**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 contra-distinction 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 subject matter in both the proceedings is identical."*

9. Now coming to the facts of the present case, the first suit has been filed for redemption of mortgage, execution of a return deed and for recovery of possession. Subsequent suit i.e., Title Suit No.12 of 2015 is filed under Section 6 of the Specific Relief Act for recovery of possession and for declaration that the possession of the defendants is illegal.

10. Section 6 of the Specific Relief Act reads as under:-

> ***"6. Suit by person dispossessed of immovable property.-*** *(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person 3[through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set*

up in such suit.

(2) No suit under this section shall be brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

11. The Hon'ble Supreme Court in the case of ***I.T.C. Ltd vs. Adarsh Coop. Housing Soc. Ltd***, (supra) in paragraph no.9 has held as under:-

*"**9.** Section 6 of the Specific Relief Act 1963 under which provision of law the suit in question was filed by the plaintiff-respondent is pari-materia with Section 9 of the Act of 1877. A bare reading of the provisions contained in Section 6 of the Act of 1963 would go to show that a person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him recover such possession by filing a suit. In such a suit, the entitlement of the plaintiff to recover possession of property from which he claims to have been illegally dispossessed has to be adjudicated independently of the question of title that may be set up by the defendant in such a suit. In*

> *fact, in a suit under Section 6, the only question that has to be determined by the Court is whether the plaintiff was in possession of the disputed property and he had been illegally dispossessed therefrom on any date within six months prior to the filing of the suit. This is because Section 6 (2) prescribes a period of six months from the date of dispossession as the outer limit for filing of a suit. As the question of possession and illegal dispossession therefrom is the only issue germane to a suit under Section 6, a proceeding thereunder, naturally, would partake the character of a summary proceeding against which the remedy by way of appeal or review has been specifically excluded by sub-section 3 of Section 6. Sub-Section (4) also makes it clear that an unsuccessful litigant in a suit under Section 6 would have the option of filing a fresh suit for recovery of possession on the basis of title, if any."*

12. Position of law has been made clear by the Hon'ble Supreme Court that when a suit filed under Section 6 of the Specific Relief Act, only inquiry which is made is to see whether the plaintiff has been dispossessed and irrespective of claim of title, the possession is to be restored to the plaintiff if he had earlier been in possession. Further another avenue is open to the plaintiff even if a suit fails under Section 6 of the

Specific Relief Act and if the plaintiff has his claim on the suit property on the ground of title, a fresh suit can be instituted by such plaintiff. The proceeding under Section 6 of the Specific Relief Act is summary in nature and the order passed is revisable. Therefore, it is evident that proceeding under Section 6 of the Specific Relief Act is independent of right and title. No doubt if the redemption suit is disposed of in favour of the plaintiff, the subsequent claim of the petitioners in Title Suit No. 12 of 2015 would automatically fail and on this ground the stay on proceeding of subsequent suit can be said to be correct. However, if the first suit is disposed of in favour of the defendants/petitioners, they would still be required to institute a suit to get the possession of the suit property. Moreover, the claim of the petitioners that they have been illegally dispossessed is also to be adjudicated as is apparent from the plaint of Title Suit No. 75 of 2007 that the plaintiff of that suit, the respondents herein, have sought recovery of possession and now they claim that after the *ex parte* decree was passed, they lawfully came into possession, a fact which require consideration by the Court.

13. In the light of aforesaid facts and circumstances, the subject matter in issue in both the suits could not be said to

be same. Applying the law to the facts of the case in the light of decisions of the Hon'ble Supreme Court in the cases of ***I.T.C. Ltd vs. Adarsh Coop. Housing Soc. Ltd*** (supra) and ***National Institute of Mental Health & Neuro Sciences*** (supra), I am of the considered opinion that the learned trial court committed an error of jurisdiction in staying the Title Suit No. 12 of 2015. Therefore, the impugned order dated 08.04.2019 passed by learned Munsif, Narkatiyaganj in Title Suit No. 12 of 2015 is set aside.

14. Accordingly, the present petition stands allowed.

15. Since the parties and the suit property are same and therefore, for the convenience of the parties and to facilitate smooth conduct of the cases, the learned Principal District Judge, Bettiah, West Champaran is requested to ensure that both the suits are entrusted to the same court and the court so entrusted with the matter would conduct the proceeding in both the suits side by side and dispose them of at the earliest.

(Arun Kumar Jha, J)

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