

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.358 of 2021**

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Lakshaman Ray @ Laxman Yadav Son of Late Lakhan Yadav @ Lakkhi Ray,
Resident of Ward no. 2, Muktapur, Police Station - Kalyanpur, District –
Samastipur. Petitioner/s

Versus

Ram Bilash Yadav Son of Late Ram Saran Yadav, Resident of Ward No. 2,
Muktapur, and Police Station - Kalyanpur, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bijay Bhushan Prasad Nisha Singh Sadhna Suman
For the Respondent/s	:	Mr.Manoj Kumar No.1

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV JUDGMENT

Date : 03-03-2022

The present civil miscellaneous petition has been filed to quash the order dated 26.06.2021 passed by the learned Sub-Judge-V, Samastipur in Title Suit No.141 of 2009 (Ram Bilas Yadav vs. Laxman Yadav), whereby the petition under section 10 of the Code of Criminal Procedure filed by the defendant-petitioner was rejected.

The averment of the defendant-petitioner is that the common ancestor of the petitioner and the respondent, Chulhai Raut died in 1951, leaving behind his three sons, namely, Ram Saran Raut (dead), Ram Lakhan Raut (dead) and Praye Raut (dead). Ram Saran Raut died, leaving behind his three sons, namely, (1) Shivnandan Yadav (2) Raghunandan Yadav and (3) Ram Bilash Yadav and three daughters, namely, (1) Dano Devi



(2) Sheela Devi and (3) Parwati Devi. It is stated further that Shivnandan Yadav and Raghunandan Yadav both died issueless. Ram Bilash Yadav, third son of Ram Saran Yadav, is the present plaintiff of Title Suit No. 141 of 2009. The petitioner-defendant in Title Suit No. 141 of 2009 is the only son of Ramlakhan Raut, who is brother of Late Ram Saran Raut. The heirs of Pyare Raut have not been made party in the suit. The petitioner-defendant and his sons are plaintiffs in Partition Suit No. 24 of 2005. The respondent-plaintiff of Title Suit No. 141 of 2009 and his sons and heirs of Late Pyare Raut are defendants in Partition Suit No.24 of 2005. The petitioner-defendant filed Partition Suit No.24 of 2005 for partition of the jointly family property (Schedule-I of the plaint), claiming his 1/3rd share. In Schedule-I, the land in dispute in Title Suit No. 141 of 2009 has also been included in Schedule-I of Partition Suit No. 24 of 2005 along with other land as joint family property acquired by the common ancestor Late Chulhai Raut in his name.

It has been stated that Title Suit No. 78 of 2001 was filed by the plaintiff-respondent for declaration of his title and recovery of his possession over plot nos. 499 and 496, total area 2 Kattha 1 Dhur. In the said suit, the petitioner being sole defendant, has filed written statement, issues were framed,



witnesses were examined and parties have also filed documents and the case came up for last stage, but because of the lack of pecuniary jurisdiction, by order dated 07.04.2009, the plaint was returned for want of the jurisdiction. Thereafter, the plaintiff filed fresh suit being Title Suit No. 141 of 2009 in the court of learned Sub-Judge, Samastipur for the same suit property and with the same relief. The learned Sub-Judge-V, Samastipur by his order dated 18.12.2020, directed that the suit would be tried *denovo* and he rejected the petition under section 10 of the Code of Civil Procedure for stay of that suit.

The learned counsel for the petitioner-defendant has submitted that admittedly the properties in dispute in Title Suit No. 141 of 2009 are subject matter of Partition Suit No. 24 of 2005 and the matter was directly and substantially matter in issue in both the suits. Parties are also either same or claiming under same ancestors. As such, as per mandatory provisions of Section 10, the subsequent suit, i.e. Title Suit No. 141 of 2009, should have been stayed. It was also necessary for inhibiting the multiplicity of the suits.

It is an admitted fact that the subject-matter of Title Suit No. 141 of 2009 was also a subject matter of Partition Suit No. 24 of 2005. But despite that some other properties were also



included in Partition Suit No. 24 of 2005. In these circumstances, it cannot be inferred that “the matter in issue was directly and substantially involved in both the cases”.

The learned counsel for the respondent has relied upon the decision of the co-ordinate Bench of this Court reported in (i) 2013 (3) PLJR 782, (*Rajesh Kumar Choudhary & others vs. Pradeep Kumar Choudhary & others*) and (ii) 2016 (4) PLJR 507 (*Sampatti Devi & others vs. Lalita Devi & others*). In the case of *Rajesh Kumar Choudhary & others* (supra), after relying upon the decision of Hon’ble Supreme Court in (2005) 2 SCC 256, (*National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara*), the co-ordinate Bench has held as follows:-

“8. The principle underlying Section 10 of the Code of Civil Procedure is based on the well recognized doctrine of *res-sub judice* object of which 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 same relief but intends to protect a person from multiplicity of proceedings and to avoid conflict of decisions. The test for applicability of



*Section 10 has been clearly laid down by Supreme Court in the case reported in (2005) 2 SCC 256 (**National Institute of Mental Health & Neuro Sciences v. C. Parameshwara**), relevant portion of paragraph 8 of which reads as follows:-*

“8 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. As per the said judgement 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. The Supreme Court held that Section 10 will apply only in such cases where the whole of the subject matter in both the suits is identical, while interpreting “the matter in issue is directly and substantially in issue.”

Similarly, in the case of Sampatti Devi & others (supra), the co-ordinate Bench has held as follows:-

“3. 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, the whole of the subject matter in both the proceedings is identical. In the present case, admittedly this is not the fact”.

In the present case, as discussed above, it is an admitted fact that although the subject matter of Title Suit No.141 of



2009 is also a subject matter of Partition Suit No. 24 of 2005, but the entire properties in dispute in both the suits cannot be termed as identical, as such, it cannot be said that the matter in issue was directly and substantially involved in both the cases. In my view, the learned court below has rightly refused to stay the proceedings of Title Suit No. 141 of 2009.

In my view, the impugned order does not require any inference. Accordingly, this civil miscellaneous petition is dismissed.

(Nawneet Kumar Pandey , J)

Mahesh/-

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