
(2025) 10 JH CK 0041

Jharkhand HC

Case No: Civil Miscellaneous Petition No. 1054 Of 2024

Shiv Shankar Burman @
Shivshankar Burman @ Shiv
Burman

APPELLANT

Vs

Pankaj Choudhary

RESPONDENT

Date of Decision: Oct. 14, 2025

Acts Referred:

- Code of Civil Procedure, 1908 — Section 10, 151

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Mohan Kumar Dubey, Vineet Prakash

Final Decision: Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Petitioners are the defendants in Partition Suit No.52 of 2014 which has been filed by Opposite Party No.1 for 2/7th share in the schedule property.
2. Defendants appeared in the suit and filed their written statement taking the plea that the present suit being barred under Section 10 of the CPC. A separate petition was also filed under Section 10 read with Section 151 of the CPC to decide this issue as a preliminary decree before proceeding with suit taking the plea that earlier Title (Partition) Suit No.108 of 2001 was filed impleading the same parties, who were litigating under same title, and the said suit was partly allowed against which Title Appeal No.39 of 2017 was filed which was allowed and against which Second Appeal No.155 of 2023 is pending before this Court.
3. It is argued by the learned counsel on behalf of the petitioners that multiplicity of the proceeding has been initiated for the same and similar relief.
4. The main grievance of the petitioners is that petition under Section 10 read with Section 151 of the CPC dated 19.03.2024 filed before the learned trial court has not been disposed of yet.

5. It is submitted by learned counsel on behalf of Opposite Party No.1 that petition under Section 10 read with Section 151 of the CPC has been filed at the fag end of the trial and therefore, it cannot be decided as preliminary issue. The suit was filed in 2014 and the petition under Section 10 read with Section 151 of the CPC was filed on 19.03.2024 at the stage of argument.

6. From the submissions advanced on behalf of both sides and on perusal of the record of the case, it appears that the plea of the suit being barred under Section 10 read with Section 151 of the CPC was not raised in the written statement, and issues with regard to the suit being barred under Section 10 read with Section 151 of the CPC has also not been framed.

7. A suit can be hit by the principles of res-subjudice or res judicata and can be decided either on the basis of the pleadings or where there are disputed questions of fact on leading evidence. Here as per the case of the plaintiff, the schedule property in both suit were not common and the plaintiff was not also a party as he had purchased the property from one of his sisters and therefore, at this stage when the case is pending for argument, the separate petition filed will dispose of as a preliminary issue, is not sustainable.

8. Issue of res-subjudice is not raised in pleading and no issue having been framed on it, the same cannot be agitated by a separate petition, that too at penultimate stage of trial.

I do not find any merit in the instant petition, Civil Miscellaneous Petition accordingly stands dismissed. Pending Interlocutory Application, if any, is disposed of.