

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.582 of 2016**

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Pramod Singh & Ors

.... Appellant/s

Versus

Pradeep Kumar Singh & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Narayansingh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 07-09-2016 Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. The application filed by the petitioners herein for stay
of Title Suit No.395 of 1995 has been rejected by the court below.

3. It appears that the aforesaid Title Suit No.395 of 1995
was filed by the respondent herein for partition. Subsequently two
probate cases were filed. One is filed by the petitioners being
Probate Case No.96 of 2005/Title Suit No.04 of 2015 and the
other Probate Case was filed by the respondent herein being
Probate Case No.220 of 2005/Title Suit No.03 of 2011. In Title
Suit No.395 of 1995 the present petitioners filed the application
for stay of the suit till the decision of the probate cases referred to
above. By the impugned order dated 19.05.2016 passed by
Subordinate Judge-IX, Sasaram, Rohtas rejected the said
application.



4. Admittedly the suit is of the year 1995. Both probate cases are filed in the year 2005. There is no provision for stay of previously instituted suit on the ground of subsequent institution of probate case. This court in the case of **Chandra Madhav Mishra Vs. Braj Kishore Mishra, A.I.R. 2006 Patna 164** has held that application for stay of the suit under Section 10, which was filed earlier in time, cannot be entertained on the ground that the probate cases are pending which are filed subsequently. This Court further held that probate case and partition suit relating to same property of which disposition is made in Will are entirely different proceeding and one Court cannot stay the proceeding pending decision of the other. In my opinion, the further proceeding of the suit cannot be stayed. However, learned counsels for the petitioners as well as learned counsel for the respondents, who are parties in title suit, submitted that the title suit of the year 1995 and these probate cases may be heard analogously.

5. In view of the submission of learned counsels for the parties, they are at liberty to move the District Judge for analogous hearing and if such application is filed, appropriate order may be passed according to the decision of the Hon'ble Supreme Court, **(2005) 12 Supreme Court Cases 503 & 505.**

6. With this direction and observation, this civil
miscellaneous application is disposed of.

(Mungeshwar Sahoo, J)

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