

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.738 of 2016**

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Jitendra Kumar Prasad Sinha & Anr

.... Appellant/s

Versus

Smt. Kiran Sinha

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Sinha

For the Respondent/s : Mr.

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

2 16-08-2016 Heard learned counsel Mr. Arun Kumar Sinha for the
petitioners.

Perused the order dated 14.07.2016 passed by
Subordinate Judge-IV, Gaya in Partition Suit No.71 of 2004/175
of 2004 whereby the learned court below rejected the application
filed under Section 10 of the Code of Civil Procedure by the
defendants-petitioners for stay of Partition Suit No.71 of 2004/175
of 2004 till the disposal of the Probate Case No.23 of 2014/45 of
2013.

This Court in the case of **Chandra Madhav Mishra
and Anr. vs. Braj Kishore Mishra and Ors., A.I.R. 2006 Patna
164** has held that in the probate proceedings the only thing that the
Court does is declare upon the validity of the execution of Will in
respect of the properties mentioned therein. It does not declare or
decide upon the validity, legality disposition contained therein.

For this purpose the jurisdiction of the High Court and the District Judge under the provisions of Succession Act are original and exclusive. No Civil Court can entertain any dispute with regard to validity or otherwise of a Will. In the said decision also partition suit was instituted prior to the probate case and in that case the stay application was rejected and revision application filed before the High Court was also dismissed saying that previously instituted suit cannot be stayed because of subsequent institution of probate case. The fact of the present case is also same. Here also partition suit is filed prior to the probate case.

In such view of the matter, I do not find any jurisdictional error in the order passed by the court below. Thus, it is not a case for interference in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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