

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.416 of 2016**

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Harinandan Prasad Sinha

.... Appellant/s

Versus

Diwakar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manish Chandra Gandhi

For the Respondent/s : Mr.

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

2 24-08-2016

Heard the learned counsel for the petitioner.

Perused the impugned order dated 03.02.2016 passed by Sub Judge IX, Vaishali at Hajipur in Partition Suit No.225 of 2003 whereby the learned Court below rejected the application under Section 10 C.P.C. for stay of further proceeding on the ground that subsequent L.A. Case No.26 of 2003 has been filed by the present petitioner.

Without going to the facts of the case, it can be said that this case is covered under the decision of the Patna High Court, AIR 2006 Patna 164.

Further, the learned counsel for the petitioner admitted that the probate case has been filed subsequent to the partition suit. Section 10 provides for stay of subsequent suit and not the stay of previous suit on the ground of institution of subsequent suit.

Thus, the impugned order passed by the Court below

cannot be said to be either illegal or it occasioned failure of justice and, therefore, I find no reason to interfere with the impugned order.

In the result, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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