

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6832 of 2013

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1. Amrita D/O Late Ram Kumar Prasad, W/O Sri Satish Kumar Sinha R/O House
No. 19, Shanti Kunj, Basant Vihar Colony, P.S.- S.K. Puri

.... Petitioner/s

Versus

1. Rakesh Kumar S/O Late Ram Kumar Prasad R/O 19, Vasant Vihar Colony, P.S.-
Sri Krishnapuri, District-Patna
2. Alka Sinha W/O Late A.K. Sinha And D/O Late Ram Kumar Prasad R/O M/54,
Road No. 27, Sri Krishna Nagar, P.S.- Buddha Colony, District- Patna
3. Nidhi W/O Sri Narendra Kumar And D/O Late Ram Kumar Prasad R/O House
No. 9, Road No. 4, Indrapuri, P.S.- Patliputra Colony, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Jha

For the Respondent/s : Mr. Subroteswar De.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 11-02-2016

The challenge in the present writ petition is an order passed by the learned Subordinate Judge II, Patna on 25.09.2012 whereby an application filed by the petitioner under Section 10 of the Code of Civil Procedure seeking stay of a suit for partition bearing Title Suit No. 65 of 2010 pending probate proceeding was dismissed.

The plaintiff-respondent 1st sought partition of property alleging himself to be the full brother of respondent nos. 2 and 3 and heirs of late Ram Kumar Prasad and late Shanti Sinha. On the other hand, defendant nos. 2 and 3 – the present petitioners relied upon a registered Will in respect of which probate proceeding has been initiated vide Probate Case no. 83 of 2010. It was, thus, stated

that since the matter in issue regarding inheritance of the heirs of late Ram Kumar Prasad and Shanti Sinha is the same in the probate proceeding as also in the partition suit, therefore, the proceeding in the partition suit should be stayed.

Learned trial court found that the partition suit was filed on 25.01.2010 whereas the Probate Case was filed on 10.06.2010. Nature of both the matters is quite different. In the Probate Case the genuineness of the Will is to be examined whereas in Partition suit the unity of title and possession of both the parties are to be gone into. The learned trial court relied upon the judgment of this Court in the case of **Krishna Pal Singh Raghuvanshi & Others Vs. Ravindra Pratap Singh alias Rabindra Prasad Singh, reported in 2010(1) BBCJ, 278** to hold that proceeding of the partition suit cannot be stayed under section 10 of the Code of Civil Procedure during the pendency of the Probate Case.

In a petition under Article 227 of the Constitution of India before this Court, learned counsel for the petitioner refers to an order passed by the Hon'ble Supreme Court in the case of **Nirmala Devi Vs. Arun Kumar Gupta and others reported in (2005) 12 SCC, 505**. In the said order the title suit was transferred to be decided along with the probate case. Thus, it is argued that since identical question of law and fact is involved in the Probate Case and the

Partition suit, both proceedings either should be decided together or the partition suit should be stayed.

Probate proceedings are summary in nature whereas partition suit is plenary in nature where the question of unity of title and possession is to be examined. In the said title suit the legality and validity of the Will can also be examined by the Civil Court.

The proceeding in a partition suit and the Probate proceeding are distinct. Proceeding in title suit cannot be stayed which are plenary in nature whereas the Probate proceeding are summary in nature to be granted by a Court of limited jurisdiction. The order of the Supreme Court referred to by the learned counsel for the petitioner is an order passed to club the proceeding of the Probate proceeding and the title suit and not deciding an issue that the proceedings of the title suit are required to be stayed. In that view of the matter, the said judgment is of no assistance to the learned counsel for the petitioner for the question raised in this writ petition.

This writ application is, accordingly, dismissed.

(Hemant Gupta, J)

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