

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.803 of 2016**

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Smt. Kiran Rani

.... Petitioner

Versus

Dr. Sanjay Kumar & Anr

.... Respondents

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Appearance :

For the Petitioner : Mr. Ranjan Kumar Dubey

For the Respondents : Mr.

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

ORAL ORDER

3 20-02-2017 Heard learned counsel Mr. Parth Gaurav for the petitioner and learned counsel Mr. Ambuj Nayan Choubey for the respondents.

Perused the impugned order dated 24.05.2016 passed by learned Subordinate Judge-V, Patna in Title Partition Suit No.2011 of 2014 whereby the learned court below has directed that final order of criminal miscellaneous case will decide the fate of proceeding of this case i.e. partition suit. Accordingly, the learned Subordinate Judge directed the plaintiff to bring the final order of the aforesaid criminal miscellaneous case and case was adjourned awaiting the final order of criminal miscellaneous case and accordingly the application filed by the respondent under Section 10 of the Code of Civil Procedure has been disposed of.

It may be mentioned here that the property has been attached under the Criminal Law Amendment Act, 1944 by the



C.B.I. On this ground the application was filed by the respondent to stay the further proceeding of the partition suit.

In view of the above facts and circumstances of the case Section 10 of the Code of Civil Procedure is not at all applicable in the case and, therefore, the court below has exceeded his jurisdiction by staying the further proceeding of civil suit on the ground of pendency of criminal miscellaneous case i.e. attachment in criminal case by C.B.I.

Thus, this civil miscellaneous application is allowed and the impugned order is set aside. The court below is directed to proceed with the partition suit.

(Mungeshwar Sahoo, J)

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