

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.149 of 2017**

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Birendra Kumar

.... Appellant/s

Versus

Surendra Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Digvijay Narayan Singh

For the Respondent/s : Mr.

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

- 2 28-01-2017 **1.** Heard the learned counsel for the petitioner.
- 2.** Perused the impugned order dated 30.09.2016 passed by Sub Judge, Jhanjharpur in Partition Suit No.22 of 2012 whereby the learned Sub Judge has rejected the application under Section 10 of the Code of Civil Procedure filed by the defendant petitioner.
- 3.** Admittedly, the partition suit has been filed earlier and thereafter, probate case has been filed by the petitioner in the same year. The Court below by the impugned order has rejected the prayer for stay of the partition suit till the pendency of the probate case.
- 4.** This Court in the case of *Chandra Madhav Mishra Vs. Braj Kishore Mishra AIR 2006 Patna 1640* held that ‘application for stay of suit which was filed earlier in time cannot be



entertained. It is further held that the jurisdiction of the Court in two proceedings, i.e., in Probate Case and Partition suit are different and exclusive and one Court cannot stay proceeding pending decision of other.’

5. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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