

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22228 of 2012

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Smt. Kiran Kumari

.... Petitioner/s

Versus

Sujeet Kumar Sinha

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pritish Kumar Lal

For the Respondent/s : Mr. Null

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOOp
ORAL ORDER

10 13-09-2017 **1.** Heard the learned counsel, Mr. S.K. Lal, for the petitioner and the learned counsel, Mr. Vishal Saurabh, for the respondent.

2. This writ application has been filed under Article 227 of the Constitution of India for setting aside the order dated 18.09.2012 whereby the learned Sub Judge , Bhagalpur refused to frame preliminary issue regarding the plaintiff's enforceable right under Section 22 of the Hindu Succession Act in Title Suit No.187 of 2008.

3. The learned counsel for the petitioner submitted that this very plaintiff respondent had also filed title suit No.42 of 2008 against another person who had also purchased the property from the brother of the plaintiff after complete partition in partition suit of the year 1992 and the First Appeal filed by the present plaintiff



before the High Court had already been dismissed, therefore, the decree passed in partition suit has become final. This petitioner is also purchaser from the said very brother of the plaintiff. In the aforesaid title suit No.42 of 2008, this question was refused to be framed by the same Court and against which the defendant of that suit had filed writ application being C.W.J.C. No.9051 of 2014 and this Court after hearing the petitioner of that case and the present plaintiff respondent herein directed the Court below to decide the question as preliminary issue. At the time of hearing in admission matter of this writ application, the order passed by this Court in C.W.J.C. No.9051 of 2014 was placed. It appears that the same question was involved in the said writ application which is involved in the present writ application, therefore, the stay order will govern this writ application also. So far facts are concerned, it is admitted fact that partition suit was decreed between the brothers. The present plaintiff respondent filed First Appeal No.260 of 2005 which was dismissed for default and the MJC filed for restoration was also dismissed, therefore, the judgment and decree passed in the partition suit has become final.

4. In view of the above facts and circumstances of the case, this writ application is allowed and the impugned order is set aside. The application filed by the present petitioner for framing



preliminary issue is hereby allowed. The Court below shall try the
said issue raised by the petitioner as preliminary issue.

(Mungeshwar Sahoo, J)

Sanjeev/-

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