

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.343 of 2018

Shanti Swarup Anand Son of Late Maheshwar Prasad Sinha, Resident of Shanti Niketan, Abulas Lane, Machhuatoli, Kadam Kuan, P.S.- Kadam Kuna, District- Patna and also resident of Bimla Niketan, Canary Road, Near PTC Chowk, Hazaribagh, District- Hazaribagh, Jharkhand. Petitioner/s

Versus

Smt. Anita Sahay, w/o Surya Kant Sahay @ d/o Late Maheshwar Prasad Sinha, Resident of House of Bigu Singh, Near St. Thomas School, New Bahadurpur, Bazar Samiti, P.S.- Bahadurpur, Town and District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Niraj Kumar

For the Respondent/s : Mr. Lakshmi Kant Tiwary

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
JUDGMENT AND ORDER

ORAL

Date : 01-09-2022

Heard learned Counsel for the parties concerned.

2. The petitioner is aggrieved by the order, dated 15.12.2017, passed, in Civil Misc. (Tr.) Case No. 177 of 2017, by the learned District Judge, Patna, whereby the application filed by the petitioner, under Section 24 of the C.P.C., for transfer of Title Partition Suit No. 50 of 2016, pending in the Court of learned Sub Judge-I, Patna, to the Court of learned 8th Additional District Judge, Patna (now, 9th Additional District Judge), has been rejected.

3. Learned Counsel for the petitioner submits that the petitioner filed Probate Case No. 832 of 2014 before the learned District Judge, Patna, for grant of probate on 24.04.2014 on the strength of the Will, dated 06.05.1987, executed by his late father,



Maheshwar Prasad Sinha, with regard to the suit property, which is a residential house, situated in Abulas Lane, Machchuatoli, Police Station Kadamkuan, Patna, pertaining to Ward No. 17 (New)/11 (Old), Circle No. 28, M.S. Plot No. 85 Part, Holding No. 54/136, having an area of 1728 sq. ft.

4. The sister of the petitioner, i.e. the sole respondent herein appeared in the probate case and filed her objection and accordingly, Probate Case No. 832 of 2014 has been converted into Title Suit No. 08 of 2017 and now, the same is pending before learned 9th Additional District Judge, Patna.

5. The respondent herein filed Title Partition Suit No. 50 of 2016 before learned Sub Judge-I, Patna, where it is still pending and the respondent is praying before the Court to adduce evidence and the Court is ready to take evidence.

6. Since the subject matter, i.e. property involved in Title Suit No. 08 of 2017 and Title Partition Suit No. 50 of 2016 are the same and the parties are also the same, accordingly, the petitioner filed a petition for transfer of Title Partition Suit No. 50 of 2016 in the Court of 9th Additional District Judge, Patna, before the learned District Judge, Patna, so that Title Suit No. 08 of 2017 (arising out of probate case) and Title Partition Suit No. 50 of 2016 be clubbed and tried together.



7. Learned Counsel for the petitioner further submits that as per Section 18 of the Bengal, Agra and Assam Civil Courts Act, 1887, the District Judge and/or the Civil Judge, Senior Division, exercises concurrent jurisdiction to decide the original suit having the suit value of more than Rs. 1,50,000/-.

8. Learned Counsel for the petitioner relies upon the decision of this Court, in the case of **Krishnapal Singh Raghuvanshi v. Rabindra Pd. Singh and Others**, reported in **2009 (4) PLJR 918**. Paragraph 9 of **Krishnapal Singh Raghuvanshi** (supra) is quoted herein below:-

“9. At the time of argument, learned counsel for the petitioners then confined his prayer to the issue that both the cases may be heard together, as the adjudication of the issues involved in the probate case will have a direct impact upon the suit. Learned counsel relies upon decisions of the Apex Court in **Nirmala Devi vs. Arun Kumar Gupta and Others**, reported in **(2005)12 SCC 505** and **Balbir Singh Wasu vs. Lakhbir Singh and Others**, reported in **(2005)12 SCC 503**, and unreported decision of this Court in **Dwarika Singh and Others vs. Smt. Raj Kumari Devi and Others** to demonstrate that in similar nature of cases the probate cases were directed to be clubbed along with the title suit to be heard together.”



9. Learned Counsel appearing on behalf of the respondent submits that he has no objection if Title Partition Suit No. 50 of 2016, filed by the respondent herein, is transferred to the Court of learned 9th Additional District Judge, Patna, to be heard and tried together along with Title Suit No. 08 of 2017 (arising out of probate case), filed by the petitioner.

10. In view of the aforesaid submissions and law laid down by this Court, in the case of **Krishnapal Singh Raghuvanshi** (supra), the impugned order, dated 15.12.2017, passed, in Civil Misc. (Tr.) Case No. 177 of 2017, by the learned District Judge, Patna, is hereby set aside and it is directed that Title Partition Suit No. 50 of 2016, pending in the Court of Sub Judge-I, Patna, shall be transferred to the Court of learned 9th Additional District Judge, Patna, and be clubbed, heard and tried together along with Title Suit No. 08 of 2017 (arising out of probate case).

11. This application is, accordingly, allowed.

12. There shall be no order as to costs.

Prabhakar Anand/-

(Anil Kumar Sinha, J.)

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01-09-2022
Transmission Date	N/A

