

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.173 of 2018

Jyoti Kumar, Son of Late Hari Narayan Sharma, resident of Uma Bhawan,
Sheopur, Mahendru, Police Station Sultanganj, District Patna.

... .. Petitioner/s

Versus

1. Indu Sharma (deleted vide order dt. 29.08.2022) Widow of Late Laxmi Kant Sharma, Resident of Uma Bhawan, Sheopur, Mahendru, P.S. Sultanganj, District Patna, Presently residing at Mohalla Professor Colony, Dinkar Nagar, Opposite Pratibha Vidyalaya, P.S. Refinery, Township, District-Begusarai.
2. Rita Sharma @ Guddi, Wife of Sri Shrikant Nandan Sinha, and Daughter of Late Laxmi Kant Sharma, Presently residing at 8360, Green Boro Drive Apartment No. 60, Mclean Virginia, U.S.A. through Indu Sharma, Power of Attorney Holder.

----- Respondents 1st Set

3. Smt. Renu Rai, Wife of Pramod Kumar Rai, (Advocate), Daughter of Late Hari Narain Sharma, Resident of Village-Marwa, P.S. Bihpur, District Naugachhiya, Presently residing at C/o Sri Pramod Kumar Rai, Advocate in Civil Court at Naugachhiya, District Naugachhiya.
4. Smt. Asha Sharma, Widow of Late Hari Narayan Sharma, Resident of Uma Bhawan, Sherpur, Mahendru, P.S. Sultanganj, District Patna.
5. Dr. Chandra Kant Sharma, Son of Late Uma Nath Sharma, Resident of Uma Bhawan, Sheopur, Mahendru, P.S. Sultanpur, District Patna. Presently residing at Meena Devi, Jindal Medical Institute, 20 Shyam Nath Marg, Civil Line, Delhi.
- 6.1. Krishna Kumar Mouar husband of Anmola Mouar Resident of 30/60 ARI Complex, P.S. - NRI Police Station, District - Thane, Konkan Division, Navi Mumbai, Maharashtra.
- 6.2. Jai Mouar, Son of Anmola Mouar, Resident of 30/60 ARI Complex, P.S. - NRI Police Station, District- Thane, Konkan Division, Navi Mumbai, Maharashtra.
- 6.3. Bulbul Choudhary, Daughter of Anmola Mouar, Resident of 30/60 ARI Complex, P.S. - NRI Police Station, District- Thane, Konkan Division, Navi



Mumbai, Maharashtra.

- 6.4. Bhuwan Mouar, daughter of Anmola Mouar Resident of 30/60 ARI Complex, P.S. - NRI Police Station, District- Thane, Konkan Division, Navi Mumbai, Maharashtra.
7. Smt. Arun Prakash Sharma, Wife of Rama Kant Rai, and Daughter of Late Uma Nath Sharma, C/o Misri Lal Thakur, Development Area, Gangtok, P.S. Gangtok, District Gangtok, Sikkim.
8. Smt. Saroj Gill, Wife of Colonel Charanjeet Singh Gill, Daughter of Late Uma Nath Sharma, Flat No. 1533, Sector 37, Noida, District Budha Nagar, U.P.
9. Suryakant Sharma, Son of Late Uma Nath Sharma, Resident of Uma Bhawan, Mahendru, P.S. Sultanganj, District Patna. Where About not Known for more than 20 years last. (Defendants)

... .. Respondent/s 2nd Set

Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Chandram, Advocate
For the Respondent/s	:	Mr. Shailendra Prasad, Advocate with Mr. Sanjay Kumar, Advocate and Mr. Manoj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

14 18-04-2023 Heard learned counsel for the parties.

2. Learned counsel for the petitioner submits that respondent no. 9 is traceless and has not known for more than about 25 years and accordingly, at the risk of the petitioner the service on respondent no. 9 may be exempted.

3. In view of the submissions of learned counsel for the petitioner service of notice on respondent no. 9 be exempted at this stage.

4. This Civil Miscellaneous Application has been filed



under Article 227 of the Constitution of India against the order dated 19.12.2017 passed by the learned Sub Judge- VI, Patna City in Title Partition Suit No. 4 of 2011 by which he has rejected the petition dated 11.01.2017 filed by defendant no. 1/ petitioner herein under Sections 10 and 151 of the Code of Civil Procedure for staying the proceeding of the said Partition Suit No. 4 of 2011 till the decision of Letters of Administration Case No. 52 of 2016.

5. Learned counsel for the petitioner submits that the property involved in the suit is the property under the Will for which the Letters of Administration Case No. 52 of 2016 has been filed by the petitioner which is now converted into Title Suit No. 59 of 2019. It is further submitted that the said Title Partition Suit No. 4 of 2011 was filed by the respondents and it is in interest of justice that partition suit may be stayed till final adjudication of the said Letters of Administration Case No. 52 of 2016 which has now converted into Title Suit No. 59 of 2019. Title Partition suit may be heard together with the Letter of Administration Case pending in the Court of A.D.J.-IIInd, Patna City, as the adjudication of the issue in the letter of Administration Case will have a direct impact upon the partition suit.



6. Learned counsel for the petitioner referred and relied upon judgment of the Hon'ble Supreme Court in **Nirmala Devi Vs. Arun Kumar Gupta & Ors.** reported in (2005) 12 SCC 505, **Balbir Singh Wasu Vs. Lakhbir Singh & Ors.** reported in (2005) 12 SCC, 503 and the judgment dated 06.07.2009 of this Court in the case of **Krishnapal Singh Raghuvanshi & Ors. Vs. Ravindra Pratap Singh @ Ravind Patna High Court (C.R. No. 1628 of 2005)** to demonstrate that in similar nature of cases the probate case were directed to be clubbed alongwith the title suit to be heard together.

7. Learned counsel for the petitioner further submits that this Court in **Smt. Pratibha Singh Vs. Sri Amit Kumar Singh (Civil Writ Jurisdiction Case No. 9294 of 2015)** vide Judgment dated 06.12.2018 consolidated the eviction suit and partition suit pending before the Court below for trial and disposal.

8. Learned counsel for the respondents has no objection on this point that both the Partition Suit No. 4 of 2011 and the Letters of Administration Case No. 52 of 2016 (now converted into Title Suit No. 59 of 2019) be clubbed together and disposed of by the same Court. Learned counsel for the respondents has no objection on this point that the Letters of



Administration Case No. 52 of 2016 (now converted into Title Suit No. 59 of 2019) be transferred to the learned A.D.J.-IIInd, Patna City where the Title Partition Suit No. 4 of 2011 is pending for expeditious disposal of both the cases in the same Court.

9. The judgment in the Case of **Kanwarjit Singh Dhillon Vs. Hardayal Singh Dhillon (2007) 11 SCC 357** is an authority on the point that probate Court is not competent to determine the question of title of the properties forming subject matter of a Will. The Hon'ble Supreme Court has laid down in **Chiranjilal Shrilal Goneka Vs. Jagjit Singh (1993) 2 SCC 507** the primacy of the probate Court on the question of validity of a Will.

10. The scope of proceedings in a partition suit are broader than that in a probate petition. The nature of probate proceedings is the judgment in rem. The nature of the proceedings i.e. the probate proceedings and partition suit are completely different. Probate proceedings are expected to be summary in nature whereas in a partition suit detailed evidence is led by the parties concerned. A probate petition, strictly speaking, cannot be considered to be a suit under Section 10 CPC and both the probate petition and the suit for partition can



proceed. Section 213 (1) of the Succession Act provides that no right as executor or legatee can be established in any Court unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed or has granted letter of administration with the Will.

11. If the letters of administration are granted to the petitioner in the testamentary proceeding, then the asset of deceased may not remain available as partible estate of the deceased. If the partition suit proceeds independently and the plaintiffs therein succeed, then there would be possibility of inconsistent finding by two Courts provided the petitioner succeed in the testamentary proceeding. In situation of this nature the Hon'ble Supreme Court in **Balbir Singh Wasu Versus Lakhbir Singh and Others (2005) 12 SCC 503, Nirmala Devi Versus Arun Kumar Gupta and Others (2005) 12 SCC 505 and Chitivalasa Jute Mills Versus Jaypee Rewa Cement (2004) 3 SCC 85** has directed clubbing together of both proceedings for hearing.

12. In **Krishna Pal Singh & Ors. Vs. Ravindra Pratap Singh @ Rabindra Pd. Singh** reported in **(2010) 1 BBCJ 278** this Court held 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.

13. In view of the above, I am of the view that there is no jurisdictional error committed by the Court below in holding that the proceeding of the title suit cannot be stayed under Section 10 of the CPC till the disposal of probate / Letter of Administration case.

14. However, considering the facts and circumstances of the Case and in view of the aforesaid principles as set by Hon'ble Supreme Court and this Court, and in the interest of justice the Partition Title No. 4 of 2011 and Letters of Administration Case No. 52 of 2016 between the parties ought to be heard and adjudicated together in order to avoid multiplicity of proceedings and conflicting findings / decisions.

15. In view of the submission of learned counsel for the parties, and in view of the legal position cited above, the Title Partition Suit No. 4 of 2011 pending on the file of Sub-Judge – VI, Patna stands transferred to the Court of Additional District Judge - IIInd, Patna City and clubbed alongwith the Letters of Administration Case No. 52 of 2016 (now converted into Title Suit No. 59 of 2019) and be taken up together for disposal. Learned counsel for both the parties shall co-operate for early disposal of both the cases and the trial Court shall take



steps for early disposal.

16. The Civil Miscellaneous Application is, accordingly, disposed of with the aforesaid observation and direction.

(Sunil Dutta Mishra, J)

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