

**(2009) 07 PAT CK 0037**  
**In the Patna High Court**  
**Case No : C.R. No. 1628 of 2005**

|                                                        |            |
|--------------------------------------------------------|------------|
| Krishnapal Singh Raghuwanshi and Others                | APPELLANT  |
| Vs                                                     |            |
| Ravindra Pratap Singh @ Rabindra Pd. Singh Raghuwanshi | RESPONDENT |

**Date of Decision :** 06-07-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 10

**Citation :** (2009) 4 PLJR 918

**Hon'ble Judges :** Ravi Ranjan, J

**Bench :** Single Bench

**Advocate :** Kumar Uday Singh, for the Appellant; Dronacharya for the O.P. Nos. 1, 3 and 4, for the Respondent

## Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioners as well as opposite party Nos. 1, 3 and 4. None appears on behalf of opposite party Nos. 2 and 5 to 8 despite service of notice.

2. Earlier this Court had issued notice to the opposite parties to show-cause as to why this civil revision petition be not admitted and if possible disposed of at the admission stage itself. Opposite Party Nos. 1, 3 and 4 have appeared to contest this revision, whereas none has appeared on behalf of opposite party Nos. 2 and 5 to 8 despite service of notice. Thus, I am proceeding to dispose of this case.

3. Defendants-petitioners have filed this revision against the order dated 18.6.2005 passed by the Sub-Judge-III, Khagaria in Title Suit No. 19/92 rejecting the petition filed by the petitioners u/s 10 of the CPC (hereinafter to be referred to as "Code") for stay of the further proceeding in the title suit concerned till the disposal of Probate Case Nos. 2/91 and 3/91, which are pending before the District Judge, Khagaria.

4. The short facts of the case are that the plaintiffs-opposite party Nos. 1 and 2 filed Partition Suit (Title Suit) No. 19/92 for partition of the suit properties to the extent of 1/5th and 1/6th share each of the plaintiff Nos. 1 and 2. Defendant

including the petitioners appeared and filed written statement. A petition u/s 10 of the Code was filed on behalf of the defendants-petitioners for staying the further proceeding of Title Suit No. 19/92 till the disposal of Probate Case Nos. 2/91 and 3/91. The court below on consideration of rival submissions came to the conclusion that the subject-matters of the title suit as well as the probate cases are not one and the same and the scope of the title suit is entirely different. In probate cases the legality of the execution of the "Will" is in issue, whereas Title Suit has been filed for partition of the suit property and thus, it has rejected the same.

5. It is submitted on behalf of the petitioners that part of the properties in the title suit are in issue in the probate cases concerned. Thus, the title suit and the result of the probate cases would definitely have some bearing in the title suit concerned.

6. Learned counsel appearing on behalf of opposite party Nos. 1, 3 and 4 submits that the issues involved in the title suit as well as in the probate cases are entirely different and in view of that, the title suit, which has been filed for partition of the suit lands cannot be stayed during the pendency of the probate cases. In support of his submission, learned counsel relies upon a decision of this Court rendered in Matia Devi Vs. Smt. Masani Devi and Others, , wherein it has been held that in a probate proceeding, the question of title of the parties cannot be gone into. Thus, the scope of two cases are different and the further proceeding of the title suit cannot be stayed.

7. Learned counsel for the opposite parties next relies upon a decision of this Court in Smt. Tara Devi Vs. Smt. Kamala Gupta and Others, , wherein the scope of Section 10 of the Code has been examined in detail. It has been held that Section 10 of the Code provides for staying of the subsequent suit, in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties.

8. 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, 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 alongwith the title suit to be heard together.

9. Learned counsel appearing on behalf of the opposite parties submits that" he has no objection, if the title suit and the probate proceedings are heard together.

10. 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 proceedings of the title suit cannot be stayed u/s 10 of the Act during the pendency of the probate cases

concerned. However, in view of the facts and circumstances of the case, it is directed that Title Suit No. 19/92, pending in the Court of the Sub-Judge-III, Khagaria, shall be transferred to the Court of the District Judge, Khagaria and be clubbed and heard and tried together alongwith Probate Case Nos. 2/91 and 3/91. With the aforesaid observation and direction, this civil revision application is, accordingly, disposed of.