

Bishwanath Prasad

CIVIL MISCELLANEOUS JURISDICTION No.1722 of 2018

FORUM

Patna High Court

ORDER DATE

29 Apr 2024

NOTE TYPE

Source extract

01 CONCLUDING COURT PASSAGE - SOURCE EXTRACT

So the learned trial court has committed error in not considering the amendment petition filed under Order VI Rule 17 of the Code citing pendency of proceedings before the probate court. 7. Hence, the observations made by the learned trial court regarding present stage not being a proper stage for passing any order on amendment petition before the final adjudication of the probate case is not sustainable and therefore, the stay of further proceedings of the partition suit till final adjudication of the Probate Case No. 62 of 2017 was simply unwarranted. 8. In the light of aforesaid facts and circumstances, I find and hold that while passing the impugned order dated 05.07.2018 in Title Suit No. 340 of 2009, the learned Sub Judge-XI, Patna committed an error of jurisdiction and erroneously refused to exercise the jurisdiction vested in him, hence the impugned order is set aside. 9. Considering the fact that a large number of issues would overlap, probate proceedings and civil suit should be clubbed and heard together by the competent court in terms of the decisions of the Hon'ble Supreme Court in the cases of Balbir Singh Wasu (supra) and Nirmala Devi (supra). Therefore, the learned District Judge, Patna is requested to transfer the Title Suit No. 340 of 2009 to the court which is already seized of the matter in Probate Case No. 62 of 2017 and the concerned court, while considering all issues, would proceed to dispose of both the cases within a period of nine months from the date of receipt/production of a copy of this order. 10. Accordingly, the instant petition stands allowed.

SOURCE & VERIFICATION

Supplied court copy / compilation pp. 932-938

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