

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.199 of 2011

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Hari Narayan Mishra @ Gaya Mishra, son of Late Ram Swaroop Mishra, resident of village – Bishanpur, Patore, P.S. Ashok Paper Mill, P.O. – Patore, District – Darbhanga at present residing in the house of Rajeshwar Thakur, resident of village and P.O. Janardanpur, P.S. Kalyanpur, District Samastipur

.... Applicant/Appellant

Versus

Smt. Raj Kumari Devi @ Urmila Devi, wife of Shri Hari Narayan Mishra @ Gaya Mishra, resident of village – Bishanpur Patore, P.S. – Ashok Paper Mill, P.O. – Patore, District Darbhanga

.... Opposite party/Respondent

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Appearance :

For the Appellant/s : Mr. Naresh Chandra Verma, Advocate
Mr. Natraj Verma, Advocate
For the Respondent/s : Mr. Sunil Kumar Verma, Advocate
Mr. Amresh Kumar Mishra, Advocate
Mr. Krishna Prasad, Advocate
Mr. Suman Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 03-04-2015

Heard learned counsel for the appellant and the respondent.

2. Appellant is the husband. He has challenged the order dated 01.07.2008 passed by Principal Judge, Family Court, Darbhanga in Maintenance Case No. 46 of 2004 whereunder maintenance amount of Rs. 750/- per month has been allowed to the applicant-respondent-wife. Besides, she has been held entitled to use 3 ½ bighas of land till her life time and

litigation cost of Rs. 4,000/-.

3. It is submitted on behalf of the appellant that he is 85 years old and besides the landed property he does not have any source of income from which maintenance amount can be allowed to the respondent-wife.

4. We have noted the aforesaid submission only for being rejected. Appellant is surviving from the income derived from the landed and other property as also support from his daughter from the first wife. In the circumstances, he is to ensure payment of the maintenance amount also to his second wife, respondent herein from the same source of income from which he is supporting himself. In this connection, we may note that appellant married for the second time with the respondent while his first wife survived, who in course of time, died in the year 2003.

5. It is submitted by the respondent-wife through her counsel that 3 ½ bighas of land which she has been allowed under the impugned order to use is not being allowed to be cultivated by her as the said land is in possession of the Bataidars of the appellant-husband.

6. In view of the stand taken by the respondent-wife, we direct that let the appellant-husband deal with 3 ½ bighas





of the remaining land but he must ensure payment of the maintenance amount in terms of the impugned order dated 01.07.2008 to his wife every month. The current payment of the maintenance amount be made by the husband to the wife in her bank account by 7th of the succeeding month, which shall begin from May, 2015, but the arrears of maintenance amount from the date of the impugned order till March, 2015 shall be cleared within four months from today. The litigation cost of Rs. 4,000/- allowed to the wife under the impugned order is increased to Rs. 10,000/- which shall also include the cost of this appeal.

7. It goes without saying that permission to the appellant-husband to deal with the remaining land, does not divest the respondent-wife of her share in the lands in question.

8. During her life time, respondent-wife shall continue to live in the house of the appellant-husband in the same portion in which she is presently residing. For any enhancement in the maintenance amount, it shall be open for the wife to request the court below.

9. In case, any of the terms of this order is violated, the respondent-wife shall first approach the Principal Judge, Family Court, Darbhanga and if the grievance is not redressed within reasonable time of two months, she will have the liberty to

file interlocutory application in this appeal itself.

10. The appeal is disposed of in the
aforementioned terms.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

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