

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.540 of 2012

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Smt. Rekha Devi W/O Sri Sanjeev Kumar Jha & D/O Sri Nand Kishore Mishra
R/O Village - Bari Lagma, P.O. Shibkund, P.S. Dharhara, District - Munger

.... Appellant/s

Versus

1. Sanjeev Kumar Jha @ Sanjay Kumar Jha S/O Sri Narendra Kumar Jha R/O
Village - Kunagarhi (Pouria) P.O. Supour Jamua, P.S. Sangrampur, District -
Munger
2. Sri Navin Singh S/O Late Kamal Singh @ Kamo Singh R/O Village - Bari
Lagma, P.O. Shibkund, P.S. Dharhara, District - Munger

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Sinha
Mr. Arvind Kumar Sharma
Mr. Chetan Kumar
Mr. Vijay Kumar Sinha
For the Respondent/s : Mr. Ranjan Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

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

Date: 07-07-2015

Heard learned counsel for the appellant and learned counsel

for the respondent No. 1.

2. Wife is the appellant. She has filed this appeal

questioning the correctness of the impugned judgement dated

18.07.2012 passed by learned Principal Judge, Family Court, Munger,



in Title (Matrimonial) Suit No. 119/2005 whereunder her marriage with respondent No. 1 has been dissolved and one of the grounds taken to allow the request of the husband for dissolution of the marriage is that she had illicit connection with respondent no.2 from whom she also gave birth to a female child on 20.09.2002 i.e. within five months and fifteen days of her second marriage/gauna.

3. It is submitted on behalf of the appellant that she filed written statement in the Court below asserting that even prior to the second marriage, respondent no. 1 was regularly visiting her parent's house and though the second marriage was performed on 5.04.2002 but marriage prior thereto consummated and she conceived through respondent no. 1 much prior to her second marriage and for delivering the child, she had come back to her parental house on 14.02.2002. In this connection, it is also pointed out that the appellant had

volunteered before the Court below to get the paternity of the child detected by subjecting all concerned to submit their DNA sample.

4. It is stated that the Court below has not indicated reasons in the impugned order not to consider such prayer. Appellant having volunteered to furnish DNA sample of self and girl child, the trial Court should have forced the husband to furnish his blood sample for DNA matching with that of the child.

5. In the light of the aforesaid submission the findings and the operative portion of the impugned judgment is set aside and matter remitted back to the court below for fixing a date on which appellant, her daughter and Respondent No. 1 appear before Civil Surgeon, Munger who shall obtain their DNA sample as per the established procedure and send the same to Forensic Science Laboratory, Hyderabad asking the laboratory to submit the report as early as

possible. After receipt of the report court below shall consider the same in accordance with law and pass appropriate order in the matter.

6. Let a copy of this order be sent to the Court below alongwith the lower Court records through special messenger by the High Court, Registry. The cost of DNA test be borne by both the parties equally.

(V.N. Sinha, J)

(Nilu Agrawal, J)

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