

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.173 of 2013

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Jhuni Devi W/O Ritesh Kumar , D/O Kalidas Choudhary , P.S. Chauri,
District - Bhojpur (Ara), at Present Resident Of Vill. - Belaur, P.S. Udwant
Nagar, District - Bhojpur (Ara)

.... Appellant

Versus

Ritesh Kumar @ Sachin Kumar S/O Mahendra Roy R/O Vill. - Amaruhan,
P.S. Chauri, District - Bhojpur (Ara)

.... Respondent

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Appearance :

For the Appellant : Mr. Ravindra Kumar
For the Respondent : Mr. Rram Suresh Roy, Senior Advocate
Mr.Binod Kumar Singh
Mr. Gaurav Kumar

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

6 21-08-2015 Heard learned counsel for the appellant and learned
counsel for the respondent.

Although the matter has come up under the heading
“For Hearing Under Order 41 Rule 11 C.P.C.” but considering
the short issue involved in the matter and with the consent of
the parties it has been finally heard and is being disposed of by
this order.

The appellant has challenged the order dated
3.10.2012 passed by the Principal Judge, Family Court, Ara,
Bhojpur, by which he has dismissed the petition under Section 9

of the Hindu Marriage Act filed by the appellant holding that the same is not maintainable.

Learned counsel for the appellant submits that the order has been passed under a misconception of the basic facts, as it appears that the order was dictated holding that there was admission by the appellant that the Matrimonial Case No. 87 of 2007 was dismissed and subsequently the miscellaneous appeal being Misc. Appeal No.600 of 2010 was filed in the High Court, in which the order of the Family Court was confirmed. The submission of the opposite party has also been similarly recorded stating that the case under Section 9 of the Hindu Marriage Act was not maintainable, as the marriage between the parties was dissolved and subsequently the order of the Family Court has been confirmed. Without looking into any further facts, the learned Principal Judge, Family Court has held that the petition under Section 9 of the Hindu Marriage Act is not maintainable and the same was, accordingly, dismissed.

From a perusal of the certified copy of the photo copy of the order dated 3.10.2012, it is evident that the learned Principal Judge has recorded that the divorce case being Matrimonial Case No.87 of 2007 was allowed but subsequently



the word “allowed” has been crossed and the word “dismissed” has been written but in other part of the order the same is as it is. It is evident that the order of the Principal Judge, Family Court is under misconception of fact that the divorce petition filed by the respondent had been allowed which was confirmed by the High Court. The judgment of the Family Court dated 19.06.2010 passed in Matrimonial Case No.87/2007: Ritesh Kumar alias Sachin Kumar vs. Jhuni Devi has been brought on the record as Annexure-1 to the appeal, which clearly shows that the matrimonial case was dismissed on contest with compensatory cost of Rs.5,000/-. The appellate order dated 23.9.2010 of this Court passed in M.A. No.600/2010: Ritesh Kumar alias Sachin Kumar vs. Jhuni Devi has also been brought on record as Annexure-2 to the appeal, which shows that this Court found no merit in the appeal and it was, accordingly, dismissed.

The aforesaid being the position, it could not have been held that the petition under Section 9 of the Hindu Marriage Act was not maintainable. The Family Court ought to have considered the matter on its merit and decided the same.

Thus, the impugned order dated 3.10.2012 of the

Family Court, Ara, Bhojpur is set aside. The appeal is, accordingly, allowed and the matter is remanded to the Family Court, Ara, Bhojpur to re-hear the same in accordance with law.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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