

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.95 of 2014

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Anil Kumar S/O Sikandar Yadav Resident of Village- Gawalpara, P.S-
Gawalpara, District- Madhepura.

.... Appellant

Versus

Manchan Kumari @ Rashmi Raj, W/O Anil Kumar, resident of village
- Gawalpara, P.S- Gawalpara, District - Madhepura, at present
Mancham Kumari @ Rashmi Raj, daughter of Kailash Yadav, resident
of village - Bitha, P.S- Ismayalpur, District- Bhagalpur.

.... Respondent

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Appearance :

For the Appellant : Mr. Dinesh Prasad Verma, Advocate
: Mr. Rana Pratap Singh, Advocate
For the Respondent : None.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-08-2016

Heard learned counsel for the appellant. In spite
of notice of appearance, no one appears for the respondent.

The appellant is the petitioner before the court
below and is the husband. The respondent was the defendant
wife before the court below.

This memorandum of Appeal is being filed by
the appellant/petitioner against the judgment dated
03.01.2014 passed by learned Principal Judge, Family Court,
Madhepura in Matrimonial Suit No. 36 of 2012.

An application was filed before the Principal



Judge, Family Court, Madhepura in terms of Section 10 of the Hindu Marriage Act, 1955 (in short the “Act”) upon which various objections were raised by the wife as usual. Though, the application was held to be maintainable on the question of territorial jurisdiction, it was rejected on the ground that the period of desertion was less than two years and as such the application under Section 10 was not maintainable. We are surprised.

The first thing we would like to notice that irrespective of the prayer or the section as made by the applicant, the Court has to determine the real nature of dispute and the true relief, as prayed for. Mention of a section or seeking any relief is of little consequence. It appears that the appellant had filed an application in terms of Section 10 seeking a decree of divorce. This is a contradiction. The learned Family Court should have looked into this at the very beginning. Section 10 talks of judicial separation and not divorce. It is under Section 13(1-A) of the Act, where desertion is of one year under decree of restitution of conjugal rights or there is no cohabitation for a period of one year. From the tenor of the order of learned Judge or the pleadings earlier made, it is not clear as to what

the parties has sought for and on what the learned Judge was trying the case for. The learned Judge notes that desertion has not been for more than two years and as such divorce cannot be granted. We fail to understand on what basis, because this was an application under Section 10 of the Act. No prayer in terms of Section 13(1-A) of the Act was at all made. We would therefore set aside the judgment and decree in the appeal and remand the matter for a fresh trial after reframing the issues with clarity, so that the parties and the court may be aware of the exact case which the parties seek to be resolved.

Accordingly, this appeal is allowed. The judgment and decree of the court below is set aside. The case is remanded for fresh hearing in accordance with the direction contained above.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/-

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