

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.386 of 2015

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Vakil Prasad Singh Son of Late Prabhu Narain Singh Resident of Village - Kujji , P.S.- Darbhanga Sadar , District - Darbhanga .At Present Residing at New B- IInd Type , Bihar State Electricity Board Colony, Kushai Colony , Doorand , Ranchi.

.... Appellant

Versus

1. Shail Kumari Singh W/O Sri Vakil Prasad Singh
2. Ritu Singh
3. Nitu Singh, Both Srl No. 2 and 3 D/O Vakil Prasad Singh
All are resident of Mohalla - Professor's Colony , Behind Asha - Suman Apartment , North Shashtri Nagar , P.S. - Shastri Nagar , District - Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Gopal Govind Mishra, Advocate
For the Respondents : Mr. Ranjan Kumar Sinha, Advocate
Ms. Seema, Advocate

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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: 20-10-2016

Interlocutory application no. 8513/2015 has been filed for condonation of delay in filing the appeal.

2. Delay is condoned.
3. Accordingly, Interlocutory application no. 8513 of 2015 stands disposed of.
4. The present appeal, under Section 19 of the Family Courts Act, 1984, has been filed by the sole defendant against the judgment, order and decree dated 9th June 2015, passed by the learned Additional Principal Judge, Family Court, Patna in Title Suit no. 11 of 2010.
5. Heard the parties, and with their consent, this

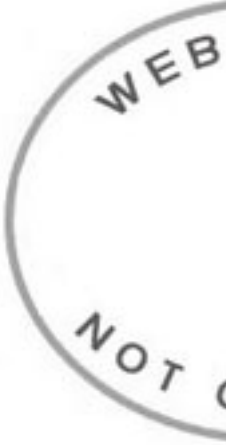
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appeal is being disposed of at this stage itself.

6. The present suit was brought by the respondent Shail Kumari Singh and her two daughters namely, Ritu Singh and Nitu Singh, as against Vakil Prasad Singh, who is the appellant herein, and husband of Shail Kumari Singh and father of the two girls, aforesaid.

7. The suit was filed for maintenance in terms of Section 20(3) of the Hindu Adoption and Maintenance Act, 1956. The plaintiffs claim was marriage expense in respect of two unmarried daughters. It appears, during pendency of the suit, the younger of the two daughters was married, and as such, in effect, the prayer was for marriage expense of the elder daughter Ritu Singh, and reimbursement of marriage expenses of younger daughter Nitu Singh. The total claim was of Rs. 20,00,000 (Rupees Twenty Lacs). The appellant retired as an Executive Engineer from the Jharkhand State Electricity Board. He superannuated in the year 2010. As per the plaintiffs, the defendant-appellant had sufficient means to pay for the marriage of the two daughters, but was not willing to do so. He had 10 Bighas of agricultural land at Darbhanga. He had got 8 Kathas of land at Ranchi. He had built a big house at Patna, which was partly tenanted as well. He had received substantial retiral dues having retired as an Executive Engineer.

8. It may be noted that the defendant-appellant having married the plaintiff no. 1, Shail Kumari Singh and having been blessed with four daughters, then, abandoned



her and the daughters to marry again, without any separation from the first wife

9. In the written statement, the defendant-appellant agreed to meet the marriage obligation in respect of the two daughters, but did not agree to pay the marriage expense in advance. In the written statement, he pleaded that he had got properties in the name of his wife and made investment to cover these expenses. It may be mentioned that no details were stated therein. His further case in the written statement is that the two daughters were working in Noida (U.P.) and earning substantial money. They did not need support. Issues have been framed and the matter went to trial.

10. On behalf of the plaintiffs, the three plaintiffs were examined as witnesses PWs. 1, 2 and 3 respectively. They have clearly stated in the deposition in the court about properties being held by their husband/father as the case may be.

11. In the cross-examination, no effort was made to challenge those statements. Suggestions were made to the two girls about their income, which they denied. Thus, from the evidence of the plaintiffs, it is clear that the defendant-appellant has land at Ranchi, substantial agricultural land at Darbhanga and a big house at Patna. Defendant examined himself as DW-1 and a friend as DW-2. He could not bring on record any evidence of the fact that his daughters were earning, muchless substantial income. He could not bring on record any evidence to show that there were properties which

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he had purchased in the name of his wife or other investments in the name of his wife to secure the marriage expenses of his daughters, and virtually admitted that properties were at Darbhanga, Ranchi and Patna. DW-2, who appears to be a friend, is no relation and, therefore, his evidence is of no consequence. The trial court, upon consideration of the evidence aforesaid, held the suit to be maintainable and held that the defendant was under obligation to meet the marriage expenses of the daughters, and therefore, ordered and decreed the suit with direction to pay Rs. 6,00,000 (Rupees Six Lacs) towards anticipated marriage of Ritu Singh, Plaintiff no. 2, and Rs. 4,00,000 (Rupees Four Lacs) towards marriage expense reimbursement of plaintiff no. 3, Nitu Singh, though the plaintiffs has sought Rs. 20,00,000 (Rupees Twenty Lacs). The appeal is against the said order.

12. We have heard the parties, perused the record and the evidence as placed before us by the appellant. We are not impressed by the submissions and thus requires no interference. The first objection that was raised was that the Family Court was not competent to try the suit of this nature. We have noticed the submission only to be rejected in terms of Section 20(3) of the Hindu Adoption and Maintenance Act, 1956. The father is under obligation to maintain unmarried daughter to the extent she is unable to support herself. Thus, obligation to maintain is there. Marriage is a part of discharge of obligation of a father or parents to a daughter. Therefore,

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obligation and duty is established. Learned counsel for the appellant does not dispute that unless it is specified in the Act that any particular court would deal with such matters in terms of Section 9 of the Code of Civil Procedure, it would be the Subordinate Civil Court of jurisdiction, which would entertain such suits. Upon this, it would flow from Section 7(1) read with explanation (f) of the Family Courts Act, 1984, that all matters relating to maintenance which was triable by the District Court or any Subordinate Civil Court would now be filed and tried by the Family Court. Thus, the jurisdiction of the Family Court stands established. Thus, the obligation and duty to pay maintenance which would include marriage expense and the jurisdiction of the Court being established, the plea that Family Court did not have the jurisdiction cannot be sustained.

13. It is then next submitted that there was no evidence in this regards. First, we have to see whether the two daughters were earning. Vague suggestions was given to the daughter to negate it, and no evidence even suggested, was brought on record to show that they were earning, muchless, what they were earning. Thus, there is no evidence of earning by the two daughters. So far as the means to pay is concerned, all the three plaintiffs categorically stated that defendant had purchased 10 Bighas of agricultural land at Darbhanga, had 8 Kathas land at Ranchi and one purchased land with big house at Patna which was tenanted as well. These facts have not been sought to be contradicted either in

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cross-examination or in the evidence of the defendant himself. That being so, there is sufficient evidence of capacity to pay. Thus, there being an obligation to pay and capacity to pay, there is no escape from liability to pay.

14. In view of the aforesaid, it is wrong to say that there was no evidence to support the judgment and decree. Thus, we find no merit in this appeal.

15. The order of the Additional Principal Judge, Family Court, Patna, in Title Suit no. 11 of 2010, dated 9th June, 2015, requires no interference. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

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