

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13052 of 2013

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Vijay Kumar, Son of Ramesh Prasad, Resident of village-Srichandpur, P.S.-
Harnaut, District-Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Nalanda.
2. Tara Devi, D/o Late Sanjiv Kumar, Resident of Village-Basti (Srichandpur),
P.S.-Harnaut, district-Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MAHENDRA THAKUR

For the Respondent/s : Mr. PRAHLAD KR. BHAGAT

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 09-03-2016

Heard Mr. Mahendra Thakur, the counsel for the petitioner
and the respondent State.

The respondent no. 2 claiming herself as legally wedded
wife of the writ petitioner filed maintenance case no. 58(M) of 2010
for payment of maintenance. The said proceeding is pending
disposal on the file of the learned Principal Judge, Family Court,
Bihar Sharif (Nalanda), wherein the petitioner, on notice, appeared
and filed written statement. The writ application seeks quashing of
the said proceeding on the ground that the petitioner is not legally
wedded husband of the respondent no. 2.

For grant of relief under Section 125 Cr.P.C. the Court in
seisin of the matter shall be required to examine as to whether the
applicant is the legally wedded wife of the opposite party (husband).
Evidence in support of the rival claims is also required to be adduced
and appraised.

Mr. Thakur, has informed that the applicant (respondent no. 2) has started adducing evidence in which, the brother of respondent no. 2 has deposed which runs contrary to the case of the applicant (respondent no. 2). He requested to Court to go through the evidence in order to find frivolousness of the case of the respondent no. 2. I am afraid it can be done by writ court. The lis is pending before the Trial Court, which is required to evaluate and consider the case of the party, in the light of the evidence, both oral and documentary adduced in support thereof and give verdict on each issue raised in the case.

It has been submitted that the maintainability of the application first be considered by the Trial Court. This Court is not aware of the issue(s) framed by the Trial Court in the case/proceeding. If any such issue has been framed, it is always open to the petitioner to pray the Court for giving a verdict on the maintainability of the proceeding.

Having said so, the writ application is disposed of.

(Kishore Kumar Mandal, J)

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