

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.552 of 2014

Santosh Shrivastava @ Santosh Kumar Srivastava, Son of Ranjan Prasad Srivastava, R/o-South Mandiri, P.S. – Budha Colony, District – Patna.

.... Opposite Party No.3/Appellant.

Versus

1. Ranjan Prasad Srivastava, son of Late Munshi Suryug Prasad, R/o-South Mandiri, P.S.- Budha Colony, District – Patna. Petitioner/Respondent.
2. Aditi Srivastava @ Tezaswi @ Subikcha, D/o- Sri Santosh Srivastava, R/o- Sidheshwar Nagar, Mainpura, P.S. – Patliputra, District – Patna.

.... Opposite Party No.1, Minor Respondent.

WITH

Criminal Writ Jurisdiction Case No. 372 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

Santosh Kumar Srivastava, S/o Ranjan Prasad Srivastava, resident of Mohalla - South Mandiri, behind Hathwa Pathshala, P.O.- G.P.O., P.S. - Buddha Colony, District- Patna. Petitioner.

Versus

1. The State of Bihar through the Director General of Police, Bihar.
2. The Senior Superintendent of Police, Patna, District - Patna.
3. The City Suoerintendent of Police, Patna, District- Patna.
4. The Deputy Superintendent of Police, Kankerbagh, District- Patna.
5. The Officer-in-charge , Patliputra , P.S.- Patliputra, District- Patna
6. Ram Niwas Singh, son of Tez Narayan Singh, resident of MIG Flat no. MF-3/8-29, Bahadurpur Housing Colony, Bhuthnath Road, P.S. Agamkuan, District- Patna.
7. Munna Singh, son of Ram Niwas Singh, resident of MIG Flat no. MF-3/8-29, Bahadurpur Housing Colony, Bhuthnath Road, P.S. Agamkuan, District Patna.
8. The Principal, Shivam Convent School, New Bypass Road, Jaganpura, Kankerbagh, P.S.- Patrakarnagar, District- Patna
9. The Principal, Baldwin Sofia School, West Boring Canal Road, Patna- 800 001.

.... Respondents.

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Appearance :

(In MA No.552 of 2014)

For the Appellant : Mr. Hemant Kumar, Adv.

For the Respondents : Mr. Dr. Anjani Kumar Singh, Adv.

(In Cr. WJC No.372 of 2015)

For the Petitioner : Mr. Sumeet Kumar Singh, Adv.

Mr. Satyendra Prasad Singh, Adv.

For the State : Mr. R.S. Nath, AAG-3.

For the Respondent Nos. 6 to 8 : Mr. Dr. Anjani Prasad Singh, Adv.

For the Respondent No.10 : Mr. Lal Babu Singh, Adv.

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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: 08-08-2016

Pursuant to our order dated 03.08.2016, the entire family of Santosh Shrivastava @ Santosh Kumar Srivastava has appeared before this Court.

We have interacted with the minor Tezaswi Srivastava alias Aditi Srivastava, who is the daughter of the petitioner- Santosh Shrivastava @ Santosh Kumar Srivastava. We have also interacted separately with Santosh Shrivastava @ Santosh Kumar Srivastava, his second wife and his two minor daughters from the second marriage. We have heard learned counsels both for the petitioner, appellant and learned counsel for respondent nos.6 & 7, being Ram Niwas Singh and Munna Singh, who were allegedly taking care of minor girl, Tezaswi Srivastava

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alias Aditi Srivastava.

It is not in dispute that the petitioner-Santosh Shrivastava @ Santosh Kumar Srivastava was married to Swati and from the said wedlock Tezaswi Srivastava alias Aditi Srivastava was born. There were serious differences between the two. Swati started living separately with the daughter Tezaswi Srivastava alias Aditi Srivastava. So far as Ram Niwas Singh and Munna Singh are concerned, they are no relation of anybody here. They appeared to be close to Swati inasmuch as it is not in dispute that Ram Niwas Singh performed the Kanyadan in the marriage of Swati with the petitioner-Santosh Shrivastava @ Santosh Kumar Srivastava .

It appears that in the year 2012 petitioner's wife Swati was getting her house constructed. She was injured and, ultimately, she died. Petitioner-Santosh Shrivastava @ Santosh Kumar Srivastava was at that time at Ranchi. He had by then obtained an *ex parte* decree of divorce and married again, though a proceeding for setting aside the *ex parte* decree was pending, when petitioner-Santosh Shrivastava @ Santosh Kumar Srivastava came to know about accidental death of his wife Swati. He immediately tried to take custody of his minor daughter Tezaswi Srivastava alias Aditi Srivastava and being resisted, he filed the

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Habeas Corpus application, being Cr. W.J.C. No.372 of 2015. In the meantime, his father also filed application in the Civil Court for guardianship. The guardianship having been allowed, it has given rise to miscellaneous appeal. It is under these circumstances both the cases have been tagged together.

This Court has passed detailed orders in these proceedings (criminal writ proceedings) on 12.05.2015 and on 19.08.2015. Therefore, we need not reiterate all the observations as were made therein. Suffice to say that so far as respondent nos.6 and 7 are concerned, i.e. Ram Niwas Singh and his son Munna Singh, though they may be well wishers of Late Swati and her daughter Tezaswi Srivastava alias Aditi Srivastava, but they are not family. Petitioner-Santosh Shrivastava @ Santosh Kumar Srivastava is the natural father and Tezaswi Srivastava alias Aditi Srivastava, being minor, would naturally fall to the guardianship of Santosh Shrivastava @ Santosh Kumar Srivastava. Considering from the point of view of the welfare of the minor, we interacted with her and we found that she is matured enough to understand the situation. She had clear understanding and she clearly expressed her wiliness to stay with her father, step mother and step sisters. In fact, she refused the suggestion that she go back to the hostel. To us, she appeared comfortable and happy

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with her father.

Considering the aforesaid, we direct that Santosh Shrivastava @ Santosh Kumar Srivastava would continue to be the guardian, being natural guardian of Tezaswi Srivastava alias Aditi Srivastava and he would have the custody of the child as a father.

There appears to be some change in the name of the girl. Petitioner states that originally the girl was named Aditi Srivastava with his name Santosh Kumar Srivastava as the father and mother was Kumari Swati. After the death of Kumari Swati, respondent nos.6 and 7, Ram Niwas Singh and his son Munna Singh, took custody of the girl and got her admitted to school. They changed her name Tezaswi Singh and mother's name Swati Singh. Now that things having been settled down, we would declare and direct the authorities to restore her name to that of Tezaswi Srivastava. She will be known as Tezaswi Srivastava and father's name would be Santosh Kumar Srivastava, whereas mother's name, wherever required, would be late Kumari Swati.

The next issue would be with regard to the property which late Swati had acquired. It was her own inherited property out of her own earning and she had made constructions thereon. She used to stay there as well. She had received serious

injuries there and died. That house property would be held by Santosh Kumar Srivastava in trust for Tezaswi Srivastava and all income arising thereof would be utilized for the benefit of Tezaswi Srivastava. It would vest in Tezaswi Srivastava absolutely, upon attaining the age of 21 years.

So far as respondent nos.6 and 7 are concerned, they, not being members of the family, would not be entitled to any custody or right in the said property. However, as they had looked after the girl and Ram Niwas Singh had made the Kanyadan of Swati, they may have discreet visitation rights under supervision of Santosh Kumar Srivastava and in his presence thereof.

This, in our view, would end all this litigation and dispose of not only miscellaneous appeal but also the criminal writ application.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/-

AFR/NAFR	NAFR
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