

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.501 of 2015

=====

S. Shabab Fatima Wife of Dr. Syed Mohammad Saklain, Daughter of Syed Akbar Hussain, At present resident of Mohalla- Dargah Road, Near Karbala, P.S.- Sultanganj, District- Patna

.... Appellant/s

Versus

Dr. Syed Mohammad Saklain Son of Shahid Mehdi, Resident of House No. B/217, Near Berum Convent School, Begumganj, Ramnagarbagh, P.S.- City Town Kotwali, District- Barabanki (Uttar Pradesh)

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Rashid Izhar

For the Respondent/s : Mr. Shabbir Ahmad, Adv & Mr. Anil Kumar Saxena, Adv

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date: 08-11-2017

This miscellaneous appeal is directed against the judgment and order dated 22.07.2015 passed by learned Principal Judge, Family Court, Patna under Section 9 and 25 of the Guardians and Wards Act passed in Guardianship Case No. 21 of 2015 by which the learned Family Court has dismissed the case of appellant on the ground of lack of territorial jurisdiction of Family Court, Patna.

2. The appellant is the wife and respondent is the husband. Their marriage was solemnized on 07.09.2003 at Patna as per Muslim law and Muslim customs. After marriage she went to her matrimonial home at Barabanki, Uttar Pradesh and started residing with her



husband. Out of their wedlock, two daughters, namely, Abiha Zahira, Alisha Zahira and a son, namely, Md. Ali were born and their age at time of filing petition before the Family Court was seven years, five years and three years respectively.

3. The respondent is a leading practicing doctor but still demanded dowry of Rs. 15 lacs from the father of appellant on the plea of constructing a Dispensary and Hospital and he was forcing the appellant to ask her father to pay him Rs. 10 lacs, but the appellant refused and stated that her father is a retired government employee and is unable to pay such huge amount. The respondent always threatened if appellant's father does not fulfill his demand, he will give her divorce and perform second marriage. Due to non-fulfillment of dowry demand, on 06.07.2014, the respondent and his family members assaulted the appellant and again demanded a sum of Rs. 15 lacs.

4. That appellant was being tortured for non-fulfillment of said demand and she came to her parental house at Patna and narrated the whole story to her parents. The father of the appellant took her to her Sasural on 12.07.2014 and when the appellant went to the house of respondent, he asked about the amount and when they denied, the appellant and her father were abused and then they returned back to Patna. On 13.09.2014, the respondent and his father came to Patna



with two children namely Alisha Zahra aged about five years and son Md. Ali aged about three years and left them with the appellant, and one child namely, Abhiha Zahra was left in the house at Barabanki. The respondent and his father again came on 14.09.2014 at 3:00 PM and took away both the children and went to their house at Uttar Pradesh.

5. It has been submitted on behalf of counsel for the appellant that appellant is the natural guardian of the aforesaid children and children need motherly love and affection and also for the welfare of minor child, custody and guardianship should be given to the mother appellant. The appellant filed a Guardianship Application in the Court of Principal Judge, Family Court, Patna being Guardianship Case No. 21 of 2015 but the Family Court dismissed the Guardianship Case of the appellant for lack of territorial jurisdiction of Family Court at Patna.

6. Section 9(1) of the Guardians and Wards Act, 1890 defines the territorial jurisdiction under which Guardianship petition can be filed, and it is stated therein that a petition for Guardianship and Custody could be filed in the District Court having jurisdiction in the place where the minor ordinarily resides. In the present case admittedly the appellant was living with her husband in Barabanki, Uttar Pradesh where all the three minor children were also living with



them, and on account of some differences, appellant came to parental home at Patna and filed a Guardianship Case in Family Court, Patna, which has no territorial jurisdiction over the matter.

7. After considering the facts of present case, we are of the view that the Family Court at Patna has no jurisdiction to entertain petition under the Guardianship and Wards Act, 1890 for custody of minor child of appellant and the Family Court has rightly rejected the petition of appellant on the ground of lack of territorial jurisdiction over the matter. The appellant should approach the Court which has jurisdiction over the matter.

This appeal as such is dismissed.

(S. Kumar, J)

Dr. Ravi Ranjan, J : I agree

(Dr. Ravi Ranjan, J)

veena/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

