

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.4822 of 2014

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Sushma Sharma, Wife of Mukesh Kumar Singh Village-Araap, P.S.-Vikram,
District-Patna.

.... Petitioner/s

Versus

Mukesh Kumar Singh , Son of Late Gaya Prasad Singh Chanakya Vihar, Muhalla-
Gobarsahin, P.S.-Sadar, District-Muzaffarpur permanent address : Village –
Dharampur Jaaran Post- Jaaran Rampur, P.S. Belsand (O.P.) District Vaishali

.... Opposite Party /s

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Appearance :

For the Petitioner/s : Mr. K.N. Singh, Sr. Advocate

For the Opposite Party /s : Mr. Prashant Kumar , Advocate

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-04-2017

1. Heard Sri K.N. Singh, learned senior counsel, assisted
by Dr. Kamal Deo Sharma, learned counsel for the petitioner and Sri
Prashant Kumar, learned counsel for the opposite party/ husband of
the petitioner .

2. The petitioner, has approached this Court under
Section 24 of the Code of Civil Procedure, 1908 with a prayer to
direct for transferring the record of Divorce Case No. 292 of 2014
from the court of Principal Judge, Family Court, Muzaffarpur to the
court of competent jurisdiction at Patna.

3. It has been pleaded that petitioner's marriage with the



opposite party was solemnized on 21.4.2006 as per Hindu rites and customs in the house of the father of the petitioner at village -Araap , Vikram , Patna. Within the short span of marriage some dispute arose in between the parties and since January, 2007 itself both, husband and wife started living separately. The petitioner thereafter started living with her father, who retired from Indian Air Force in the year 1999, in the village Araap which is at a distance of 20 kilometers from Patna within the district of Patna. It has been pleaded that since marriage of the petitioner with opposite party was solemnized within the territorial jurisdiction of Patna Court and even on the date of filing of the divorce case the petitioner was residing at Patna in view of Section 19 of the Hindu Marriage Act, 1955 suit in question was required to be filed within the jurisdiction of Patna Court itself. Sri Singh has further argued that being lady who is residing with his retired father at Patna it would be difficult for her to regularly attend the proceedings at Muzaffarpur. On aforesaid ground a prayer has been made for transferring the record from Muzaffarpur to Patna.

4. Sri Prashant Kumar, learned counsel for the opposite party has opposed the prayer of petitioner. By way of referring to the facts disclosed in the counter affidavit he tried to persuade the court that the learned court below in its order dated 21.9.2016 has recorded



regarding completion of argument and the case was fixed 'For Orders'. According to him once the case was fixed "For Order" there is no point for passing order for transferring the record. However, learned counsel for the petitioner has drawn my attention to the order dated 4.2.2015 of the court below to show that immediately after filing of the present case before this court for transferring the case the petitioner informed the learned trial court regarding filing of the transfer case. Even thereafter, the learned court below proceeded in the case and allowed the applicant of the matrimonial case (opposite party) to lead evidence in absence of the petitioner /wife. He has further drawn my attention to subsequent orders i.e. order dated 28.10.2016 and 2.12.2016 to show that though earlier order was reserved but subsequently on 28.10.2016 the case was fixed for evidence and on 2.12.2016 the learned court below fixed the case for argument. In sum and substance it has been argued that in any event the proceeding before the court below has not come to an end and from the order sheet it is evident that in absence of the petitioner learned trial court has proceeded with the case.

5. Be that as it may, considering the fact that till date the matrimonial case is pending before the court below as well as the fact that marriage of petitioner with opposite party was solemnized within the jurisdiction of Patna Court and on the date of filing of the



matrimonial case petitioner was residing at Patna, in view of the provision contained in Section 19 of the Hindu Marriage Act, 1955 in ordinary course, matrimonial case was required to be filed at Patna. Moreover, considering the fact that petitioner is a lady the court appreciates her difficulty. In view of the facts and circumstances, the petition stands allowed.

6. Let the record of Divorce Case No. 292 of 2014 be transferred from the court of Principal Judge, Family Court, Muzaffarpur to the court of Principal Judge, Family Court, Patna forthwith.

7. It goes without saying that after receipt of the record at Patna, the petitioner shall render full co-operation for early disposal of the case.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N/A
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