

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1251 of 2016

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

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Sharda Nand Sah, S/O Late Mala Sah, Resident of village – Orma Mukund, P.O.-
Hakam, P.S.-Muhfisal Siwan, Distt-Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Must. Suman Devi, W/o Late Rajesh Sah, D/o Achchhe Lal Gupta
3. Ekta Kumari, D/o Late Rajesh Sah, both are residents of Village – Hussepur
Tola Bharpatiya, P.S.-Bhore, District-Gopalganj at rpresent W/o Angad Singh,
Residnece of H.No.261, Gali No.3, Naharpar, Hanuman Nagar, Near Hero
Honda Agency, P.S.-Kheripull, District-Faridabad, State-Hariyana.

.... Opposite Parties

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Appearance:

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 24-04-2017

This is not in dispute that the opposite party no.2 is the daughter-in-law of the petitioner and the opposite party no.3 is his grand-daughter. The petitioner is the father of Late Rajesh Sah, the deceased husband of opposite party no.2. Opposite party no.2 filed an application before the Principal Judge, Family Court, Gopalganj under Section 125 of the Code of Criminal Procedure giving rise to Miscellaneous Case No. 139 of 2011 which has been allowed by the



impugned order dated 16.11.2016, with a direction to pay a sum of Rs. 3000/- per month to opposite party no.2 and Rs. 2000/- to opposite party no.3.

Learned counsel appearing on behalf of the petitioner assailing the impugned order has submitted that the father-in-law of a woman or the grand father of a child cannot be asked to maintain, in exercise of powers conferred under Section 125 of the Code of Criminal Procedure. He has accordingly submitted that the impugned order dated 16.11.2016 is beyond jurisdiction and deserves to be set aside on that ground.

Learned counsel appearing on behalf of opposite party nos. 2 and 3 has submitted that the opposite parties have got share in the immovable property consequent upon the death of Late Rajesh Sah and there is no illegality in the order impugned.

In my view, the submission which has been made on behalf of opposite party nos. 2 and 3 is wholly misconceived. Section 125(1) of the Code of Criminal Procedure reads thus:

“Section 125 (1) : If any person having sufficient means neglects or refuses to maintain-

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or



(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.”

It puts obligation to maintain wives, children and parents. Father-in-law or grand-father cannot be asked to pay monthly allowance in exercise of powers under Section 125 of the Code of Criminal Procedure.

The impugned order is beyond jurisdiction and deserves to be interfered with.

On that ground, the order is accordingly set aside. The present criminal revision application is allowed.

It will be open to the opposite party nos. 2 and 3 to take recourse to the remedies for their right/share in accordance with law, which even otherwise goes without saying.

(Chakradhari Sharan Singh, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	28.04.2017
Transmission Date	28.04.2017

