

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1003 of 2016

=====

Amit Kumar son of Binod Prakash Sah aged about 32 years, resident of village-Rampur Alouli, P.S. Alouli, Distt. Khagaria(applicant).

... .. Appellant/s

Versus

Priya Kumari wife of Amit Kumar, resident of village-Rampur Alouli, P.S.- Alouli, District-Khagaria, D/o Mukesh Kumar, resident of Mohalla-Bekapur(in front of B.J.A. office), P.S.-Kotwali, Distt.-Munger (opposite party).

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Anshu Dhar Sharma, Advocate
		Mr. Mukesh Kumar, Advocate
For the Respondent/s	:	Mr. Nagmani Kumar, Advocate

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 06-11-2017

Heard learned counsel for the appellant and the respondent.

Admit.

No notice is required to be issued upon the respondent as learned counsel for the respondent accepts notice on behalf of the respondent.

The appeal has been heard for the purpose of its final disposal on the consent having been given by the parties.

This appeal is directed against the judgment dated 21.06.2016 passed in Matrimonial Case No. 47 of 2016 by which the petition under Section 13 of the Hindu Marriage Act



filed by the husband-appellant for dissolution of marriage has been dismissed with a direction that he may file the same before the Principal Judge, Family Court, Munger or may file application for revival of Matrimonial Case No. 188 of 2014.

From perusal of the impugned order it appears that this dismissal is not on merit rather on the ground that such application should have been filed before the Principal Judge, Family court, Munger, in place of Khagaria.

Learned counsel appearing for the appellant has submitted before this Court at the strength of the copy of the plaint which has been appended as Annexure-1 to the supplementary affidavit, filed on his behalf on 10.06. 2016, that the couple last resided at village Rampur Alouli in the district of Khagaria and, as such, the suit was maintainable before the Principal Judge, Family Court, Khagaria. From the plaint it appears that marriage was solemnized on 16.06.2011 at Bekapur, P.S. Kotwali, District-Munger and thereafter the couple started residing at matrimonial house of the sole respondent, i.e., village-Rampur Alouli in the district of Khagaria. Thereafter, some dispute arose in the marital life and, as claimed by the appellant, in the plaint, she left the matrimonial home in the year 2012 without any reasonable



ground. On 11.12.2012 the Complaint Case No. 1245 (C) of 2012 was filed at Munger against the appellant and the family members under Section 498-A of the Indian Penal Code and Sections 3 / 4 of the Dowry Prohibition Act. The appellant also filed a case under Section 9 of the Hindu Marriage Act for restitution of conjugal life, i.e., Matrimonial Case No. 188 of 2014 before the Principal Judge , Family Court, Munger which was disposed of on 11.07.2014 on compromise having been arrived between the parties. It is further claimed by the appellant that in light of the order dated 01.05.2015 the respondent came to the house of the appellant to stay in terms of the compromise but her behaviour was not cordial. Relationship between them remained unchanged and no physical relationship was there. In the meantime, respondent gave birth to a male child in the month of October, 2015. Sensing it would be impossible to live with the respondent as she refused to change her attitude, present Matrimonial Case for divorce was filed at Khagaria and, according to the appellant, it has been dismissed on flimsy ground.

Per contra, learned counsel appearing for the respondent has submitted that appellant was clever enough and filed a Matrimonial Suit at Munger itself sensing he may be taken in



custody and convicted in the complaint case. On compromise having been arrived, which has been mentioned in the impugned judgment, both side agreed to live together. It is also contended that on the date of compromise the wife was carrying pregnancy of five months and she continued to remain in Maiké. It was also agreed that petitioner would withdraw the Matrimonial Case. If the agreement fails, the parties would be at liberty to revive the Matrimonial Suit within six months. However, in place of doing that petitioner has cleverly filed a petition for grant of decree of divorce at Khagaria.

After having given the anxious consideration to the rival contentions, we are of the opinion that the Principal Judge, Fimaly court, Khagaria, could not have rejected the Matrimonial Case without holding that there is lack of territorial jurisdiction rather the wife could have moved before the appropriate forum for transfer of the case to Munger. At the same time, the appellant also, in place of reviving the Matrimonial Suit had also filed the case for divorce under Section 13 of the Hindu Marriage Act at Khagaria in place of Munger. Admittedly, the wife was residing at Munger. Learned counsel for the respondent has submitted that the wife would face much difficulty in attending the court at Khagaria as she would have



to come regularly from Munger.

In such situation, we would set aside the order passed by the Principal Judge, Family Court, Khagaria. This Court is of the opinion that the Matrimonial Case would be maintainable at both places, i.e., Khagaria and Munger. However, having regard to the facts and circumstances of the case, this Court ex debito justice would direct that the Matrimonial Case should be transferred to the Principal Judge, Family Court, Munger, who would take expeditious steps for its disposal.

This Miscellaneous Appeal accordingly stands disposed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

sudip/-

AFR/NAFR	NAFR
CAV DATE	Not applicable
Uploading Date	06.12.2017
Transmission Date	06.12.2017

