

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6646 of 2016

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1. Swetambar Yatti son of Late Ram Naresh Yatti, Resident of village- Areraj,
P.S.- Govindganj, District- East Champaran at Motihari Petitioner/s

Versus

1. The State of Bihar

2. Kiran Devi @ Meera Devi, wife of Shiv Kumar Yatti, Daughter of Rajdeo Puri,
resident of village- Jeev Dhare, Pole Pipra Kothi, District- East Champaran at
Motihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Adv.

For the Opposite Party/s : Mr. R.P.S.Singh(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

2 12-10-2018 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor.

Petitioner has challenged the order dated 25.06.2008
passed by the Principal Judge, Family Court, East Champran at
Motihari in connection with Miscellaneous Case No. 16/2007
under Section 125 Cr.P.C.

Annexure-I, petition filed on behalf of wife Kiran
Devi @ Meera Devi against her husband Shiv Kumar Yattti did
not desclose presence of petitioner, father of Shiv Kumar Yatti to
be a party nor, during proceeding he has been impleaded as a
party. In spite of the same, the learned lower court while hearing
the petition filed on behalf of wife/applicant dated 25.06.2008 to
attach the property belonging to opposite party that means to say
her husband, the learned lower court has attached the property not



only of O.P. (husband) rather that of petitioner also. The aforesaid exercise adopted by the learned lower court was illegal on three grounds:

- (a) Petitioner/father of O.P. was not at all made party
- (b) He was not impleaded as party before passing of the aforesaid order.
- (c) He was not given opportunity to address the Court.

So, the learned lower court violated principle of natural justice. It is settled principle of law that an order should not be passed without hearing a party, unless and until the circumstances so necessitated. The order impugned did not suggest prevailing of such kind of circumstance.

In the present petition, O.P. No. 2 wife has not been noticed. This petition is of the year 2016. If notice is issued and, appearance of O.P. No. 2 is awaited, then the matter is to linger as it will consume at least one year further more and no fruitful result on account of illegality perceived in the order impugned.

That being so, petitioner is directed to file a petition before the lower court, serving a copy upon the O.P. and then, thereafter, the learned lower court, after hearing the party, will pass an order in accordance with law, without considering the fact that the order impugned happens to be of the year 2008.



In terms thereof, instant petition is disposed of.

(Aditya Kumar Trivedi, J)

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