

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.704 of 2015

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Bhola Singh @ Bhola Pd. Singh, son of Late Deo Nandan Rai, Resident of village- Fulhara, P.S.- Rajapakar, Dist.- Vaishali.

.... Petitioner/s

Versus

Zeena Rai, D/o Shiv Nandan Rai, Resident of village- Dharampur, Ram Raj, P.S.- Deshri, Dist.- Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

6 19-03-2018 The petitioner is aggrieved by the order dated 23.07.2015, passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in Miscellaneous Case No. 18 of 2015, arising out of Maintenance Case No. 6 of 1984, whereby the petition filed on his behalf under Section 127(2) of the Code of Criminal Procedure, 1973 (*in short* **"the Cr.P.C."**) for cancellation of the maintenance amount, which was fixed by it earlier, was refused.

The case of the opposite party/wife is that she was married to the petitioner in the year 1973 and a son



was born out of the wedlock. She had stayed with the petitioner as his legally wedded wife for about nine years but both, the opposite party No. 2 as well as her son were thrown out of the matrimonial home in the year 1984.

Mr. Rajendra Narain, learned Senior Advocate for the petitioner, has drawn the attention of this Court to the fact that a Title suit was filed by the petitioner *vide* Title Suit No. 82 of 1985, seeking a decree from the competent Court that there was no marriage solemnized between the petitioner and the opposite party No. 2 and consequently no child was born out to the wedlock. The aforesaid Title suit, on contest, was finally decided on 14.09.1992, declaring that opposite party No. 2 was never married to the petitioner. Consequently, the claim of the son of opposite party No. 2 also got extinguished. Be that as it may, the son of the opposite party No. 2 also preferred a Title suit, bearing Title Suit No. 70 of 2000, seeking a declaration that he is the heir of the petitioner because of his mother having married the petitioner and he being born out of the wedlock of his parents. The said Title suit was also dismissed on 16.09.2006, holding that the issue has already been decided in Title Suit No. 82 of 1985.

Mr. Narain, learned Senior Advocate, has submitted that the argument made by the opposite party



No. 2 before the court below as well as relied upon by the learned Family Court, viz. that the Court of the Additional Munsif was not competent to try the Title Suit No. 82 of 1985 is not correct.

The Family Courts Act, 1984 (*in short "the Act"*) was enacted in the year 1984. However, in the State of Bihar, it was adopted on 10.12.1991. The Rules in this regard were framed in the year 2000.

Section 3 of the Act reads as follows :

"3. Establishment of Family Courts.-(1)

For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,-

(a) shall, as soon as may be after the commencement of this Act, establish for every area in the State comprising a city or town whose population exceeds one million, a Family Court;

(b) may establish Family Courts for such other areas in the State as it may deem necessary.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase reduce or alter such limits."

Under Section 7, falling in Chapter III of the Act, the jurisdiction of the Family Courts Act has been delineated. Subject to the other provisions of this Act, a Family Court is to have jurisdiction to exercise powers of a



District Court or of a Subordinate Civil Court for the area in which the jurisdiction of the Family Court extends to any suit or proceeding for declaration as to the validity of the marriage or as to the matrimonial status of any person.

In order to avoid any confusion with regard to the applicability of the Act with respect to jurisdiction, Section 8 of the Act clearly spells out the conditions under which such jurisdiction in the pending proceedings would be excluded. Section 8 of the Act clarifies that if a suit is pending before the establishment of the Family Court before any District Court or Subordinate Court, as the case may be, and which would have been required to be instituted or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, the Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it was established.

Section 8 of the Act reads as follows :

"8. Exclusion of jurisdiction and pending proceedings.—Where a Family Court has been established for any area,-

(a) no district Court or any subordinate civil Court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the *Explanation* to that sub-section;



(b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the *Explanation* to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-

(i) which is pending immediately before the establishment of such Family Court before any district Court or subordinate Court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,
Shall stand transferred to such Family Court on the date on which it is established."

In the present case, the title suit was filed in the year 1985 and the judgment was delivered on 14.09.1992. The Act, as stated earlier, was adopted in the State of Bihar on 10.12.1991 and the Rules in that regard were framed in the year 2000. Thus, before the establishment of the Act, the proceedings in Title Suit No. 82 of 1985 brought about by the petitioner had already stood concluded. The records further reveal that no effort was made by the opposite party No. 2 to challenge the



aforesaid judgment passed by the learned Additional Munsif, regarding the matrimonial status of the petitioner and the opposite party No. 2, which has attained finality. The issue got further confirmed with the dismissal of the Title Suit No. 70 of 2000 preferred by the so-called son of the opposite party No. 2.

Learned counsel appearing for the opposite party No. 2, however, has submitted that as against the judgment delivered in Title Suit No. 70 of 2000, in which judgment was pronounced on 16.09.2006, an appeal has been preferred by the son of the opposite party No. 2 *vide* Civil Appeal No. 3 of 2010, which is still pending adjudication.

Considering the aforesaid facts, this Court is of the view that with the passing of the judgment in Title Suit No. 82 of 1985, no maintenance could have been awarded to opposite party No. 2 and the Family Court was absolutely unjustified in not passing any order under Section 127(2) of the Cr.P.C. Even if the judgment passed in Title Suit No. 70 of 2000 is under challenge, that would not affect the status of the petitioner as having not married ever the opposite party No. 2.

As such, the order impugned is set-aside. The petitioner would not be required to pay any maintenance to



opposite party No. 2.

The petition stands disposed of.

(Ashutosh Kumar, J)

Praveen-II/-

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