

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.75 of 2017

In
CIVIL MISCELLANEOUS JURISDICTION No.1584 of 2016

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Dinesh Kumar son of Sri Naga Singh, Resident of village and P.O. Takiya Sasaram, Police Station-Sasaram Modle Ward No.2, District Rohtas.

...Petitioner/ Appellant

Versus

Pooja Kumari W/o Dinesh Kumar, d/o Chandrama Singh, Resident of village-P.O. Amaon, Police Station-Karamchat, District Kaimur.

... Opposite Party/ Respondent

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Appearance :

For the Appellant/s :Mr. Arvind Kumar Pandey, Advocate

For the Respondent/s :Mr. Dhaneshwar Prasad Gupta, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 25-09-2018

Heard.

The order passed by the Principal Judge, Family Court, Rohtas at Sasaram dated 14.09.2016 passed in Matrimonial (Divorce) Case No. 129 of 2016 is under challenge in this appeal.

By the aforesaid order, the Principal Judge, Family Court has held that the appellant should file his case before a competent court falling in the territorial jurisdiction of Kaimur district.

Admit.



No notice is required to be issued upon the sole opposite party as Mr. Dhaneshwar Prasad Gupta, learned counsel, who has already entered his appearance by filing vakalatnama, accepts notice on her behalf.

We are not calling for the lower court records for the reason that the order has been passed simply after perusing the statement made in the petition/plaint of the appellant and in a pre-notice stage as well as the further fact that the copy of the plaint already stands appended as Annexure 1 A to this memorandum of appeal.

This matter is being heard for its final disposal on merit on the consent having been given by the parties.

From bare perusal of the plaint, it would appear that the appellant as well as the respondent are legally wedded husband and wife. It is admitted that the marriage was solemnized on 05.06.2015 and it is further stated in the plaint that on 06.06.2015, the respondent after "Bidagri" came to her matrimonial house at Sasaram and, thereafter, appellant-petitioner observed that her manners were not conducive to be a prudent person and she was suffering from some sort of mental illness. She was also taken to the doctor and after examination by the doctor, it was held that she is suffering from mental illness from the period before



solemnization of the marriage. Thereafter, the opposite party returned back to her parents' house. It is also stated in paragraph no. 11 that the respondent-opposite party-wife stayed at her matrimonial house for about a month and, thereafter, she returned back to her parental home along with her brother and uncle in the month of July, 2015. Subsequently, even after efforts having been made by the appellant-petitioner, they did not allow her to go to her matrimonial house. Thus, since July, 2015, they have been living separately. From the aforesaid statement made in the plaint though it appears that the address of the opposite party-respondent given in the plaint was of Kaimur but this is also a fact that she lastly resided as husband and wife at matrimonial house at Sasaram at Rohtas.

In view of Section 19 (iii) of the Hindu Marriage Act, 1955, in our view, the case was maintainable before the Sasaram Family Court also as the party to marriage, in view of the averment made in the plaint, resided together at Sasaram. Thus, it is held that the decision of the Principal Judge, Family Court, Rohtas that he should file a case in Kaimur district as the same would not be maintainable at Sasaram is held to be erroneous.

It is further made clear that in view of the provision contained in Section 19 (ii) of the Hindu Marriage Act, the



matrimonial case would also be maintainable before the Principal Judge, Family Court, Kaimur at Bhabhua because the respondent is staying there.

In the result, this appeal is allowed. The impugned order dated 14.09.2016 is set aside. The matter is remanded to the court concerned for consideration of the *lis* in accordance with law.

However, at the time of hearing, learned counsel for the respondent has submitted that the respondent is residing at her parental house and it would be difficult for her to come to Rohtas, Sasaram for attending the case on each and every date of hearing.

Learned counsel for the appellant has submitted that Kaimur at Bhabhua is about 40-50 K.Ms. away from Sasaram, therefore, she would not have any difficulty in coming to Kaimur.

In our view, since the respondent is a lady and if she does not have any difficulty in the eyes of the appellant to come to Sasaram to attend the court then the appellant certainly would not have also any difficulty to attend the case at Kaimur at Bhabhua.

In such a situation, this Court *ex debito justitiae* would order for transfer of the case from the court of Principal Judge, Family Court, Rohtas at Sasaram to the court of Principal Judge, Family Court, Kaimur at Bhabhua.



The records should be transferred within two weeks from the date of receipt/production of a copy of this order by the Principal Judge, Family Court, Rohtas at Sasaram to the Principal Judge, Family Court, Kaimur at Bhabhua.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.09.2018
Transmission Date	28.09.2018

