

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1074 of 2017

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Most. Rekha Devi, Wife of Late Bijoy Kumar Gupta, Resident of Village-
Naugachia Near Bishahari Asthan, P.S. Naugachia, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Raj Kishore Gupta, Son of Sri Ramatar Prasad Gupta, Resident of
Village- Suryagarha Bazar, P.S. Suryagarha, District- Lakhisarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Jha, Adv.,
Mr. Mirtyunjay Kumar Mishra, Adv.

For the Respondent/s :
For the O.P. No.2 : Mr. Amrit Abhijat, Adv.
Mr. Manoj Kumar Gupta, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 26-10-2018 The petitioner is seeking transfer of Guardianship Case

No. 01 of 2017, pending in the Court of learned Principal Judge,

Family Court, Lakhisharai, to the Court of learned Principal

Judge, Family Court, Bhagalpur.

It appears that the petitioner is the mother-in-law of the
O.P. No.2. The daughter of the petitioner was married to O.P.
No. 2 but unfortunately, after about 13 years her daughter died
due to burning. The petitioner has lodged Suryagarha P.S. Case
No. 56 of 2015, dated 24.03.2015 under Section 302/34 of the
Indian Penal Code in which the O.P. No. 2 is a named accused.

The O.P. No. 2 has brought the Guardianship Case



seeking custody of his three children who were aged about 12 years, 10 years and 6 years respectively in the year, 2017 at the time of filing of the case.

The grounds pleaded for transfer of the guardianship case are :-

- (I) That these three children are the eye-witnesses to the occurrence and, therefore, if they go in the custody of the O.P. No. 2, they are likely to be influenced and
- (II) that the petitioner is a widow having no independent source of income and that makes it difficult for her to travel to the Court from Bhagalpur to Lakhisarai and contest the guardianship case.

On the other hand, the O.P. No. 2 has been contesting the present application on the ground that he being the father of the three children is the natural guardian. The marriage between the O.P. No. 2 and daughter of the petitioner had taken place about 13 years back from the alleged date of occurrence and at this stage, when his wife died due to burning, the three children have been taken away by the petitioner and now is tutoring her wrong things and is indulged in brain washing.

In course of argument, it has also been submitted on behalf of O.P. No. 2 that taking note of the statement of the



petitioner that she is in financial difficulties, it may be very well inferred that she is unable to take care of these three children properly, they are not being sent to school for studies which are likely to place them in a difficult situation in future.

Having heard learned counsel for the parties and on perusal of records, this Court finds that the O.P. No. 2 is admittedly the father of the three children, he has brought the Guardianship Case for getting custody of the three children who are presently living with the petitioner. The apprehensions raised by the petitioner that if these children will go in the custody of O.P. No. 2, they are likely to be tutored and that may affect the criminal case are the contentions on the merit of the case of which the Guardianship Case is being contested but such contentions cannot be a ground to transfer the proceedings from Lakhisarai.

So far as plea of financial difficulties are concerned, in the given facts and circumstances of the case, where this Court finds that O.P. No. 2 is the father and is seeking custody of his three children, such plea of financial difficulties in traveling and contesting the case are not appealing to this Court so as to allow transfer of the proceeding to Bhagalpur.



This application is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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