

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7647 of 2014

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Prashant Kumar Verma son of Paras Nath Verma, resident of Mohalla - Lanka
(Nawkapur), P.S. Ghazipur, District - Ghazipur (U.P.).

.... Petitioner/s

Versus

Babita Verma D/o Late Haridwar Prasad Verma, resident of village - Purana
Bhojpur, P.O. & P.S. Dumraon, District – Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manendra Kumar Sinha, Adv.

For the Respondent/s : Mr. Nazir Alam, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 20-04-2018

This application has been filed for setting aside the order dated 14.02.2014 passed by Principal Judge, Family Court, Buxar in Matrimonial (Divorce) Case No. 10 of 2012. The learned court below as per impugned order rejected the petition filed by the petitioner (husband) to dismiss the case as not maintainable.

2. Heard learned counsels for the petitioner as well as the respondent.

3. The respondent (wife) filed the aforesaid Matrimonial Case No. 10 of 2012 for declaration that the marriage of her husband with another lady, namely Sarita Kumari @ Nita Kumari during the subsistence of 1st marriage of plaintiff (1st wife) is void under the provision of Hindu Marriage Act, 1955.



4. The learned counsel for the petitioner submits that the court below has erred in not dismissing the matrimonial suit as not maintainable. According to Hindu Marriage Act, only the wife or husband, who is already married, is competent to file the matrimonial suit for declaration of 2nd marriage as null and void in view of provision of section 12 of the Hindu Marriage Act, 1955. The petitioner being not party to the second marriage has no right to get the marriage declared as void and so the suit of the respondent before court below is not legally maintainable.

5. The learned counsel for the respondent on the other hand submits that the respondent had filed Title Suit No. 8 of 2008 under section 9 of Code of Civil Procedure read with section 34 of Specific Relief Act for declaration of marriage of her husband with 2nd wife as illegal and void. The husband appeared and contested the case. The petitioner filed a petition under Order XIV Rule 2 of Code of Civil Procedure challenging the maintainability of the said suit before the civil court. The Sub-Judge-II disposed of said suit observing that the court of Sub-Judge has no jurisdiction to hear the suit in view of constitution of Family Court. The petitioner however was given liberty to file the suit before the Principal Judge, Family Court, Buxar. The respondent-wife filed C.W.J.C. No. 22030 of 2011 which was disposed of as per order dated 14.12.2011 observing that



the suit is not maintainable before the civil court after constitution of Family Court. The petitioner however was given liberty to approach appropriate forum for initiating appropriate proceeding. Thereafter, the respondent filed the aforesaid suit for declaration of 2nd marriage of her husband with another lady as void before the court of Principal Judge, Family Court, Buxar. A suit for declaration of marriage as null and void under the provision of Hindu Marriage Act is required to be presented by either the husband or the wife. The 1st wife if seeks declaration of marriage of her husband with another lady shall be governed by section 9 of the Code of Civil Procedure read with section 34 of the Specific Relief Act. The respondent-wife has averred that the marriage of her husband with 2nd lady is void under the provision of Hindu Marriage Act. This does not mean that the present suit has been filed under the provision of Hindu Marriage Act. The plaintiff had filed the earlier suit under section 11 of the Code of Civil Procedure read with section 34 of Specific Relief Act on the file of Sub-Judge which was disposed of with an observation that the said suit is maintainable only before the Principal Judge, Family Court as by that time, the Family Courts Act came into force. Against the said order, the respondent filed civil writ before this Court. The said writ was dismissed with some observation as stated above. In view of observation of this Court passed in C.W.J.C. No. 22030 of 2011, the



respondent filed the suit before the court below. The court below as per impugned order has rightly rejected the petition and held that the suit is maintainable before the court of Principal Judge, Family Court.

6. In view of above facts, I do not find any illegality in the impugned order requiring any interference under inherent jurisdiction. This application is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30.04.2018
Transmission Date	

