

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.702 of 2015

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Sukhendra Mishra Son of Late Ram Ashish Mishra Resident of Village- Bishunpur Baghnagri, P.S.- Sakra, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rubi Kumari wife of Surjeet Kumar Mishra resident of Village- Vishunpur Baghnagri, P.S.- Sakra District- Muzaffarpur, Presently living with her father Vijay Sinha at village- Harishankar Maniyari, P.S.- Maniyari, District- Muzaffarpur.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Hari Kishore Thakur
For the Respondent/s : Mr. Lallan Kumar (App)
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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 10-08-2018 A supplementary affidavit has been filed in the Court.

Let it be taken on the record.

The petitioner has challenged the order dated 23.06.2015 passed in Miscellaneous Case No. 54 of 2013 whereby the learned Principal Judge, Family Court, Muzaffarpur has directed for attachment of his property for payment of maintenance to O.P. No. 2, who is wife of one of his sons.

Without going into the merits of the case with respect to the quantum of maintenance awarded to O.P. No. 2, the only contention of the petitioner is that the husband of O.P.



No. 2 (son of petitioner) would only have 1/6th share in the ancestral property of the petitioner. Whatever property stands in his name and which is exclusively acquired by him cannot be attached for implementation of an order passed by the learned Family Court towards the grant/payment of maintenance to O.P. No. 2.

This Court had insisted upon the petitioner to furnish a complete and correct statement regarding his assets in the shape of land and building. By way of supplementary affidavit, he has brought to the notice of this Court that his share in the ancestral property would be to the extent of 42 decimals of land. The other property in the name of the petitioner or his wife is his self acquired property which he does not intend to part with in favour of anybody. A fair stand has been taken by the petitioner that in the ancestral property, his sisters have not staked any claim. Thus, the property to which the husband of the O.P. No. 2 (son of the petitioner) would be entitled, would be around 7 decimals of land which can be attached or auction sold for implementing the order of the learned Family Court.

Under such circumstances, this Court deems it appropriate to set aside the order impugned and remit the case to the Court of learned Principal Judge, Family Court, Muzaffarpur for writing out a fresh order in accordance with



law after taking into account the aforesaid facts which have been indicated. The petitioner shall also bring to the notice of the Court below the details of his property. The aforesaid order shall be passed within a period of two months from the date of receipt/production of a copy of this order.

With the aforesaid observation/direction, the petition is disposed of.

(Ashutosh Kumar, J)

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