

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.522 of 2016

Arising Out of PS. Case No.- Year- Thana- District- Nalanda

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Bina Devi, wife of Lakhan Yadav, resident of Village Samas Khurd, Tola Balwa, P.S. Barbigha, District- Shaikhpura, at present mother in Bimli Devi, Village- narari Balwa, Police Station- Tharthari, District- Nalanda.

... .. Petitioner

Versus

Lakhan Yadav, Son of Late Shankar Yadav, resident of Village Samas Khurd, Tola Balwa, Police Station- Barbigha, District- Shaikhpura.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Dhananjay Mishra, Adv.

For the Respondent/s : Mr. Bipin Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV ORDER

Date : 06-12-2018

As both the parties have appeared in this case, as such this revision application is being heard and is being disposed of at the stage of admission itself.

2.The petitioner has preferred this revision application against the order dated 19.4.2016 passed by the Principal Judge, Family Court, Nalanda in Maintenance Case No.12/M/2009 by which the application for maintenance filed by the petitioner has been rejected.

3. The case in short is that the petitioner is legally wedded wife of O.P.No.2 and she has four daughters and later on the petitioner has not been blessed with a son so the O.P. no.2 re-



married with another lady namely Pyari Devi. It is alleged that after marriage with Pyari Devi O.P.No.2 started neglecting her and torture in various manner and several times ousted her from her matrimonial house and she took shelter in the house of her daughters and the daughters of the petitioner are not in a position to maintain her. It appears that thereafter a complaint case was filed by the petitioner and a complaint case has been filed by the O.P.no.2 also against the petitioner. It further appears that thereafter the Maintenance Case No.123/M/2009 was filed by the petitioner against the O.P.no.2 stating that after re-marriage with Pyari Devi he started neglecting her and torture in various manner, as such she is residing in the house of her daughters, who are not in a position to maintain her on the other hand, the O.P.No.2 has sufficient means to maintain the petitioner as he has got 2 acres and 99 decimal cultivable land having gross income annually of Rs.02 lac and apart from that the O.P.no.2 has retired from the Army and got handsome pension also.

4. During the proceeding, two witnesses were examined on behalf of the petitioner - one herself and another is Devnarayan Prasad. On the other hand eight witnesses have been examined on behalf of O.P. no.2



5. The learned Family Court after evidence and argument has come to the conclusion that the petitioner has left the house of the O.P.No.2 on her own and in spite of which, O.P.No.2 asked her to come but she did not return and she sold 72 decimals of land purchased by the O.P.No.2 in the name of his daughter at Rs.1,77,000/- to maintain her and also considering the fact that no person either from her Sasural or from her Maikie has come forward to depose in favour of the petitioner and considering the aforesaid fact has dismissed the Maintenance Case filed by the petitioner, vide order dated 19.4.2016 passed in Maintenance Case No.123/M/2009.

6. Being aggrieved by the aforesaid order, the present revision application has been preferred on the ground that the petitioner has been ousted from the matrimonial house of the O.P.no.2 which appears from the evidence of the witnesses examined on behalf of the petitioner and the evidence further shows that O.P.no.2 is a retired army personnel having pension also apart from that income from other properties, as such O.P.no.2 has sufficient income to maintain her but in spite of that she is not being maintained by the O.P.no.2. It has further been submitted that the learned Family court without considering the fact that the petitioner has sufficient reasons to live separately and



a petition has been filed by the petitioner for maintenance has dismissed her case which is against the spirit of Section 125 of the Cr.P.C.

7. On the other hand the learned counsel for the O.P.no.2 has supported the impugned order on the ground that in spite of the offer made by the O.P.no.2 to keep her in his house she is not ready to live with the petitioner and moreover she has sold the land which has been purchased by the O.P.No.2 in the name of the petitioner at Rs.1,77,000/- with which he could maintain herself and though he had married with another lady, but with the consent of the petitioner that too 24 years ago and after the marriage also she was living with the O.P.No.2 but later on she left her house as such it is the petitioner who is not ready to live with O.P.No.2, as such under Section 125(4) of the Cr.P.C. she is not entitled for maintenance.

8. On perusal of the record it appears that only two witnesses have been examined on behalf of the petitioner, one herself and another is one Devnarayan Prasad who is Gotia and it clearly appears that no family members either of her Sasural or her or Maikha has come forward to depose in favour of the petitioner . It further appears from the record that she has four daughters and she is living with one daughter but in spite of that they have not



come forward to depose in favour of the petitioner, C.W. 2 is petitioner and has stated that O.P.No.2 had solemnized second marriage and thereafter she was ousted from the house. Further it appears from para 6 of the impugned order that her husband had solemnized second marriage 40 years ago as he had no son. Further her evidence in cross examination discloses that prior to marriage with another lady O.P.No.2 had purchased land in favour of the petitioner which has been sold by her to his daughter Bimali Devi. His evidence further shows in para 9 of her cross examination that she has stated that prior to three years, she had herself gone to her daughter and after lodging the case, her husband had gone to bring her back but she did not come and in cross examination she has also categorically stated that even her husband will take her she would not go with him.

9. Section 125 (1) of the Cr.P.C. provides for maintenance for the wife if any person neglects or refuses to maintain her and Section 125 (4) of the Cr.P.C. provides that -

“No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refused to live with her husband, or if they are living separately by mutual consent.”



10. However as discussed above from her evidence itself it appears that she had gone on her own to the house of his daughter and thereafter her husband had gone to bring her back after lodging of the case but she refused to come. Furthermore Section 125(4) of the Cr.P.C. provides that if the wife refused to come with her husband or if she is living with her husband without any sufficient reason she is not entitled for maintenance.

11. Case of the petitioner is that after the second marriage she was ousted from the house and she is living with her daughter, however, as discussed above, from her own evidence it appears that she had gone on her own to live with her daughters and in spite of request by the petitioner she refused to return, as such the case of the petitioner is that she had been ousted from the house after the second marriage of the petitioner is falsified from her own evidence. Further the grounds for living separately is that the O.P.2 has re-married does not stand from her own evidence that the marriage was solemnized 40 years ago and the petitioner is still ready to keep her and maintain her as appears from the evidence as discussed in the impugned order. Hence the plea of the petitioner is that she was forced to leave her matrimonial home is being falsified.



12. Learned family court considering the aforesaid aspect of the matter has dismissed the maintenance case filed by the petitioner, which appears to be just and proper.

13. Accordingly, I find this revision application is devoid of any merit. Hence, this application is dismissed.

chn/-

(Vinod Kumar Sinha, J)

AFR/NAFR	AFR
CAV DATE	22/11/2018
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