

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1015 of 2017

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Niraj Gupta, Son of Surendra Prasad Gupta, Resident of Village - Chakballi, P.O. - Noorpur, P.S. - Barauni, District - Begusarai (Bihar), At present residing at Flat No. B - 204 Vastu Shanti Tower Sector - 11 Kalamboli Navi Mumbai Pin Code - 410218 Mumbai.

... .. Appellant/s

Versus

1. Monika Kumari, Wife of Niraj Gupta, Resident of Village - Chakballi, P.O. - Noorpur, P.S. - Barauni, District - Begusarai (Bihar) At present residing at Flat No. B - 204 Vastu Shanti Tower Sector - 11 Kalamboli Navi Mumbai Pin Code - 410218 Mumbai.
2. Prem Chandra Rai Son of late Hari Nandan Rai.
3. Anita Devi, W/o Prem Chandra Rai.
Both residents of Saket Vihar Barmasia Ambedkar Chowk, Deoghar, P.S. - Deoghar, District - Deoghar (Jharkhand).

... .. Respondent/s

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Appearance :

For the Appellant/s	:	M/s Kaushal Kumar Singh
	:	Niraj Kumar
	:	Ashok Kumar, Advocates
For the Respondent/s	:	Mr.

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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 : 18-09-2018

Heard learned counsel for the appellant.

This appeal is directed against the judgment dated 12.10.2017 passed by the Principal Judge, Family Court, Begusarai in Divorce Case No. 15/2017 by which the Principal Judge, Family Court, Begusarai after recording a finding that the appellant as well as respondent both are presently staying at



Mumbai. Accordingly, this case would not be maintainable at Begusarai and, thus, the same has been dismissed.

Learned counsel appearing for the appellant has submitted without framing issue and without the factual assessment, the said order has been passed and, as such, the same is erroneous. It is contended that ofcourse the wife is living at Mumbai and in the flat of the husband itself but since there is no husband-wife relationship, therefore, sub-Section (III) of Section 19 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) would not come in play.

However, we do not find any force in such submission made on behalf of the appellant. For the purpose of jurisdiction in the matrimonial matters governed by the Hindu Marriage Act, 1955 where the provisions contained in Section 19 of the Act would be the guiding factor for any Court. For better appreciation provisions of Section 19 of the Act stands enumerated as under:-

“19. Court to which petition shall be presented.

1[19.Court to which petition shall be presented.

Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction--



- (i) the marriage was solemnized, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.]”

It is apparent from the aforesaid provision that every petition under the Act has to be presented before the district court and after coming of Family Courts Act, 1984 before the Family Court established under the law where either the marriage was solemnized, or the respondent, at the time of presentation of petition, resides or the parties to the marriage last resided together.

A copy of the plaint was produced by learned counsel for the appellant at the time of hearing also. For looking into the issue of jurisdiction one would have to go through the averments made in the plaint itself and the plaintiff has to establish his case from the plaint with respect to the jurisdiction. Admittedly, the marriage was solemnized at Deoghar, which is in the State of Jharkhand, therefore, on that count the Principal Judge, Family Court,



Begusarai would not have any jurisdiction to decide the *lis* so far Section 19 (II) and (III) are concerned. Admittedly, the respondent, at the time of presentation of petition is residing at Mumbai. In addition to that the appellant, i.e., the husband and the wife are together residing in the flat of the husband, therefore, on that score also the jurisdiction will not be in the State of Bihar rather that would be at Mumbai. Even for the time being, if it is assumed that there is no husband-wife relationship though, that would be a factor to be decided at the time of consideration of the *lis* between the parties. In such case, the relevant provision would be the Section 19 (II) as the respondent admittedly resided at Mumbai at the time of presentation of petition.

Above all, in our considered opinion, it is not the factor as to whether they are living as husband or wife or not leading a conjugal life. Even if they are living together at a particular place that would again be the place to sue.

Having regard to the aforesaid discussion and facts and circumstances of the case, in our view, the stand taken by the Principal Judge, Family Court, Begusarai



cannot be faulted with and in our opinion this appeal is not
fit to be admitted.

Accordingly, the same is dismissed.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
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