

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.57 of 2016

Most. Sangeeta Singh wife of Late Sanjay Singh, resident of Village-Padumker, P.S.- Patahi, District- East Champaran.

... .. Appellant/s

Versus

Bindhyachal Singh son of Late Hari Narayan Singh resident of Village-Padumker, P.S.- Patahi, District- East Champaran. At present Mohalla-Rajendra Nagar Motihari, P.S.- Motihari Town, District- East Champaran.

... .. Respondent/s

with

Miscellaneous Appeal No. 153 of 2016

Most. Sangeeta Singh wife of Late Sanjay Singh, resident of Village-Padumker, P.S.- Patahi, District- East Champaran.

... .. Appellant/s

Versus

Bindhyachal Singh son of Late Hari Narayan Singh resident of Village-Padumker, P.S.- Patahi, District- East Champaran. at present Mohalla-Rajendra Nagar Motihari, P.S.- Motihari Town, District- East Champaran.

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 57 of 2016)

For the Appellant/s : Mr. Shivjee Pandey

For the Respondent/s : Mr. Vivekanand Vivek

(In Miscellaneous Appeal No. 153 of 2016)

For the Appellant/s : Mr. Binay Kant Mani Tripathi

For the Respondent/s : Mr. Vivekanand Vivek

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 18th May, 2020

Both the above stated miscellaneous appeals



have been preferred against the common order dated 22.6.2015 passed by learned Principal Judge, Family Court, East Champaran at Motihari in Maintenance Case No. 84 of 2009 as well as Maintenance Case No. 227/2012 by which learned Principal Judge, Family Court, East Champaran at Motihari dismissed both the above stated maintenance cases filed on behalf of the appellant.

2. Appellant Sangeeta Singh filed Maintenance Case No. 84 of 2009 for her maintenance as well as for maintenance of her minor daughters and son against sole respondent under Section 19 of the Hindu Adoption and Maintenance Act, 1956, claiming permanent alimony of Rs. 12,000/- per month and also interim maintenance of Rs. 6000/- per month from respondent till disposal of the above stated case. The appellant Sangeeta Singh claimed in her petition that she is widowed daughter-in-law of respondent and her husband, namely, Sanjay Singh, died on 6.11.2005 due to his ailments. She, further, claimed that her marriage with above stated Sanjay Singh had taken place on 24.5.1995 and she was blessed with three daughters and one son out of the above stated wedlock. She, further, claimed that after death of her husband, she was neglected by respondent and respondent



forcibly took away one of her daughters, namely, Kumari Arpana and son Shivam Kumar Singh and kept them with him. She, further, claimed that share of her husband in her ancestral property was also not given to her and her ornaments and other belongings were also snatched by respondent. She, further, claimed that she approached to District Magistrate, East Champaran, Motihari for redressal of her grievances and, thereafter, District Magistrate, East Champaran, referred the matter to the court of Sri S.C.Lal, the then Executive Magistrate, Motihari, who, subsequently, settled the matter by partitioning the ancestral property but the respondent did not follow the direction of the then Executive Magistrate, Motihari, and got filed collusive Partition Suit No. 48 of 2006 in the court of Subordinate Judge, Motihari through her daughters with an object to grab the property of deceased husband of appellant. She, further, pleaded in her petition that the respondent got an *ex parte* collusive decree and, furthermore, the respondent also filed Guardianship Case No. 6 of 2006 against the appellant with false and concocted allegation. She, further, claimed that the respondent failed to discharge his legal duty to maintain his widowed daughter-in-law. She, further, pleaded that the respondent is a retired teacher and he gets Rs.



Eight thousand approximately per month as pension and has 20 Bighas agricultural land from which he earns Rs. Ten lac per annum. She, further, claimed that she does not have any earning to maintain herself and her minor children.

3. Respondent appeared before learned Principal Judge, Family Court and contested the claim of appellant by filing objection in which respondent, specifically, pleaded that the appellant after death of her husband solemnised her second marriage with one Saurabh Singh, son of Vijay Singh, in the month of May, 2008 and she has been living with her second husband, namely, Saurabh Singh. He, further, pleaded that he has three daughters, who filed partition suit bearing Partition Suit No. 48 of 2006 against the respondent and others and in the aforesaid partition suit, the appellant as well as her children were party. The respondent, further, pleaded that the aforesaid suit was decreed on 29.11.2008 and, accordingly, the ancestral property of husband of the appellant as well as respondent was partitioned and the due share was allotted to appellant, who is, exclusively, in possession of share of her husband. Respondent, further, pleaded that the appellant appeared in above stated Partition Suit No. 48/2006 but she did not file any written statement.



Respondent, further, pleaded that the second husband of appellant has inimical and litigating term with the respondent and as a matter of fact, the second husband of appellant set up the appellant and got filed above stated Maintenance Case No. 84/2009.

4. During pendency of the aforesaid Maintenance Case No. 84/2009, the appellant was awarded Rs. Two thousand per month as interim maintenance, which had been, regularly, paid by the respondent till final disposal of the aforesaid maintenance case.

5. It is pertinent to note here that during pendency of Maintenance Case No. 84/2009, appellant filed Maintenance Case No. 227 of 2012 against the respondent with almost similar pleadings and in the aforesaid Maintenance Case No. 227 of 2012, the respondent appeared and filed his objection reiterating almost same pleadings, which were pleaded before learned Principal Judge, Family Court in Maintenance Case No. 84 of 2009.

6. The learned Principal Judge, Family Court, East Champaran at Motihari made attempt to reconcile the dispute of the parties but failed in his attempt and, thereafter, proceeded with the above stated cases.



7. Both parties led their respect evidences before the concerned learned Principal Judge, Family Court, in Maintenance Case No. 84/2009. However, the impugned judgment reflects that the learned Principal Judge, Family Court heard arguments in both the cases and passed common judgment in both the above stated maintenance Cases.

8. Learned counsel appearing for appellant assailed the impugned judgment dated 22.6.2015 submitting that the learned Principal Judge, Family Court, East Champaran at Motihari, did not frame any issue and without framing proper issue passed the impugned judgment. He, further, submitted that the learned Principal Judge, Family Court, failed to consider the evidence of P.W. 2, who, specifically, denied her marriage with Saurabh Singh. He, further, submitted that respondent did not disclose the actual date of so-called marriage of appellant with Saurabh Singh and, moreover, there was no evidence either oral or documentary to prove the valid marriage of appellant with above stated Saurabh Singh but even then the learned Principal Judge, Family Court, relied upon the pleading of respondent. He, further, submitted that, no doubt, the daughters of respondent filed partition suit bearing Partition Suit No. 48/2006 against



the respondent impleading appellant as well as her children as party to the said partition suit but as a matter of fact, the aforesaid partition suit bearing Partition Suit No. 48/2006 was a collusive suit and even after disposal of the aforesaid Partition suit No. 48/2006, the appellant did not get possession over share of her husband in ancestral property and the share of ancestral property of her husband is still in possession of respondent. He submitted that the learned Principal Judge, Family Court, completely failed to take note of the aforesaid facts and, therefore, the impugned judgment cannot be sustained in the eye of law.

9. On the other hand, learned counsel appearing for respondent supported the impugned judgment arguing that the respondent was examined in the above stated Maintenance Case No. 84/2009 as D.W. 4 and, specifically, stated that the appellant remarried with Saurabh Singh in May 2008 and after the remarriage, she has been residing with her second husband Saurabh Singh @ Tinku Singh and leading her conjugal life with her second husband. Learned counsel for the respondent, further, submitted that the respondent gave his statement on affidavit and he supported the contents of his affidavit before learned Principal Judge, Family Court, but the



appellant refused to cross-examine D.W. 4 and, therefore, the statement of D.W. 4 remained uncontroverted. He, further, submitted that the respondent got exhibited certain documents including voter list and the voter list goes to show that the appellant had been shown in the voter list as wife of aforesaid Saurabh Kumar @ Tinku Singh.

10. Learned counsel of the respondent, further, submitted that the respondent got exhibited the judgment and decree passed in Partition Suit No. 48/2006 and the aforesaid documents go to show that the partition in the family of respondent had already taken place and after partition of ancestral property of his family, the respondent has lost the status of Karta of his family and, therefore, he is not bound to maintain the appellant as well as her children. He, further, submitted that, moreover, in partition, the appellant got share of her husband and, therefore, it cannot be said that she has no means to maintain herself as well as her children. He, further, submitted that so far as non framing of the issues is concerned, it may be a mere irregularity but only on the above stated basis the impugned judgment cannot be set aside.

11. Having heard the contentions of the parties, I went through the records. I find that, admittedly,



respondent is father-in-law of appellant, who happens to be widow of son of respondent. It is also an admitted position that the husband of appellant died in the year 2005. Furthermore, it is an admitted position that the appellant was blessed with three daughters and one son out of her marriage with son of the respondent and, furthermore, it is an admitted position that one of the daughters and one son of appellant are residing with the respondent whereas her two remaining daughters are residing with her.

12. It is not in dispute that under Section 19 of the Hindu Marriage Act, 1956, a Hindu wife is entitled to be maintained after the death of her husband by her father-in-law, if she is unable to maintain herself out of her own earnings or other property or where she has no property of her own, is unable to obtain maintenance from the estate of her husband or her father or mother or from her son or daughter, if any, or his or her estate. Furthermore, the obligation imposed upon father-in-law under Section 19 of the above stated Act cannot be enforced, if father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share and any such of obligation shall cease on the remarriage of the daughter-in-law.



13. In the present case, the respondent denied his obligation on two counts, first, the appellant remarried with Saurabh Kumar Singh @ Tinku Singh in May 2008, second, the appellant got share of her husband of ancestral property in Partition Suit No. 48 of 2006.

14. Now, it has to be seen as to whether the respondent could succeed to prove the aforesaid two grounds or not because the burden lies upon respondent to prove the aforesaid facts.

15. In course of hearing, altogether, three witnesses were examined including the appellant on her behalf and out of them, P.W. 2 is Saurabh Kumar Singh, the so-called second husband of appellant and P.W. 3 Sukirti Singh, one of the daughters of the appellant and P.W. 1, the appellant herself.

16. P.W. 1 and P.W. 2 both denied their so-called marriage and P.W. 1 stated that after death of her husband, she was neglected by the respondent and she has no source of income to maintain herself as well as her children. On being cross-examined, she stated that she had not taken any share from the property of her father. She, further, stated that she did not get any share in the partition suit which had been filed by the daughters of the respondent. However, she



admitted that she got 1/6 share in ancestral land of her husband but the aforesaid share was allotted only on the paper and she did not get any share or possession on the ground. She, further, admitted that Chhatauni P.S. Case No. 35/2007 was lodged against her. She denied that she brought Maintenance Case No. 84/2009 to put pressure upon the respondent. She, further, stated that in voter list, her husband's name was wrongly entered as Saurbh Singh @ Tinku Singh. However, she has stated nothing about the earnings of respondent.

17. P.W. 2, Saurabh Kumar Singh stated that the respondent has 35 Bighas land and gets Rs. 12,000/- per month as pension.

18. P.W. 3 stated in her deposition that her grand father is a retired school teacher and he gets pension but he does not maintain to her as well as her mother.

19. The respondent got examined four witnesses including himself and got exhibited several documents including decree passed in Partition Suit No. 48/2006 as well as voter list of appellant as well as Saurabh Kumar Singh. Respondent was examined as P.W. 4 on affidavit and he supported the contents of affidavit before the learned Principal Judge, Family Court, but appellant refused to cross-



examine the respondent, though, she was present in court, when D.W. 4 (respondent) was examined by learned Principal Judge, Family Court, Motihari. D.W. 4 (respondent), specifically, stated in his deposition that the appellant solemnized her second marriage with Saurabh Kumar Singh @ Tinku Singh in the month of May, 2008 and has been leading her conjugal life with Saurabh Kumar @ Tinku Singh. He, further, stated that Arpana Kumari and Shivam Kumar, one of the daughters and son of appellant, reside with him and he maintains Arpana Kumari and Shivam Kumar. This witness, further, stated that after death of her husband, the appellant took the possession of her husband's share in agricultural property and got cultivated lands of her husband, though, she had been residing with her second husband Saurabh Singh. He, further, stated that in Partition Suit No. 48/2006, appellant appeared but she did not file any written statement and, thereafter, Partition Suit No. 48/2006 was decreed *ex parte* but appellant got share in ancestral property vide the judgment and decree passed in the said partition suit. He, further, stated that appellant in collusion with Saurabh Kumar Singh lodged several false cases against him and not only this, she also made attempt to kill her daughter Arpana Kumari for which



Chhatauni P.S. Case No. 35/2007 was lodged against appellant as well as her second husband Saurabh Singh. D.W. 4 (respondent), further, stated that respondent is not the Karta of his family nor in possession of coparcenary property.

20. Admittedly, the D.W. 4 was not cross-examined and his statement remained uncontroverted. However, the testimony of D.W. 4 is corroborated by the documentary evidences and, therefore, it is obvious that the respondent succeeded to prove this fact that the appellant remarried with Saurabh Kumar Singh @ Tinku Singh after death of her first husband and, furthermore, the appellant got share of her husband in ancestral property in Partition Suit No. 48/2006 and, therefore, in the back drop of above stated proven facts, in my view, learned Principal Judge, Family Court, Motihari, rightly held that the appellant was not entitled to seek maintenance from respondent.

21. So far as the question of maintenance of children of appellant by respondent is concerned, admittedly, one daughter and one son of appellant are residing with respondent and they are being looked after by him. It is also an admitted position that two daughters of appellant are residing with her. However, the respondent has filed Guardianship case



for the custody of the above stated two daughters of the appellant.

22. Section 20 of Hindu Adoption and Maintenance Act, 1956, makes provision for maintenance of children and aged parents. The aforesaid Section has no relevance in the facts of the present case because the said section compels the father or mother of legitimate or illegitimate children to maintain them during his or her life time.

23. Section 22 of Hindu Adoption and Maintenance Act, 1956 makes provision for maintenance of dependents of a deceased Hindu. However, the aforesaid provision is also of no help to children of appellant because the aforesaid provision compels the heirs of deceased, who inherits the estate of deceased to maintain the dependents of a deceased. In the present case, appellant has got the share of her husband and, therefore, respondent is not responsible for maintenance of children of the appellant.

24. No doubt, the learned Principal Judge, Family Court, Motihari, did not frame any issue on the basis of pleadings of the parties but mere non framing of issues does not vitiate the findings of the Principal Judge, Family Court,



because from perusal of entire impugned judgment, I find that the learned Principal Judge, Family Court, has taken note of each facts and evidences on the record and, therefore, in my view, on the aforesaid ground, no interference is required in the impugned judgment. Furthermore, I find that the learned Principal Judge, Family Court, having considered all the evidences available on the record, passed the impugned judgment, which does not require any interference by this Court, therefore, on the basis of above stated discussions, I am of the view that both the above stated miscellaneous appeals do not have any merit and, accordingly, both the above stated miscellaneous appeals stand dismissed.

(Hemant Kumar Srivastava, J)

Partha Sarthy, J: I agree.

Spd/-

(Partha Sarthy, J)

AFR/NAFR	AFR
CAV DATE	15.11.2019
Uploading Date	19.05.2020
Transmission Date	NA

