GAHC010306862019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./530/2019

ABDUR RAZZAK
S/O LATE MANGAL ALI, P/R/O VILL-SATRAKANARA SHATBHITA, P.O.-SATRAKANARA, P.S.-BAGHBOR, DIST-BARPETA, ASSAM, P/R/A BYE LANE NO. 1, SREENAGAR, P.O.-CHRISTIANBASTI, GUWAHATI-5, DIST-KAMRUP (M), ASSAM

VERSUS

RUNU KHATUN
W/O ABDUR RAZZAK, R/O VILL-KAPLABORI, P.O.-KAPLABORI, P.S.-MUKALMUWA, DIST-NALBARI, ASSAM, PIN-

Advocate for the Petitioner : MR. K M HALOI

Advocate for the Respondent : MS S SHARMA

BEFORE
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

ORDER

Date : 15-12-2020

Heard Mr. KM Haloi, learned counsel for the petitioner and Ms. S. Sarma, learned counsel for the respondent.

2. The challenge in this revision petition is to the judgment and order dated 12.09.2019, passed

by the learned Principal Judge, Family Court, Nalbari in F.C. (Crl.) Case No. 84/2019. With the consent of the parties, this revision is taken up for disposal at the stage of admission.

3. The respondent herein as the petitioner filed an application under Section 125 of the Cr.P.C. against the present petitioner seeking maintenance at the rate of Rs. 15,000/- per month for herself and Rs. 10,000/- per month for her child. The revision petitioner contested the said petition and after hearing the both side, the leaned Family Court granted monthly maintenance of Rs. 2,500/- in favour of the respondent-wife. However, the learned Family Court refused to grant maintenance to the daughter on the ground that she has attained the majority. The learned Family court also granted Rs. 10,000/- as one time payment towards cost of litigation.

4. The marital relationship between the parties has not been disputed in this case. It is also admitted position that the respondent-wife has been living separately at Nalbari. However, the learned counsel for the petitioner contends that he had executed a power of attorney in favour of the respondent-wife for selling a plot of land measuring 15 Khatas situated at Guwahati. On the strength of the said power of attorney, the respondent wife sold the said plot of land. It was also brought on record that the petitioner made fixed deposit of Rs. 2,00,000/- in favour of his daughter. The contention of the learned counsel for the revision petitioner is that since the respondent-wife has sold the said land and kept the money with herself and the petitioner also made a fixed deposit of Rs. 2,00,000/- in the name of her daughter, he never neglected them and as such the learned trial court ought not to have passed the impugned order granting maintenance.

5. Evidently, with the money received by way of selling of land on the strength of power of attorney executed by the revision petitioner, the respondent had purchased another plot of land at Nalbari and constructed a house and she has been residing there. The pleaded case of the respondent wife is that though house was constructed by her with the money received by selling the land of her husband and she has been residing there with her daughter, she has no means to maintain herself. The petitioner never denied or rebutted the above pleadings of the respondent-wife that the money received by selling the land was used for purchasing another plot of land for constructing house. There was also neither any pleading nor evidence to show that the 15 lechas of land, was given to the respondent-wife by the petitioner in lieu of her regular maintenance. Therefore, it cannot be

presumed automatically that the land was given to the respondent-wife in lieu of her maintenance, in view of categorical pleading of the respondent which remained unrebutted.

6. The learned trial court held in the judgment that the revision petitioner did not pay anything as maintenance for subsistence of his wife who has been admittedly living separately. The pleading and evidence of the wife that she has no means of her livelihood also remained unrebutted.

7. In the above facts and circumstances, the impugned order passed by the learned Family Court granting maintenance of Rs. 2,500/- per month to the respondent can by no stretch of imagination be said to have suffered from any illegality, calling for interference by this revisional court. The amount of Rs. 10,000/- towards cost of litigation also found quite reasonable. Therefore, the revision petition is held to be devoid of merit.

9. Accordingly, this petition is dismissed and disposed of

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JUDGE

Comparing Assistant