

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.452 of 2021

1. Priyanka Kumari W/o Sagun Kumar Chandan R/o Village- Dumari, P.S.- Parwalpur, District- Nalanda at present residing at Parental Village- Kakhaura, P.S.- Shakurabad, District- Jehanabad.
2. Rudra Pratap Singh, Minor Son of Sagun Kumar Chandan R/o Village- Dumari, P.S.- Parwalpur, District- Nalanda at present residing at Parental Village- Kakhaura, P.S.- Shakurabad, District- Jehanabad.

... .. Petitioner/s

Versus

Sagun Kumar Chandan S/o Sri Awdhesh Singh @ Awdhesh Kumar Singh R/o Village- Dumari, P.S.- Parwalpur, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Baidya Nath Thakur
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

2 06-12-2021 Learned counsel for the petitioners is directed to remove all the defects pointed out by the Stamp Reporter within one month.

Heard the learned counsel for the petitioners.

Learned counsel for the petitioners has submitted that due to mistake, the petition under Section 24 of the Hindu Marriage Act was independently filed as Matrimonial Case No. 25/2020, whereas it should have been filed under Section 125 of the Code of Criminal Procedure. The petitioners made a prayer before the learned court below to convert that Matrimonial Case No. 25/2020 into one under Section 125 of the Cr. P.C., which was rejected by the court below while mentioning that the petitioners should first withdraw this case and thereafter file a fresh case under Section 125 of the Cr. P.C. for



maintenance.

As submitted, the impugned order shows that after rejecting the withdrawal petition the learned court below has fixed the matter for hearing on the point of admission fixing the date on 23.03.2021, but as submitted by learned counsel for the petitioners no order up-til now has been passed on the point of admission.

It is settled principle of law that merely mentioning a wrong Section is not fatal to the case if the prayer may be granted in other provisions of law.

Accordingly Matrimonial Case No. 25/2020 is ordered to be converted into one under Section 125 of the Cr. P.C. Let it be entered in the relevant register accordingly, if the Matrimonial Case No. 25/2020 has not been dismissed earlier.

Accordingly, the application is allowed.

Office shall ensure that all defects are removed by the petitioners within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey , J)

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