

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.881 of 2018**

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Arun Kumar Sah son of Sri Sonelal Sah resident of Village- Begusarai, P.S.-
Bachhwara, District- Begusarai.

... .. Petitioner/s

Versus

Punam Devi @ Lajwanti Kumari wife of Sri Arun Kumar Sah, Daughter of
Late Aashish Gupta, resident of Village- Chatti Road, Begusarai P.O./ P.S.-
Begusarai, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vivekanand Vivek
For the Respondent/s : NONE

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 17-10-2022 Heard learned Counsel for the petitioner.

Despite valid service of notice, no one appears on
behalf of the respondent.

The petitioner has challenged the order, dated
09.04.2018, passed by the learned Principal Judge, Family
Court, Begusarai, in Divorce Case No. 108 of 2011, by which
the one-fifth of the ancestral property of the petitioner has been
directed to be attached.

The petitioner filed Divorce Case No. 108 of 2011,
under Section 13 (1) of the Hindu Marriage Act, seeking a
decree of divorce against the respondent-wife.

The oral evidence of the petitioner-husband was being
recorded by learned Family Court and during the cross-
examination of the petitioner, he deposed that the petitioner



would maintain the son, who born out of the wedlock and also stated during his cross-examination, that his son has got one-fifth share in the ancestral property.

Learned Counsel for the petitioner submits that upon this statement given by the petitioner, the learned Family Court, without any provision, under the Family Court Act, or any other Act, directed the District Magistrate, Begusarai, to attach the one-fifth of the ancestral property of the petitioner. While assailing the impugned order, he submits that the order of attachment passed by the learned Family Court is without jurisdiction and without any sanction of law.

I have heard learned Counsel for the petitioner and have gone through the impugned order.

From perusal of the impugned order, it appears that during the course of cross-examination of the petitioner in the divorce case filed by him, the learned Family Court has directed for attachment of one-fifth share of his ancestral property merely on the ground that the petitioner, in his cross-examination, has accepted that he would maintain his son so long as he is minor and also stated that son has one-fifth share in the ancestral property.

In my opinion, the learned Family Court has got no



jurisdiction to pass an order of attachment during the course of recording of the deposition of the petitioner in the divorce case and that too without any prayer made by the respondent-wife.

In the result, this application is allowed and the order, dated 09.04.2018, passed by the learned Principal Judge, Family Court, Begusarai, in Divorce Case No. 108 of 2011, is hereby set aside.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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