

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.581 of 2018

In
Miscellaneous Appeal No.123 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Sri Dilip Kumar Sah, S/o Late Ganga Prasad Sah, resident of village Pipara
Maniya Kothi, P.S.-Katihar (Muffasil), Dist.-Katihar

... .. Petitioner

Versus

Smt. Uma Devi, W/O Sri Dilip Kumar Sah, D/o Sri Surya Prasad, residing at
Mirchaibari, P.S. Katihar, Dist.-Katihar

... .. Respondent

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Appearance :

For the Petitioner/s : Mr.Amrendra Kumar Shrivastawa, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

11 04-08-2022

I.A. No. 1572 of 2016

This application has been filed seeking condonation of delay in filing of the Miscellaneous Appeal which has been later on allowed to be converted vide order dated 30.04.2018 in a criminal revision application.

For the reasons stated in the interlocutory application, the delay is condoned.

I.A. No. 1572 of 2016 stands allowed.

The revision application has been preferred for setting aside the judgment dated 16.12.2015 passed by learned Additional Principal Judge, Family Court, Katihar in Maintenance Case No. 141 of 2008. By the impugned judgment



the learned court below has allowed a maintenance allowance of Rs. 2,000/- per month to the applicant-wife and Rs. 3,000/- per month to the minor daughter of the petitioner.

Learned counsel for the petitioner submits that the father of the petitioner had executed a deed of conveyance in respect of 01 acre and 54 and 1/2 decimal of land in favour of the sole opposite party. It is submitted that the petitioner has no independent source of income, therefore, the learned court below has wrongly concluded that the petitioner has got sufficient means to maintain his wife and his minor daughter. Submission is that the court below has committed an error in awarding maintenance allowance of Rs. 2,000/- per month to the applicant-wife and Rs. 3,000/- to the minor daughter.

It is further submitted that the court below has directed the petitioner to deposit a sum of Rs. 3,00,000/- in the name of the minor daughter to meet her marriage expenses. This amount was directed to be deposited in installment within a period of one year.

Learned counsel submits that at the relevant time the daughter was aged about 16-18 years and as on today she must have attained majority.

This Court had earlier issued notice to the opposite



party. The opposite party has entered appearance through Mr. Ajay Kumar, learned Advocate but unfortunately on call, learned counsel has not appeared.

This Court has perused the materials available on the record. It appears on perusal of the impugned judgment that the marriage between the petitioner and the opposite party was solemnized on 02.06.1991 in accordance with Hindu rites and customs. A female child was born out of the said wedlock but thereafter the opposite party and her minor daughter were thrown out of the matrimonial house. Evidences have come on the record that the petitioner has performed a second marriage and from the second marriage he has got two children.

It further appears that in the learned court below a plea was taken that the opposite party had herself left the house and she earns from her occupation of sewing but in course of evidence the petitioner could not bring any materials much less any cogent material to prove that the opposite party had left her matrimonial house on her own or that she had refused to live with the petitioner.

The petitioner had taken a plea in the learned court below that his father had executed a deed of conveyance in respect of 01 acre and 54 and 1/2 decimal of village land in



favour of the opposite party but on the basis of the evidences, it has been concluded by the learned court below that the said land has never been given to the opposite party. There was no mutation of the land in favour of the opposite party and the evidences have further shown that the deed of conveyance is only an eyewash as the land is still in possession of the petitioner.

On behalf of the applicant-wife, it is claimed that the petitioner works as a contractor and he has got 30-35 bigha of land. This has been denied by the petitioner but he has admitted that he performed a second marriage and has got two children out of the same. Opposite party no. 3 has stated that the petitioner has got 3-4 acre of land.

In view of the aforementioned materials and the discussions, this Court finds no illegality or infirmity in the judgment of the learned court below. The applicant-wife has been awarded a meager amount of Rs. 2,000/- per month and the daughter has been given Rs. 3,000/- per month by the impugned judgment but the petitioner has successfully deprived them of the fruit of the judgment which was in the nature of a help to the neglected wife and the daughter of the petitioner. The petitioner has in fact defeated the purpose of the social



legislation such as Section 125 Cr.P.C.

So far as the impugned judgment directing the petitioner to deposit a sum of Rs. 3,00,000/- for marriage purposes of minor daughter is concerned, the petitioner is obliged to comply with the said order as well in view of the provisions contained under Sub-section (3) of Section 20 of the Hindu Adoption and Maintenance Act, 1956.

In the result, this Court finds no error with the impugned judgment. The opposite party is entitled for the cost of litigation and interest on the arrears of amount, therefore, this Court directs the petitioner to pay the arrears of maintenance together with the interest @ 12% per annum and a sum of Rs. 15,000/- towards litigation cost to the opposite party within a period of one month from today, failing which the learned Principal Judge, Family Court, Katihar shall realize the entire amount in accordance with law expeditiously.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

