

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.182 of 2020

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1. Radha Devi @ Radha Kumari D/o Surendar Prasad Mohalla- Samachak, Dagarpur, P.S.- Barbiga, District- Shekhpura.
 2. Surendra Prasad S/o Late Gokul Mahto, R/o Village - Dayanakchak, P.O. Malikchak, P.S. Barbiga, Distt. - Sheikhpura.

... ... Appellant/s

Versus

Parmeshwar Prasad S/o Late Nandlal Sinha Resident of Village- Aaifani, P.S.- Aariyani, District- Shekhpura, At present resident of Mohalla- Hanuman Nagar (Kashipuram Indai), P.S.- Shekhpura, District- Shekhpura.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Binit Kumar, Advocate
For the Respondent/s : Mr. Sudhir Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

Date : 24-07-2024

1. The appellant No. 1 is the wife of the sole respondent and appellant No. 2 is the father-in-law of the respondent. The sole respondent filed an application before the Principal Judge, Family Court, Sheikhpura bearing T.S. (Matrimonial) Case No. 42 of 2019 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. The appellant No. 1 was set *ex parte* and an *ex parte* decree has



been passed vide judgment/order dated 13.11.2019 directing the appellant No. 1 to return to her matrimonial house and to re-establish her conjugal life with the respondent within 90 days from the date of the said order. Further the order disclose that if the appellant No. 1 fails to do so, the respondent was given liberty to take legal recourse from the Court to bring her back.

2. Being aggrieved by the said judgment/order dated 13.11.2019 passed by the Principal Judge, Family Court, Sheikhpura in T.S.(Matrimonial) Case No. 42 of 2019, the present appeal has been preferred.

3. Heard the rival contentions of the Learned counsel for the appellants as well as the Learned counsel for the respondent. Perused the records of the case.

4. It is an admitted fact that the marriage of the appellant No. 1 was solemnized with the respondent on 26.04.2012 as per the Hindu rites and rituals. Thereafter, the appellant No. 1 joined to the matrimonial house and stayed with the respondent only for a period of one month. It is specific allegation of the respondent that the father of the appellant no. 1 and other family members misbehaved and threatened to kill him when he went to their house to secure



the presence of the appellant No. 1. Further, it is alleged that the appellant No. 1 was forcefully confined in the house of her parents and they pressurized her to renounce the matrimonial relationship with the respondent.

5. The order of trial Court reveal that after due service of notice, as the appellants did not appear they were set *ex parte*. Later, three witnesses were examined on behalf of the respondent and an *ex parte* decree has been passed pursuant to the judgment dated 13.11.2019.

6. It is the contention of the learned counsel for the appellants that the appellant No.1 was pressurized by the respondent to ask her father to transfer her share of the property in favour of him for which the appellant No. 1 got frustrated and, thereafter, she deserted her husband. Further, the respondent is an unemployed person and the petition under Section 9 of the Hindu Marriage Act is filed only to pressurize the appellant with an ulterior motive of the respondent for gaining the property of the appellants. It is also contended that there was no opportunity for the appellants to place their case as no notice was served upon them and, therefore, prayed to set aside the judgment dated 13.11.2019 passed in T.S.(Matrimonial) Case No. 42 of 2019.



7. On the other hand, learned counsel for the respondent contended that inspite of sufficient service of notice, the appellants did not appear in Court and was set *ex parte* and, therefore, prayed to dismiss the Miscellaneous Appeal.

8. On perusal of entire record, we are of the opinion that it is an *ex parte* decree / judgment against the appellants herein without following the Principle of Natural Justice and, therefore, it is just necessary to set aside the *ex parte* order. Accordingly, judgment dated 13.11.2019 passed by the Principal Judge, Family Court, Sheikhpura in T.S. (Matrimonial) Case No. 42 of 2019 is set aside. T.S. (Matrimonial) Case No. 42 of 2019 stands restored on the file of Principal Judge, Family Court, Sheikhpura. The matter is remitted back to the Principal Judge, Family Court, Sheikhpura for fresh adjudication.

9. Further both parties are directed to appear on 20th August, 2024 before the Principal Judge, Family Court, Sheikhpura and in turn, the Principal Judge, Family Court, Sheikhpura shall receive the written statement of the appellant and further proceed with the trial in accordance with law and shall dispose of the matter within a period of six



months. Respective parties are hereby directed to co-operate in deciding the matter.

10. This order shall not prejudice the rights of the parties in any manner before the Trial Court.

11. With the above observations, this appeal stands disposed of.

(G. Anupama Chakravarthy, J)

P. B. Bajanthri, J:

(P. B. Bajanthri, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	22.07.2024
Uploading Date	24.07.2024
Transmission Date	24.07.2024

