

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.818 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Madhepura

-
1. NITU DEVI W/o Sadanand Yadav @ Sadhu Yadav, D/o Late Anandi Yadav R/o village- Bhirkhi Ward No. 22, P.S. and District- Madhepura
 2. Shravan Kumar S/o Sadanand Yadav @ Sadhu Yadav Petitioner no. 2 is minor represented through his mother (petitioner no. 1) as natural guardian. R/o village- Bhirkhi Ward No. 22, P.S. and District- Madhepura

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sadanand Yadav @ Sadhu Yadav S/o Shree Badri Yadav R/o village- Birkhi Ward No. 22, P.S. and District- Madhepura

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gopal Kumar Jha, Advocate
For the Respondent/s : Mr. Raj Ballabh Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 12-01-2024 The instant Revision is directed against an order passed in Misc. (Maintenance) Case No. 83 of 2015 by the learned Principal Judge, Family Court, Madhepura on 9th April, 2019 dismissing the application filed by the petitioner claiming maintenance under the above mentioned provision of the statute.

2. The learned trial Judge held that the petitioner is not a legally married wife of the opposite party no.2, therefore, she is not entitled to get any maintenance. The learned Advocate for the petitioner submits that the witnesses on behalf of the petitioner namely AW-1 and AW-2 stated on oath that they saw the petitioner residing with the opposite party for last 15 years



or more as his wife. On the other hand, it is the specific case of the opposite party no.2 that the petitioner is the legally married wife of one Kailash Mandal and their marriage has not been terminated by a decree of divorce.

3. It is true that in a proceeding under Section 125 of the Cr.P.C., strict proof of marriage is not necessary. If the petitioner is able to prove on the basis of preponderance of probability that she is the legally married wife of the opposite party, she is entitled to get maintenance.

4. However, in a case where the opposite party specifically pleads that the petitioner is a legally married wife of one Kailash Mandal duty casts upon the petitioner to prove her marriage at least on the basis of preponderance of probability. The petitioner in her evidence did not state anything about the ceremonies of marriage allegedly solemnized with the opposite party. AW-1 is the maternal uncle of the opposite party who deposed that the petitioner used to staying with the opposite party for about 15 years. However, it is revealed from his cross-examination that his relation with the opposite party is inimical there are litigations pending between the opposite party and AW-1. The petitioner has been staying in her house, therefore, the trial Judge declined to accept the evidence of AW-1. AW-2



never visited the house of the opposite party and he is not in a position to say about the relationship of the petitioner with the opposite party. On the other hand, the opposite party has stated in his evidence that he never married the petitioner under Hindu Rights and Ceremony or under Special Marriage Act. On the other hand, it is pleaded that she is the wife of one Kailash Mandal. Thus, the learned Magistrate found that the petitioner has failed to prove that she is legally married wife of the opposite party.

5. On perusal of the impugned judgment, I do not find any scope for interference. The impugned order was passed rightly on proper consideration of evidence on record.

6. In view of such circumstance, the Instant Revision is dismissed.

(Bibek Chaudhuri, J)

GUDDU/-

U			
---	--	--	--

