

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.643 of 2017

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Geeta Devi W/o Ravi Kumar, D/o Ram Chandra Poddar, R/o Ranibag
Bhartiya State Bank Near House WZ 978 New Delhi, C/o Landlord Endu
Bala, Ranibag Gurudwara, Near II Floor, New Delhi.

... .. Appellant/s

Versus

1. Kumkum Devi and Anr W/o Ravi Kumar, R/o Lallu Pokhar, Argara Road,
P.S.- Kasim Bazar, District- Munger.
2. Ravi Kumar, S/o Late Nawal Kishore, R/o Lallu Pokhar, Argara Road, P.S.-
Kasim Bazar, District- Munger.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Arvind Kumar Pradhan
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 11-11-2024

The present appeal has been filed under
Section 19(1)(4) of the Family Court Act, 1984
impugning the judgment and decree dated 25.07.2016
and 30.07.2016, passed by learned Principal Judge,
Family Court, Munger in Matrimonial Case No. 51 of
2016, whereby the petition, filed by the respondent No.
1 under Section 7 of the Family Court Act, for declaring

her as legally wedded wife of respondent No. 2 and their marriage as valid, has been allowed *ex-parte*.

2. The case of the respondent No. 1, as per the petition filed before the Family Court is that the marriage of respondent No. 1 was solemnized on 06-02-1986 along with respondent No. 2/Ravi Kumar as per Hindu Rites and Customs and since after the marriage, both are permanently residing together as husband and wife. Out of the wedlock, they have two children namely (1) Priti Kumari aged about 29 and (2) Avinash Kumar aged about 22 years. Further case of the respondent No. 1 is that some neighbour informed her that in her absence, a Civil Court staff had come to her house for delivery of a court notice in the name of her husband/respondent No. 2, but unfortunately, as none was present in the house, the notices were not delivered. The respondent No. 1, after receiving such information started tracing the matter and came to know that notices were issued from the Family Court, North West Rohini,

Delhi relating to a case filed by the present appellant bearing Matrimonial Case No. 399 of 2014 registered under Section 125 of the Cr. P. C. whereby the appellant claimed herself to be the legally wedded wife of respondent No. 2 and also claimed maintenance for herself and two children who were born out of the wedlock. The filing of such maintenance case by the appellant has casted cloud over the matrimonial relationship of the respondent Nos. 1 and 2. Hence, to protect the legal rights of the wedded wife, the respondent No. 1 had no alternative remedy but to file a suit under Section 7 (b) of the Family Court Act for declaring her as legally wedded wife of respondent No. 2 and also declaring the marriage between respondent Nos. 1 and 2 as valid and further declaration of the matrimonial status of the present appellant.

3. It is submitted by learned counsel for the appellant that without hearing the appellant, the Family Court passed *Ex-parte* Judgment against the appellant.

The appellant has not received any notice in the said declaratory suit i.e. Matrimonial Suit No. 51 of 2016 and without hearing the appellant, *Ex-parte* judgment was delivered against the appellant declaring her that she is legally not wedded wife of respondent No. 2. The learned Family Court has not brought on record any material evidence to prove that the appellant is not a legally wedded wife and she has filed Maintenance Case No. 399 of 2014 against the respondent No. 2 just to grab the money. The learned Court below has also failed to appreciate that after receiving notice in the Maintenance Case No. 399 of 2024 registered under Section 125 of the Cr.P.C, this declaratory suit i.e. Matrimonial Suit No. 51 of 2016 was filed. Further case of the appellant is that, Matrimonial Case No. 51 of 2016 was filed on 27.02.2016 for declaring the respondent No. 1 as legally wedded wife of respondent No. 2 and in a most hasty manner, the said Matrimonial Case was decided by the learned Family Court within six

months without hearing the appellant which creates cloud over the validity of the impugned judgment of the Family Court. The respondent No. 1 has also produced wrong fact before the Family Court in Matrimonial Case No. 51 of 2016 that earlier the appellant had married with one Ram Chandra Poddar, whereas the real fact is that said Ram Chandra Poddar is the father of the appellant and she could not appear and clear her stand before the Family Court because no notice was received by the appellant in the said case. The appellant has brought on record the marriage certificate and photograph of the marriage of the appellant with respondent No. 2 by way of supplementary affidavit to show that appellant has validly married with the respondent no. 2. It is also submitted that in Maintenance Case No. 399 of 2014 filed by the appellant, the respondent No. 2 is regularly appearing before the Family Court at Rohini, New Delhi but in the present case, respondent Nos. 1 and 2 have not

preferred to appear before this Court and refused to accept the notices issued by this Hon'ble Court.

4. We have perused the case record and considered the submissions advanced on behalf of the learned counsel for the appellant. After analysis of the evidence in entirety on record as adduced by the appellant, this Court finds that respondent No. 1 had filed Matrimonial Suit No. 51 of 2016 for declaring her as legally wedded wife of respondent No. 2 after respondent No. 2 received notices in Maintenance Case No. 399 of 2014 filed by the appellant. The learned Court below has passed the judgment without hearing the appellant and there is no evidence on record to suggest that appellant had received any notice in the aforesaid case. The respondent no. 2 has been regularly appearing in the Maintenance Case No. 399 of 2014 filed by the appellant but when this Court issued notices to the respondent Nos. 1 and 2, they preferred not to appear before this Court to clear their stand. The

appellant has also brought on record the marriage certificate and a photograph to authenticate her marriage with the respondent no. 2. Hence, the observation of the Family Court that appellant is a fake lady and Maintenance Case was filed without having any material evidence, appears to be not trustworthy in the eye of law.

5. In that view of the matter, the impugned judgment and decree dated 25.07.2016 and 30.07.2016, passed by learned Principal Judge, Family Court, Munger in Matrimonial Case No. 51 of 2016 is hereby set aside.

6. Accordingly, the appeal stands allowed with cost of Rs. 10,000/-(Ten Thousands). The cost shall be paid to the appellant by 2nd Respondent-Ravi Kumar.

7. The matter is remanded back to the learned Principal Judge, Family Court for fresh consideration, keeping in view the facts and circumstances, as stated above. The appellant shall file her written statement

within a period of 15 days from the date of receipt of the order of this Court and parties are hereby directed to co-operate in the matter. Learned Principal Judge, Family Court, Munger is requested to dispose of the matter, preferably within a period of six months thereafter.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	24/10/2024
Uploading Date	13/11/2024
Transmission Date	N/A