

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.22 of 2022

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Shailendra Kumar, son of Late Shatrughna Bhagat, resident of Mohalla- Teja Tola, P.O.- Katihar, P.S.- Sahayak Thana Katihar, District- Katihar, Pin- 854105.

... .. Appellant/s

Versus

1. Girindra Kumar, son of late Shatrughna Bhagat, resident of Mohalla- Teja Tola, P.O.- Katihar, P.S.- Sahayak Thana Katihar, District- Katihar, Pin- 854105.
2. Sunita Kumari @ Sunita Devi, wife of Sri Alok Kumar, permanent resident of Village- Garhpura, P.O. and P.S.- Garhpura, District- Begusarai. At present resident of -L- Extension 82 (Near Som Bazar) Mohan Garden- Uttam Nagar, New Delhi (West), Pin- 110059.
3. Kavita Kumari @ Kavita Devi, wife of Sri Uday Kumar, resident of Mohalla- Susta, P.S. and District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Anshuman Jaipuriyar, Advocate
For the Respondent/s : None

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 25-09-2025

Heard.

2. The present appeal is directed against the order dated 25.10.2021 passed in Guardianship Case No. 09 of 2017 by the learned Principal Judge, Family Court, Katihar, whereby and whereunder the learned Court has dismissed the petition of the appellant filed under Section 7(1)(g) of



the Family Court Act, 1984 for declaration of the appellant as the legal guardian of respondent No. 1 who is unmarried and 50 percent mentally retarded person.

3. The case of the appellant as per petition filed before the Family Court is that the appellant and respondent No. 1 are full brothers. The respondent No. 1 is 47 years old and 50 percent mentally retarded person. Their father was a retired Railway Employee who died on 30.01.2017. The mother of the appellant and respondent No. 1 has already died before the death of their father. The appellant is posted as a Teacher in KV at Katihar having his own family. The appellant is facing troubles regarding proper care of the respondent No. 1, his medical expenses and other necessities to lead his life. The appellant, therefore filed Guardianship Case No. 9 of 2017 for declaring the appellant as legal guardian of respondent No. 1, as after being declared as legal guardian of respondent No. 1, the appellant will be entitled for grant of Railway Family Pension which is being granted by the Railway to the physically/mentally disabled children of Railway Employee and after getting pension, he would be able to properly



maintain his brother (respondent No. 1).

4. The appellant has examined three witnesses in order to prove his case which are P.W. 1 Manas Ranjan Sen, P.W. 2 Shankar Prasad Mandal and P.W. 3 Sudha Kumari.

5. The learned Principal Judge, Family Court, Katihar, after considering the materials available on record, came to the conclusion that appellant and respondent No. 1 are full brothers. However, learned Family Court dismissed the petition of the appellant on the ground that he has not exhibited any document which could suggest that his late father was employed in Indian Railways nor he has exhibited any medical certificate to suggest that his brother (respondent No. 1) is 50 percent mentally retarded person. Though a photo-copy of certificate issued by the Chief Medical Officer, Katihar dated 30.05.2017 was brought on record which suggests that respondent No. 1 is 50 percent mentally retarded person, but in the absence of certified copy of said certificate and any medical prescription suggesting that respondent No. 1 was under treatment regarding his ill health, learned Family Court came to the conclusion that appellant has not proved his case and



therefore dismissed the petition filed on behalf of the appellant. Being aggrieved by the order of learned Principal Judge, Family Court, Katihar, the appellant has approached this Court.

6. It is submitted by learned counsel for the appellant that learned Court below has committed a grave error in dismissing the case, and such dismissal is *per se* illegal and unsustainable in the eye of law. It is urged that there was sufficient material on record to establish that appellant and respondent No. 1 are full brothers and respondent No. 1 is 50 percent mentally retarded person. The respondent No. 1 is unmarried and living along with the appellant. The appellant is married person and he has his own family expenses. The appellant, although has two sisters but all are married and settled. The father of the appellant was Railway employee and there is a provision for family pension to a mentally retarded person whose father/mother were in the services of Indian Railways. The appellant has also brought on record, though not exhibited the medical certificate of respondent No. 1 showing 50 percent mentally retarded which was issued by the Civil



Surgeon-cum-Chief Medical Officer, Katihar, which was not considered by the learned Family Court and in a flimsy manner, the petition of the appellant was dismissed.

7. It is contended by learned counsel for the appellant that documents were not exhibited in his presence and the same were required to be proved as per law. Hence, he prays that the matter be remitted back to the learned Trial Court to decide the admissibility of documents and to look into and decide the matter.

8. We have heard learned counsel for the appellant and perused the impugned order.

9. The notices were issued by this Court to the respondent No. 1, but in spite of valid service of notice, none had entered appearance on behalf of respondent No. 1. The appellant claims that respondent No. 1 is residing along with the appellant but after being noticed to the respondent No. 1, he has not appeared to contest his case, which clearly suggests that respondent No. 1 is not residing along with the appellant.

10. The appellant has not brought on record any document before this Court also which could suggest that



his father was employed in Indian Railways nor death certificate of his father/mother was brought on record to suggest that appellant is the only Guardian to take care of his mentally retarded brother (respondent No. 1). The appellant has also not brought on record any medical certificate much less any medical prescription of the respondent No. 1 suggesting that he is a mentally retarded person and a treatment in this regard is going on. He has only filed the photocopy of the certificate issued by the Chief Medical Officer, Katihar dated 30.05.2017.

11. After going through the above facts, the matter is remanded back to the learned Principal Judge, Family Court, Katihar with a direction to the appellant to file fresh petition before learned Principal Judge, Family Court, Katihar, producing/exhibiting all relevant documents for declaring him as legal guardian of respondent No. 1. The Trial Court shall record fresh findings after considering the documentary as well as oral evidences adduced on behalf of the appellant.

12. Accordingly, M.A. No. 22 of 2022 is hereby disposed of.



13. Pending I.A(s), if any, stand disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, CJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	07/08/2025
Uploading Date	25/09/2025
Transmission Date	N/A

