

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.212 of 2024

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Prahlad Kumar, Son of Sri Gopal Jee, resident of Village - Taripar, P.S. -
Bikram, District- Patna.

... .. Appellant/s

Versus

1. Ragini Kumari, Daughter of Surendra Singh, resident of Village- Rakashiya,
P.S. - Dulhin Bazar, District- Patna.
2. Rajesh Kumar, Son of Yogesh Singh, Resident of Village - Neriya, P.O -
Chiksi, P.S. - Sigori, District- Patna.
3. Smt. Soni Devi, Wife of Rajesh Kumar, Resident of Village - Neriya, P.O -
Chiksi, P.S. - Sigori, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Devi Das Srivastava, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 12-12-2025

The appellant is the biological father of one Kishley
Kumar @ Vedant presently aged about 17 years. The appellant
filed an application under the Guardians and Wards Act, 1890
for custody of his child which was registered as Custody Case
No. 21 of 2017. The said case was disposed of *ex parte* and
dismissed by the Trial Court. Against the order of dismissal, the
appellant /biological father has filed the instant appeal against
respondent no.1 being the biological mother of the above-
mentioned child, respondent no.3 being maternal aunt of the



said child and sister of respondent no.1 and respondent no.2 being the husband of respondent no.3. It is alleged that the respondent nos.2 and 3 adopted the son of respondent no.1 and changed his name without permission and knowledge of the appellant. It is also alleged that the respondent no.1 is instrumental in such so called adoption only to deprive the father from his rightful claim of having custody of the child.

2. We have perused the impugned judgement as well as the memorandum of appeal. Before the trial Court in Custody Case No. 21 of 2017 as well as in the memorandum of appeal, the minor child of the appellant and respondent no.1 was not made a party through his guardian / custodian. In a case for custody of a child, first interest of the child is required to be looked into and appearance / production of the child before the Trial Court is absolutely necessary.

3. Therefore, we find that Custody Case No. 21 of 2017 was wrongfully framed and same is bad for non - joinder of necessary parties being the minor child of the appellant and respondent no.1.

4. Accordingly, we find no alternative but to set aside the *ex parte* judgement passed by the learned Additional Principal Judge, Family Court, Patna and remand the case back



to the Trial Court giving liberty to the applicant/appellant to make the minor child of the appellant and respondent no.1 as a party respondent through his custodian along with necessary amendment of the application under the Guardians and Wards Act, 1890, if any.

5. Such amendment and application for addition of party shall be made by the appellant within three weeks from the date of communication of the order to the Trial Court.

6. The learned Trial Court is directed to dispose of such application in accordance with law and proceed further by issuing a notice to the respondent afresh.

7. The Miscellaneous Appeal stands disposed of accordingly.

(Bibek Chaudhuri, J)

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	17/12/2025
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