

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.422 of 2024**

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Amarjeet Kumar son of Late Jailal Rai resident of village- Gorigama, P.O. and P.S.- Mahua, District- Vaishali.

... .. Appellant/s

Versus

Pinki Devi wife of Amarjeet Rai, daughter of Shyam Babu Raii resident of Gorigama, P.O. and P.S.- Mahua, District- Vaishali, Naihari address village and P.O. Kajari Buzurg, P.S.- Jandaha, District- Vaishali, presently wife of Manoj Kumar resident of village Biddilpur Sarai, P.S. and P.O.- Patori, District Samastipur.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Rajeev Ranjan

For the Respondent/s : Mr.Satya Prakash Sinha

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**

**and**

**HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**

7      19-03-2026                      Heard learned advocate on behalf of the appellant and  
  
learned advocate on behalf of the respondent.

2. The instant appeal challenges the order dated 02.04.2024, where by and where under Guardianship Case No. 03 of 2018 was dismissed on the ground of maintainability for want of territorial jurisdiction.

3. On perusal of the impugned order dated 02.04.2024 passed by the learned Principal Judge, Family Court, Hajipur at Vaishali, this Court finds that on the date of dismissal of guardianship case, the petitioner/father was not present. We fail to understand that how an issue of maintainability can be



decided in the absence of the applicant of Guardianship Case No. 03 of 2018, moreover, under the provision of Order 7 Rule 10 read with Order 7 Rule 10A, a suit cannot be held to be maintainable, if it is filed in a wrong forum having no territorial jurisdiction. In that case, plaint be returned to the applicant to file the same in appropriate court. Without the provision contained in Rule 10 and Rule 10A of Order 7, the learned trial court directly dismissed the guardianship case holding *inter-alia* that same is not maintainable for want of territorial jurisdiction.

4. The impugned order is bad in law and cannot be sustained, accordingly, we allow the instant appeal, set aside the impugned judgment dated 02.04.2024 and direct the learned trial court to take up the issue of maintainability along with all other issues as directed in Order 14 Rule 2 of C.P.C. and dispose of the same on merit after hearing both the parties.

**(Bibek Chaudhuri, J)**

**(Chandra Shekhar Jha, J)**

Sudha/-

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