

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.362 of 2019

1. Suman Kumari D/O Sri Sachiv Kumar @ Satendra Kumar wife of Niteswar Kumar Singh, Resident of village Kawari Bujurg, P.S. Ganga Bridge hajipur, District Vaishali.
2. Yuvraj Son of Rakesh Kumar under Guardianship of mother Suman Kumari Resident of village Baikunthpur, P.S. Raja Pakar, District Vaishali.

... .. Appellant/s

Versus

Rakesh Kumar Son of Late Nihora Singh, Resident of village Tarajeevar, P.O. Tarajeevar, P.S. Hathauri, District Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rajesh Ranjan Kumar

For the Respondent/s : Mr.Kumar Dharendra Pratap Singh

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

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

Date : 18-09-2025

Heard the parties.

2. The present appeal is directed against the judgment dated 27.04.2019 and Decree dated 07.05.2019 passed in Guardianship Case No. 12 of 2017 by the Principal Judge, Family Court, Muzaffarpur, whereby and whereunder the learned Court has allowed the Guardianship case and directed the appellant No. 1 to hand over minor son Yuvraj (appellant No. 2) to the respondent for his custody and guardianship within 90 days of passing of the



order.

3. The brief facts as per petition filed before the Family Court is that the marriage of appellant No. 1 – Suman Kumari was solemnized with the respondent– Rakesh Kumar on 06.05.2009 according to Hindu rites and customs. The marriage was consummated and out of the wedlock, a male-child viz. Yuvraj (appellant No. 2) was born on 23.04.2010. Thereafter, the relation between the appellant No. 1 and the respondent became strained and after a few years, the appellant No. 1 left her matrimonial house and went to her parents' house. The respondent made every efforts to bring the appellant No.1 back to her matrimonial house but all his efforts went in vein. Ultimately, the respondent filed Matrimonial Case No. 335 of 2013 for restitution of conjugal rights but in spite of that conjugal life could not be restored. In the aforesaid case, a compromise took place between the parties and both parties agreed to compromise the cases filed against each other. They also agreed to live separately and free from the marital obligation and can perform second marriage. It was also agreed that the son Yuvraj would live with her mother and



she would up-bring the child. Accordingly, on the basis of compromise dated 02.02.2017, in Matrimonial Case No. 335 of 2013, the Principal Judge, Family court, Muzaffarpur disposed of the case.

4. The respondent further alleged that in the beginning the appellant No. 1 Suman Kumari nurture the child properly but subsequently, she has performed second marriage with one Niteshwar Kumar and after marriage, his son Yuvraj also went along with his mother (appellant No. 1) to the house of Niteshwar Kumar. The death of first wife of Niteshwar Kumar was in a suspicious circumstances and he has one daughter from the first wife who is aged about 10 years and her name is Srijan. The financial condition of Niteshwar Kumar is very weak and he can not properly maintain his wife, Yuvraj and his daughter. Hence, for the welfare and proper education of his minor son Yuvraj, the respondent, who is the biological father of the minor has filed Guardianship Case No. 12 of 2017 with a prayer to provide custody of his minor son (appellant No. 2) from the custody of his mother (appellant No. 1).

5. On the other hand, the appellant No. 1 has



appeared and admitted that appellant No. 2 is son of Rakesh Kumar (respondent). Due to assault and torture and a fear of being killed, the appellant No. 1 left her matrimonial house and went to her parents' house along with her minor son (appellant No. 2). She further states that in Matrimonial Case No. 335 of 2013, she had filed a petition to live with the respondent but it was the respondent, who did not want to keep her and her children. Hence, a compromise took place in which it was agreed that the minor son would remain with his mother (appellant No. 1) and the respondent would have no concern with the upbringing of minor son and on the basis of said compromise, the case was disposed of on 14.12.2016. The relation of both the parties were strained since 2013 and the minor son was with mother. In this period, the respondent never tried to know the whereabouts of his minor son nor given any clothes and never talk to him. The respondent made several attempts to kidnap his son but failed. Hence, the appellant No. 1 has prayed to dismiss the petition filed by the respondent.

6. The appellant No. 1, thereafter filed a petition in which she has stated that she is ready to hand over the



minor son Yuvraj to the respondent on the condition that respondent shall file an affidavit that he will get him admitted in a good school and keep him in a hostel. He will not kill his son by giving sweet poison. He will not torture his son Yuvraj mentally. He will allow his son Yuvraj to meet his mother on last Saturday and Sunday of each month. He will not torture her by any means.

7. The respondent has also filed an affidavit in which he has stated that he is biological father of minor son Yuvraj and for better future, his custody should be given to him. He has further stated that he will get his son Yuvraj admitted in a good school at Muzaffarpur and he will fully cooperate in his study. He will keep his son under proper care and protection and always remain alert about his health. He will also keep his son mentally and physically fit. He will get his son Yuvraj to meet her mother on the last Sunday of each month.

8. The learned Principal Judge, Family Court, Muzaffarpur after considering the fact that appellant No. 1 is ready to hand over the custody of her minor son (appellant No. 1) to his biological father (respondent) on



certain conditions and the respondent has already filed an affidavit accepting all the conditions of the appellant No. 1, has directed the appellant No. 1 to hand over the custody of minor son Yuvraj to his father (respondent) within a period of 90 days of passing of the order.

9. It is submitted by learned counsel for the appellant No. 1 that she got married with the respondent on 06.05.2009. Thereafter, the respondent allegedly subjected the appellant No. 1 to cruelty, and on 17.06.2012 he left her at her parental home (Naihar), threatening her family that unless a sum of Rs. 2,50,000/- was paid, he would not take her back. Despite efforts of reconciliation by the family members of the appellant, the respondent did not agree to resume cohabitation. Consequently, Appellant No. 1 instituted Complaint Case No. 1324 of 2013 before the learned C.J.M., Vaishali at Hajipur on 09.05.2013. During pendency of the said proceedings, the respondent also filed Complaint Case No. 355 of 2013 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before the learned Principal Judge, Family Court, Muzaffarpur on 11.09.2013. In the said proceeding, the



respondent was examined as P.W. 1 on 04.07.2016, wherein he admitted that he is a farmer without any property to maintain his wife. In the meantime, appellant No. 1 has also instituted Maintenance Case No. 164 of 2014 before the learned Principal Judge, Family Court, Vaishali at Hajipur on 05.08.2014. Ultimately, a compromise petition dated 22.12.2016 was filed between the parties in Complaint Case No. 1324 of 2013, wherein it was mutually agreed that the marital relationship between the parties would come to an end and both shall be free to contract a fresh marriage with another person. The custody of the minor child (Appellant No. 2 – Yuvraj) shall remain with his mother (Appellant No. 1). Appellant No. 1 shall not claim any money for her livelihood, nor for the maintenance or education of the child in future. Similar compromise petitions were also filed in Maintenance Case No. 164 of 2014 (withdrawn on 14.12.2016) and in Complaint Case No. 355 of 2013 (filed by the respondent), and accordingly, both the proceedings were disposed of. Thus, all three cases between the parties stood settled on the basis of compromise. Thereafter, Appellant No. 1



contracted a second marriage with one Niteshwar Kumar Singh of Vaishali District and has been residing there along with her son and appellant No. 2 is getting his education at Vaishali. Surprisingly, the respondent, after acquittal in Complaint Case No. 1324 of 2013, instituted a fresh case under the Guardians and Wards Act being Guardianship Case No. 12 of 2017 before the learned Principal Judge, Family Court, Muzaffarpur on 04.08.2017 seeking custody/guardianship of the minor child. It is the case of the appellants that, in terms of the compromise, custody had already been settled with the mother, and further, since the appellants are residing in Vaishali, the Family Court at Muzaffarpur lacked territorial jurisdiction to entertain the guardianship petition.

10. Learned counsel has further submitted that, in terms of the compromise entered into between the parties, the custody of the minor son was settled with appellant No. 1 – Suman Kumari, and ever since, the child has been residing with her. It is further contended that the respondent, along with his brother were threatening to the appellant No. 1 that unless she withdraws from



Matrimonial Case No. 335 of 2013 and Guardianship Case No. 12 of 2017, both she and her minor son would be killed. In his deposition in Matrimonial Case No. 335 of 2013, the respondent himself admitted that he is a farmer with no property or income sufficient to maintain his wife. On the contrary, Appellant No. 1 is an educated lady, presently engaged as a Teacher in a private school, and is not only maintaining herself but also providing proper care and education to her minor son.

11. Learned counsel for the appellants, thus urged that the respondent is acting in clear violation of the compromise earlier entered into between the parties, and in such circumstances, the prayer made by the respondent in the guardianship proceeding deserves no consideration. Being aggrieved by the judgment dated 27.04.2019 and decree dated 07.05.2019 passed by the learned Principal Judge, Family Court, Muzaffarpur in Guardianship Case No. 12 of 2017, the present appeal has been preferred.

12. A counter affidavit dated 23.08.2019 has been filed on behalf of the respondent, wherein it has been asserted that a detailed study plan for the minor child has



been formulated along with a clear disclosure of the respondent's financial capabilities. It is stated that the respondent intends to provide education to the minor child up to Class V in a reputed school under the care and affection of his joint family, and particularly under the supervision of his aunt – wife of the respondent's elder brother. Thereafter, it is envisaged that the child would be admitted to a good school in New Delhi, where the family of the respondent's younger brother resides, so as to ensure better educational opportunities. As regards financial capability, it has been submitted that the respondent has already been selected for appointment as a Sub-Inspector in the Bihar Police Department and is presently awaiting posting. In addition, the parents of the respondent have left behind approximately 19.10 acres of agricultural land, jointly owned by their three sons including the respondent. From cultivation of the said land, an annual income of about Rs. 3–4 lakhs is derived, out of which the respondent's share comes to around Rs. 1 lakh per annum. Apart from this, the respondent's joint family possesses two residential buildings in Muzaffarpur town and two flats in



Malviya Nagar, New Delhi. It has thus been contended that the respondent is financially sound and fully capable of maintaining his minor son and meeting his educational and other expenses. Accordingly, the order passed by the learned court below is just, proper and in accordance with law, and therefore warrants no interference.

13. Before advertng to the factual aspect of the matter, it is necessary to reproduce certain statutory provisions of the Guardian and Wards Act. Sections 9, 10, 11, 13 and 47 of G and W Act read as under:

“9. Court having jurisdiction to entertain application.—(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily



resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

(Under line supplied)

10. Form of application.—(1) *If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure, 1882 for the signing and verification of a plaint, and stating, so far as can be ascertained—*

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has, and where they reside;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at



any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the applications; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

(Under line supplied)



11. Procedure on admission of application.—(1) *If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—*

(a) to be served in the manner directed in the Code of Civil Procedure, 1882, on—

(i) the parents of the minor if they are residing in [any State to which this Act extends],

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The [State] Government may, by general or special order, require that, when any part of the property described in a petition under section 10, subsection (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in



whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

13. Hearing of evidence before making of order.—*On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of, or in opposition to, the application.*

47. Orders appealable.—*An appeal shall lie to the High Court from an order made by a [*]Court,—*

(a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or

(b) under section 9, sub-section (3), returning an application; or

(c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or

(d) under section 26, refusing leave for, the removal of award from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or

(e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section; or

(f) under section 32, defining, restricting or extending the powers of a guardian; or

(g) under section 39, removing a guardian ; or

(h) under section 40, refusing to discharge



a guardian; or
(i) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order ; or
(j) under section 44 or section 45, imposing a penalty.

14. Similarly, some of the statutory provisions of the Family Courts Act like Section 7 (g), Section 17 and Section 19 are as follows:-

“7.Jurisdiction-(1)-----

(a)-----
(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to any minor.

19. Appeal.—(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the



commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).]

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.]

[(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

[(6)] An appeal preferred under subsection(1) shall be heard by a Bench consisting of two or more Judges.”

(Under line supplied)

15. The appellant has assailed the judgment dated 27.04.2019 passed in Guardianship Case No. 12 of 2017 by contending that Principal Judge, Family Court, Muzaffarpur, has no jurisdiction to decide the Guardianship Case No. 12 of 2017 filed on behalf of the respondent on the jurisdictional point as minor Yurvaj (appellant No. 2) is residing with the appellant No. 1, who is minor's biological



mother at Hajipur and it is submitted that in terms of sub-Section (1) of Section 9 of G and W Act, respondent should have preferred Guardianship case in the territorial jurisdiction of Vaishali at Hajipur and not in Muzaffarpur.

16. We have heard the parties and perused the materials available on records. We find that the cause of action arose at the jurisdiction of Vaishali at Hajipur because a compromise between the parties took place before learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur in Complaint Case No. 1324 of 2013 wherein both parties agreed to withdraw all the cases filed against each other. The respondent was also agreed that appellant No. 1 will keep her minor child (appellant No. 2) with her and provide proper education. The appellant No. 1 also agreed that she would not get any maintenance or alimony from the respondent for the expenses incurred on herself and her child.

17. Now, the respondent has filed Guardianship Case No. 12 of 2017 before learned Principal Judge, Family Court, Muzaffarpur for custody of his minor son who already resides with his mother at Vaishali at Hajipur.



18. In the light of aforementioned provision of Guardian and Wards Act, the learned Principal Judge, Family Court, Muzaffarpur has erred jurisdictional error in deciding Guardianship Case No. 12 of 2017 in favour of the respondent. The respondent is at liberty to redress his grievances, if any, before appropriate forum.

19. Accordingly, the judgment dated 27.04.2019 and Decree dated 07.05.2019 passed in Guardianship Case No. 12 of 2017 by the Principal Judge, Family Court, Muzaffarpur, is hereby set aside.

20. M. A. No. 362 of 2019 stands allowed.

21. Pending I.A.'s, if any, stands disposed of

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/Niraj/-

AFR/NAFR	AFR
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