

IN THE HIGH COURT OF JUDICATURE AT PATNA

Yogendra Pandit

Vs.

Rita Das

Miscellaneous Appeal No. 671 of 2018

07 August, 2025

(Honourable Mr. Justice P. B. Bajanthri and Honourable Mr. Justice S. B. Pd. Singh)

Issue for Consideration

1. Whether rejection order of learned Family Court is correct or not?
2. Whether the impugned judgment of Principal Judge, Family Court, is just, proper and sustainable/tenable in the eyes of law?

Headnotes

Hindu Marriage Act, 1955—Section 9—Restitution of Conjugal Rights—marriage of the appellant was solemnized with the respondent according to Hindu rites and customs at temple in presence of parents, relatives and friends of both the parties—after marriage, respondent stayed with appellant for eight months—appellant filed an application for restitution of conjugal rights—in reply to it, respondent stated that she never married with the appellant in any way either religious, or legal—earlier petition filed by appellant for restitution of conjugal right was dismissed.

Held: marriage certificate was issued by pandit, but said pandit has not been produced as a witness by the appellant to prove his marriage—P.W. 3 who claims to have attended the marriage has also deposed in his cross-examination that he does not know pandit who has issued marriage certificate—marriage certificate does not bear any number of the organization nor any witness has signed over the certificate—both the witnesses i.e. P.Ws. 2 and 3 produced by the appellant have not proved that appellant has married with the respondent—appellant has not brought on record any relevant and reliable proof to show that he has legally married with the respondent—no interference required in the impugned judgment—learned Family Court has rightly dismissed the petition filed under Section 9 of Act, 1955 for restitution of conjugal rights—appeal dismissed.

(Paras 18, 20, 22, 23)

Case Law Cited

NONE

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| List of Acts |
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Hindu Marriage Act, 1955

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| List of Keywords |
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Restitution of conjugal rights; marriage; marriage certificate; notary; temple.

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| Case Arising From |
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From judgment and decree dated 01.06.2018 passed by learned Principal Judge, Family Court, Munger in Matrimonial Case No. 844 of 2013 (C.IS.)/Old Case No. T.S (Mat.) 69 of 2013.

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| Appearances for Parties |
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For the Appellant/s: Mr. Abdul Mannan Khan, Adv.; Mr. Hafiz Shahbaz Arif, Adv.

For the Respondent/s: Mr.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

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| Judgment/Order of the Hon'ble Patna High Court |
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IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.671 of 2018

Yogendra Pandit Son of Babu Lal Pandit, Resident of Village- Sita Kund Dih
Kalyanchak, P.O.- Dariyapur, Police Station- Mufassil, District- Munger.

... .. Appellant/s

Versus

Rita Das Wife of Yogendra Pandit, Daughter of Late Bajrangi Das, resident of
Mohalla- Nayagaon, Kabristan Road Near Residence of D.S.P., P.O. Jamalpur,
Police Station- East Colony, Jamalpur, District- Munger.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abdul Mannan Khan, Adv
Mr. Hafiz Shahbaz Arif, Adv
For the Respondent/s : Mr.

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 : 07-08-2025

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment and decree dated 01.06.2018 passed by learned Principal Judge, Family Court, Munger in Matrimonial Case No. 844 of 2013 (C.IS.)/Old Case No. T.S (Mat.) 69 of 2013 filed under Section 9 of the Hindu Marriage Act whereby learned Family Court has rejected the



matrimonial suit filed on behalf of the appellant-husband for restitution of conjugal rights with the respondent-wife.

3. The case of the appellant as per petition filed before the Family Court is that the marriage of the appellant was solemnized with the respondent according to Hindu rites and customs at Hanuman Temple on 17.09.2005 situated in the campus of Munger Civil Court in presence of parents, relatives and friends of both the parties. After marriage, both the parties sworn affidavit before Notary at Civil Court, campus as the marriage between the parties was ideal marriage. The appellant was an Advocate at the Civil Court whereas respondent was working in the State Bank of India. After marriage, the respondent came at her matrimonial house and started living with the appellant and stayed at her matrimonial house for about eight months. The respondent, thereafter on 01.05.2006, went to her *Maike* along with all belongs on the pretext that she is facing difficulty to attend her duty from her matrimonial house. The appellant used to visit the *Maike* of the respondent after completing his court's work. Further case of the appellant is that



whenever he tried to bring her back to her matrimonial house, the respondent refused on the pretext of her job. The last cohabitation between the parties was established on 30.06.2010 and thereafter, the respondent refused to cohabit with the appellant without any reasonable cause and started saying him that she is an Officer in Bank whereas appellant is advocate, therefore, she cannot live with him and asked him not to come to her house. The appellant made every efforts to bring back the respondent into her matrimonial house but all his efforts went in vein. Ultimately, the appellant has filed Matrimonial Case No. 10 of 2011 for restitution of conjugal rights which was rejected on 29.10.2011. After the said order, the appellant again went to the *Maike* of the respondent and requested her to bring back to her matrimonial house and cohabit with him but she refused and told him that she had performed second marriage with Devnayak Mishra @ Devnayak Das and she wants to live with him. Hence, the present matrimonial case has been filed for restitution of conjugal life.

4. In response to the summon/notice issued by the



Court, respondent-wife appeared and filed her reply/written statement.

5. In her written statement, the respondent-wife has stated that most of the facts and allegations stated in the aforesaid petition are false and baseless and the case is not maintainable in the eye of law or on the basis of facts. The respondent has clearly stated that she never married with the appellant in any way either religious, or legal. It has been further stated that earlier also appellant has filed a petition for restitution of conjugal rights which was dismissed. The respondent has already married with Devnayak Mishra @ Mahant Devnayak Das and both are leading happy conjugal life. It has been further submitted that appellant has absolutely no ground to get any decree of restitution of conjugal right. It has been further submitted that the document filed on behalf of the appellant is forged and fabricated and since there is no existence of any marriage between the appellant and the respondent, hence the question of restitution of conjugal rights does not arise.

6. After conclusion of the trial, the learned



Principal Judge, Family Court has held that appellant has not established his claim. Accordingly, the Trial Court came to the conclusion that the appellant was not entitled for any relief filed under Section 9 of the Hindu Marriage Act.

7. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Family Court, the present appeal has been filed by the appellant.

8. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Court below is bad and appears to be mechanically passed without application of judicious mind. The learned Family Court has not considered the materials brought on record by the appellant and in a casual manner, dismissed the petition filed under Section 9 of the Hindu Marriage Act. The learned Family Court has also not considered this fact that during the subsistence of first marriage, the respondent has again married with one Devnayak Mishra @ Mahant Devnayak Das which is *null & void abinitio*.



9. *Per contra*, learned counsel appearing on behalf of the respondent-wife has submitted that the impugned judgment and decree is just, legal and in accordance with law. The learned Trial Court has rightly appreciated the evidence adduced on behalf of both the parties in the right perspective and has correctly dismissed the suit filed on behalf of the appellant-husband.

10. In view of the rival contentions, evidences and the arguments adduced on behalf of both the parties, the main points for determination in this appeal are as follows:-

(i) Whether the appellant is entitled to the relief sought for in his petition/appeal.

(ii) Whether the impugned judgment of Principal Judge, Family Court, is just, proper and sustainable/tenable in the eyes of law.

11. During the course of trial, altogether three witnesses have been examined on behalf of the appellant which are P.W. 1 Yogendra Pandit (appellant himself), P.W. 2 Sikhdeo Yadav and P.W. 3 Upendra Prasad.



12. The appellant has also brought on record the following documents.

Ext-1 Marriage Certificate issued by Sri 108 Mahabir Mandir, Civil Court, Munger

Ext.2 Affidavit of Yogendra Pandit sworn before Notary, Munger

Ext. 2/1 Affidavit of Rita Das sworn before Notary, Munger

Ext. 3 Deposition of Rita Das Nayak wife of Dev Narayan Das in G.R. No. 1260 of 2003

Ext. 4-Vakalatnama executed by Rita Das in favour of Advocate Uday Prakash, Yogendra Pandit on 04.08.2005 in G.R. Case No. 1260 of 2013.

13. The respondent though has not produced any evidence but has brought on record the following documents:-

Ext. A- Photo copy of application written by Pujari Murli Dhar Mishra filed in complaint case no. 369 C of 2010

Ext. B- Copy of order dated 29.10.2012 passed in Title Suit (Mat) no. 10 of 2011 (Yogendra Pandit vs Rita Das) by the court of Principal Judge, Family Court, Munger as per which the aforesaid case was rejected



under Order VII Rule 11(a) CPC.

Ext. C (with objection)- Photo copy of fardbeyan of Kuldeep Goswami recorded by S.I. Irfan Ahmad, Teghra O.P. on 11.06.1996 on the basis of which Kharagpur P.S. case no. 153 of 1996 dated 11.06.1996 U/S 302, 120(B), 34 IPC was registered.

Ext. D (with objection)- Petition dated 09.07.2016 filed before S.P. Munger by Rita Das.

14. From perusal of the evidences of P.W. 1 Yogendra Pandit(appellant), it appears that though he has reiterated the same version as was stated in his petition but he has deposed that he has not registered his marriage. He has also admitted that no registration number of any organization has been entered in Ext-1 nor any name or signature of any witness has been entered in the Ext 1. He has also admitted that he is on bail in a case filed by the respondent in a defamation case.

15. P.W. 2 Sukhdeo Yadav though in his examination-in-chief has admitted that he has seen the marriage being solemnized between the appellant and



respondent but in his cross-examination, he has deposed that he did not know the respondent nor he can say about the relatives who attended the marriage.

16. P.W. 3 Upendra Prasad has deposed in his examination-in-chief that he was present at the time of marriage and he has identified the marriage certificate issued by Pandit Murlidhar Mishra but in his cross-examination he has deposed that he does not know any Pandit Murlidhar Mishra.

17. Now, we need to analyze whether the appellant has married with the respondent as respondent claims that she never married with the appellant.

18. The appellant has brought on record the marriage certificate (Ext.1) showing that his marriage was solemnized with Rita Das at Shri 108 Mahavir Mandir, Civil Court Munger on 17.09.2005 and marriage certificate was issued by Pandit Murlidhar Mishra, but said Pandit Murlidhar Mishra has not been produced as a witness by the appellant to prove his marriage. P.W. 3 who claims to have attended the marriage has also deposed in his cross-examination that he does not know Pandit



Murlidhar Mishra who has issued marriage certificate. Further, the appellant claims that after marriage both the parties sworn affidavit before Notary Public, Munger on 17.09.2005 but said certificate also does not bear any number of the organization nor any witness has signed over the certificate. Both the witnesses i.e. P.W. 2 and 3 produced by the appellant have not proved that appellant has married with the respondent.

19. The respondent has brought on record the application written by Pandit Murlidhar Mishra in Complaint Case No. 369C of 2010 wherein he has completely denied to have issued any marriage certificate in favour of the appellant, rather, he claims that he protested at the time of issuing the certificate in favour of the appellant.

20. Considering the facts aforesaid, it is clear that appellant has not brought on record any relevant and reliable proof to show that he has legally married with the respondent.

21. The evidences produced on behalf of the appellant does not appear to be trustworthy in the eye of



law. There is no such declaratory decree also by any competent court holding that opposite party/respondent is legally married with of the appellant.

22. Accordingly, we find no merit in the present appeal warranting any interference in the impugned judgment. The Family Court has rightly dismissed the petition filed under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.

23. The present appeal is dismissed accordingly, affirming the impugned judgment.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

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