

(2025) 12 PAT CK 0068

Patna HC

Case No: Miscellaneous Appeal No.587 Of 2022

Anjani Kumar @ Pappu Kumar

APPELLANT

Vs

Mamta Bharti

RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Family Courts Act, 1984- Section 7, 10, 19(1), 20
- Hindu Marriage Act, 1955- Section 5, 11
- Specific Relief Act, 1963- Section 34
- Code of Civil Procedure, 1908- Order 41 Rule 11

Hon'ble Judges: Dr. Anshuman, J; Bibek Chaudhuri, J

Bench: Division Bench

Advocate: Jitendra Prasad Singh, Varun Krishna Singh, Vankatesh Kaushik, Shripriya Sinha, Rajeev Kumar

Final Decision: Dismissed

Judgement

Dr. Anshuman, J

1. Heard learned Counsel for the appellant and learned Counsel for the respondents.

2. The present appeal has been filed under Section 19(1) of the Family Courts Act, 1984 (66 of 1984) for setting aside the judgment and decree dated 29.09.2022 and 14.10.2022 respectively, passed by Principal Judge, Family Court, Begusarai, in Matrimonial Case No.176 of 2010 (Registration No.1148 of 2013), by which the above mentioned matrimonial case filed by respondent 1st Set has been decreed by allowing the marriage between Opposite Party No.1/appellant and Opposite Party No.2/respondent 2nd Set has been declared as null and void.

3. Learned Counsel for the appellant submits that the present appeal has been preferred by Opposite Party No.1/appellant on the ground that the Principal Judge, Family Court, Begusarai, has failed to appreciate the evidence of PW 3, the father of respondent 1st Set, who has deposed orally in favour of the present appellant and further on the ground that the Principal Judge, Family Court, without considering the provisions laid down under Sections 11 and 5 of the Hindu Marriage Act, 1955 (Act No.25 of 1955) as well as materials available on record, particularly ignoring Section 34 of the Specific Relief Act, 1963, passed the impugned judgment and decree in favour of the applicant/respondent 1st Set in gross violation of law, according to which the present matrimonial suit is barred.

4. Learned Counsel for respondent No.1 has received service of notice of appeal through her father, in this regard the appellant has filed a petition of jointness, which was accepted by the Court. In result, valid service takes place against respondent No.1. Respondent No.2 has appeared through Vakalatnama and thereafter this case was fixed for hearing under Order 41 Rule 11 of the Code of Civil Procedure, 1908 (5 of 1908) vide order dated 07.11.2025. Argument has been completed on 25.11.2025.

5. Learned Counsel for respondent No.2 is also in support of appellant and submits that the present appeal is maintainable and fit to be allowed and is completely barred under Section 34 of the Specific Relief Act as the applicant/respondent No.1 has not demanded any relief relating to restoration of conjugal right and once the relief, which ought to be made is not made, the applicant is not entitled to get any relief and suit is barred according to Section 34 of the Specific Relief Act.

6. For the purpose of deciding this matrimonial case, the Trial Court has formulated in all four issues, which reads as under:

(i). The first issue is that whether the matrimonial case as framed is maintainable?

The said issue has been decided in favour of the applicant/respondent No.1 and against Opposite Party No.1/appellant.

(ii). The second issue is that whether the marriage of applicant/ respondent No.1 solemnized with Opposite Party No.1/appellant on 29.06.2001 at village Lakho, P.S. Muffasil, District-Begusarai is maintainable?

The second issue has also decided and the Family Court has held that marriage was solemnized between the applicant/respondent No.1 with Opposite Party No.1/appellant on 29.06.01 at village Lakho, P.S. Miffasil, District- Begusarai.

(iii). The third issue is that whether Opposite Party No.1/appellant has entered into another marriage after his marriage with Mamta Bharti, which is in gross violation of Section 5(1) of the Hindu Marriage Act?

This third issue has also been decided in favour of the applicant/respondent No.1 and against Opposite Party No.1/appellant.

(iv) The fourth issue is that whether applicant/respondent No.1 is entitled for any other relief or not?

The said issue has also been decided in favour of the applicant/respondent No.1 and it has been held by the Court that the applicant/respondent No.1 is entitled for the relief available under Section 11 of the Hindu Marriage Act.

7. For the purpose of deciding this appeal, the two grounds which has been raised by the Counsel for the appellant in the present appeal is that (i) whether the non-consideration of oral evidence of PW 3, the father of Opposite Party No.1/respondent 1st Set, is fatal up to the extent that it shall demolish the entire judgment and decree. (ii) Whether Section 34 of the Specific Relief Act creates any bar on the declaratory suit, which has been framed before the Principal Judge, Family Court, and if it is so then what shall be the result of judgment and decree passed by the Principal Judge, Family Court, in Matrimonial Case No.176 of 2010.

First Point Of Determination

8. With a view to decide the first point of determination this legal aspect has to be taken into consideration that at the time of deciding Issue No.II, the learned Principal Judge, Family Court, has discussed the entire aspect of the matter in detail. According to the said discussion, the oral evidence of applicant witness No.3 is not the only evidence available before the Court; rather evidence of PW 1, 15 photographs produced by PW 1, i.e., Exhibits-6 to 6N, Ext-12 document dated 21.04.2014 placed before Mediation Centre, Begusarai, Ext-7, Ext-10A in which undertaking and statement on affidavit has been made by the present appellant before this Hon'ble Court as well as Exts-9 and 11 are also relevant. In spite of that the discussion on burden of proof has also been made by the Court that appellant should have to stand on his own document. In this regard, a detailed discussion has been made by the Principal Judge, Family Court, in the original order. In addition to that the principle applicable to law is that, admittedly, the present proceeding is a civil proceeding and in civil proceeding the standard of proof is the preponderance of probability. Here in the present case, in our firm opinion, the Principal Judge, Family Court, reached on the finding on the basis of consideration of different exhibits and oral evidences, found the preponderance of probability in favour of the applicant/respondent No.1 and, therefore, we are of the firm opinion that the first point of determination has been decided against the appellant as the original Court has decided the matrimonial suit on the basis of

preponderance of probability and due to this reason minor contradiction in oral evidence shall not help the present appellant in any manner.

Second Point of Determination

9. With a view to decide this point of determination that whether Section 34 of the Specific Relief Act shall apply in the matrimonial matters or not. It is necessary to

look into the provisions of Section 34 of the Specific Relief Act which is as follows:

“34. Discretion of Court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

10. The certain provisions of Family Courts Act is also necessary to be discussed as the present matrimonial suit has been proceeded according to the Family Courts Act, 1984 (66 of 1984). Section 7 of the Family Courts Act, 1984 discussed about the jurisdiction of Family Courts Act, in which Section 7(1)(Explanation)(b) clearly states that a suit or proceeding for a declaration as to the validity of a marriage or to the matrimonial status of any person is maintainable before the Principal Judge, Family Courts. It has been further discussed in Section 10(1) that subject to other provisions of this Act and Rule, the provisions of Code of Civil Procedure 1908 (5 of 1908) or of any other law for the time being in force shall apply to the suits. It has also been stated in the said provision that a Family Court shall be deemed to be a Civil Court and shall have all powers of such Court.

11. Here in the present case, Section 20 of the Family Courts Act, 1984 is most relevant so far as the present appeal is concerned; which states as follows:

“20. Act to have overriding effect._ The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

The provisions of this Act shall have effect notwithstanding anything therein contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this act.

12. The principle laid down under the Specific Relief Act, 1963 shall not be applicable upon the suits filed under the Family Courts Act, 1984, due to Section 20 of the Family Courts Act, 1984 stated above. As the Specific Relief Act, 1963 has come into existence in 1963 and Family Court Act, 1984 has come into existence in the year 1984 and the provisions of Family Courts Act have been prevailed by Section 20 in the year 1984 on any other law for the time being in forced and, hence, we are of the firm view that even if the applicant/respondent has not demanded any relief in its suit with regard to restitution of conjugal right or any further relief. In this regard, the Principal Judge has indicated, at the time of deciding issue No.4, but restrained himself, for not granting any relief with regard to Section 11 of the Hindu Marriage Act shall not make the judgment and decree passed by Principal Judge, Family Court illegal. Rather due to overriding effect of Section 20 of the Family Courts Act, 1984 non-demand of any such relief shall not create any shadow on the judgment and decree passed by the Principal Judge, Family Court, and therefore, the second point of determination has been answered accordingly.

13. In this view of the matter, we are of the firm view that in the light of the discussions/reasons assigned in considering "points of determination", there is no need of any interference in the impugned judgment and decree as we do not find any illegality in the judgment and decree dated 29.09.2022 and 14.10.2022 respectively, passed by Principal Judge, Family Court, Begusarai, in Matrimonial Case No.176 of 2010. Accordingly, the present miscellaneous appeal is dismissed.