

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.778 of 2019

Anjan Kumar Roy, son of Shri Ram Bilas Roy, resident of Village-Bhawanathpur, Post Office- Runnuchak, Police Station- Akbarnagar, District-Bhagalpur.

... ... Appellant/s

Versus

Smt. Mala Devi, wife of Anjan Kumar Roy and daughter of Late Karyanand Singh, resident of Village- Bishnupur, Post Office- Pakaria, District- Banka.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Syed Masleh Uddin Ashraf, Advocate
Mr. Rana Hasan, Advocate
Ms. Huma Yunus, Advocate

For the Respondent/s : Mr. Rajesh Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

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

Date : 25-09-2025

Heard the parties.

2. The appellant has come up in this appeal against judgment and decree dated 29.06.2019 passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 12 of 2008, whereby the petition filed by the appellant under Sections 12 and 13 of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been dismissed.

3. The pleaded case of the appellant in his petition filed under Sections 12 and 13 of the Hindu Marriage Act,



1955 is that marriage of the appellant with the respondent was solemnized on 29.06.2006 according to the Hindu rights and rituals and after marriage the respondent came at her *Sasural* and stayed there for about a week and thereafter, her brother came and took her to her parents' house. During her stay, the appellant tried to cohabit with her but she frequently denied. After staying for sometimes, the respondent-wife returned to her *Sasural*. The appellant again tried to establish physical relation with the respondent but due to similar type of excuse by her, the physical relationship could not be established. The appellant, time and again, tried to cohabit with the respondent, but every time, she denied to cohabit with him, as a result of which, the appellant could not establish physical relation with the respondent even a single time. Hence, the appellant claimed that the marriage could not be consummated owing to the impotency of the respondent. The respondent has been exercising frequent mental as well as physical cruelty against the appellant and other in-laws family members since 30-06-2006.

4. The respondent has completely failed to



discharge her matrimonial obligation towards her husband and other in-laws members. The actions/misdeeds of the appellant have caused great torture and harassment in the mind of the appellant. This causes enormous pain and grief in the mind of the appellant. The appellant, therefore prayed to annul the marriage by a decree of nullity of marriage.

5. After filing of the Matrimonial Case, summons were issued to the opposite party/respondent. She appeared and filed her written statement in which she has stated that all the allegations made by the appellant against the conduct and behaviour of the respondent was false and it has been averred that the respondent was mentally and physically tortured by the appellant for non-fulfillment of dowry demand for which the respondent-wife has filed Complaint Case No. 2231 of 2008 against the appellant and other in-laws family members. Thereafter, this Divorce case is said to have been filed on false and concocted grounds only to oust the respondent from the matrimonial life of the appellant. The respondent, therefore, prayed that divorce petition filed by the appellant is fit to be dismissed.

6. After framing of the issue and material



evidences available on record, learned Principal Judge, Family Court, Bhagalpur held that the appellant-husband has failed to prove his case. Accordingly, the divorce petition was dismissed. The appellant-husband, being aggrieved by the said judgment of the learned Family Court has filed the instant appeal before this Court.

7. In order to prove his case, the appellant has produced four witnesses which are P.W. 1 Anjan Kumar Roy(appellant himself), P.W. 2 Sadanand Roy, P.W. 3 Krishna Kant Roy, P.W. 4 Kailash Choudhary.

8. The following documents were also exhibited on behalf of the appellant husband.

*Ext-1 Medical Prescription of Dr.
R.N.Jha*

Ext.2- Ultrasound Report

Ext-3 Report of examination of blood

*Ext.-4 Report of examination of blood
immuno serological*

*Ext.-5 Report of the examination of
urine*

9. The respondent wife has also produced three witnesses which are O.P.W-1 Mala Devi(respondent



herself), O.P. W-2 Pankaj Kumar Singh (brother of the respondent), O.P.W. 3 Bipin Kumar Roy.

10. Learned counsel for the appellant-husband submits that the learned Family Court has erred in law and facts both in dismissing the divorce petition filed by the appellant-husband. Learned counsel has further submitted that the impugned order has been passed without considering the evidences as well as material fact produced by the appellant and it was supported by a Medical expert as well as pathological reports. The respondent-wife as well as her family members have concealed this fact that respondent is a barren woman and she cannot perform matrimonial obligation with any person.

11. It is submitted by learned counsel for the respondent that learned Family Court has rightly appreciated the materials available on record and dismissed the divorce petition filed on behalf of the appellant. The respondent further submitted that appellant and other in-laws family members, soon after the marriage, started torturing the respondent-wife for non-fulfillment of dowry demand. The respondent and her family members made all



efforts to fulfill their demands but when their greediness started increasing day by day, the respondent has filed Complaint Case No. 2231 of 2008 against the appellant and other in-laws family members. Thereafter, in order to put pressure upon the respondent, the present divorce petition was filed on behalf of the appellant-husband. It is further submitted that appellant has performed second marriage and there is a child out of the second marriage.

12. We have heard learned counsel for the appellant as well respondent and perused the concerned record of Family Court as well as the impugned judgment.

13. Before we part with, it is relevant to extract Section 12 of the Hindu Marriage Act which is reproduced hereinbelow:-

*“12. **Voidable marriages.**-(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-*

(a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of



the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner "[was required under section 5, as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-

(a) on the ground specified in clause (c) of sub-section (1), shall be entertained if-

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of



sub-section (1), shall be entertained unless the Court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground].”

14. From perusal of the case records, it appears that the divorce petition has been filed only on the ground of infertility (barrenness) of the respondent-wife and in order to prove his case, the appellant has also exhibited some documentary evidences. The O.P.W. 3 has clearly stated in his evidence that respondent-wife has been living at her parents' house since 2008. The brother of the respondent, who has been examined as O.P.W 2 has also claimed that appellant has performed second marriage with



one Kajal Devi without divorce to his first wife (respondent) and a child was also born out of the second marriage.

15. The learned Principal Judge, Family Court, did not take a pain to examine those facts and the materials exhibited on behalf of the appellant-husband regarding their genuineness/authentication and concentrated its findings only on the fact that barrenness is not a ground for taking divorce within the purview of Hindu Marriage Act. The learned Family Court ought to have examined these material facts before coming to any conclusion.

16. In the impugned judgment, it was held by the learned Principal Judge that Exhibits 1 to 5 which are medical prescriptions, Ultrasound report and Pathological reports from which it is not clear that whether the opposite party was Barrenness or not ?. And no any conclusive proof of Barrenness of opposite party is on the record.

17. The learned counsel for the appellant has further argued that the appellant wants to produce the concerned Doctor and Pathologist to get the reports legally proved which were issued by them.



18. Accordingly, the judgment and decree dated 29.06.2019 passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 12 of 2008 is set aside.

19. The matter is remanded back to the Principal Judge, Family Court, Bhagalpur to decide the case on merits after examining Exhibits 1 to 5 as exhibited by the appellant-husband in support of his case and after granting opportunity to both the parties to adduce their evidences within a period of three months from the date of receipt of a copy of this order. Parties are directed to co-operate in the matter.

20. Accordingly, M.A. No. 778 of 2019 stands disposed of.

21. Pending I.A.(s), if any, stand disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, CJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	24/07/2025
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