

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

FAMILY COURT APPEAL No.179 OF 2009

JUDGMENT: (Per the Hon'ble Dr.SA,J)

This Family Court Appeal, under Section 19 of Family Courts Act, 1984 is filed by the appellant/husband, aggrieved by the order, dated 22.12.2008 passed in O.P.No.450 of 2007 by the learned Judge, Family Court, Secunderabad, whereby the petition filed by the respondent/wife under Section 13(1)(ia) of the Hindu Marriage Act, seeking divorce, was partly allowed granting decree of divorce dissolving the marriage between the parties and directing the appellant/husband to pay Rs.3,50,000/- as permanent alimony and dismissing the claim for return of Rs.4,00,000/- and return of movables worth of Rs.6,25,500/-.

2. Heard the learned counsel for the appellant/husband and perused the record.
3. In spite of service of notice on respondent/wife, there is no representation on her behalf.
4. Learned counsel for the appellant/husband would contend that divorce was granted to the parties on the ground that the appellant/husband is incapable of begetting the children.

Incapable of begetting the children is not a valid ground to dissolve the marriage between the parties in the subject O.P. filed under Section 13(1)(ia) of the Hindu Marriage Act. The Court below ought not have taken the same into consideration and allow the petition granting divorce between the parties. There is no reunion between the parties from the date of filing of the subject O.P. and ultimately prayed to set aside the impugned order and decree dated 22.12.2008.

5. In view of the above submissions, the point that arises for determination is:-

“Whether the Court below is justified in granting the decree of divorce dissolving the marriage between the parties *vide* impugned order, dated 22.12.2008?”

6. **POINT**:- The evidence of P.W.1, the respondent/wife, is that the marriage between her and the appellant/husband was not consummated. P.W.2, who is an Urologist in Care Hospital, Hyderabad, deposed that R.W.1, the appellant/husband, underwent Testicular Biopsy on 15.09.2006 under his supervision. R.W.1 is suffering from infertility (Sertolicell Syndrome) i.e., no sperm cell production in testis and referred to psychiatrist. The medical evidence on record discloses that the appellant/husband is incapable of producing sperm as

suffering from sertolicell syndrome. There is evidence with regard to payment of huge dowry in the marriage. Both the parties are living separately from the year 2007. There are no efforts from either side. There are no chances of reunion. The marriage between the parties had irretrievably broken down. When the husband is incapable of begetting children, certainly it causes mental agony and certainly it can be taken as mental cruelty. So it is sufficient ground to allow the subject petition for divorce. Furthermore, for the reasons indicated above that the marriage was irretrievably broken down between the parties. Hence, no interference is warranted in the impugned order.

7. Accordingly, the appeal is dismissed confirming the impugned order and decree, dated 22.12.2008 passed in O.P.No.450 of 2007 by the learned Judge, Family Court, Secunderabad.

Miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

JUVVADI SRIDEVI, J

Date: 30.06.2022
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