

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 31st OF JULY, 2024

FIRST APPEAL NO.331/2011

MAHILA MAMTA

Vs

SUNIL KUMAR

Appearance:

(SHRI DEEPAK KUMAR GUPTA, LEARNED COUNSEL FOR APPELLANT.)

(NONE FOR RESPONDENT)

ORDER

Per: VIVEK RUSIA, J.

Appellant/wife has filed this first appeal under Section 28 of the Hindu Marriage Act against the judgment dated 25.08.2011 passed by Additional District Judge, Karera, District Shivpuri in Case No.57-A/2010 (HMA), whereby marriage dated 01.07.2009 has been dissolved.

2. Facts of the case in short are as under:-

(i) The marriage of appellant and respondent was solemnized on 01.07.2009 under Hindu customs and rituals at Datia. After the marriage, both lived together in Karera. It is also an admitted fact

that since 17.09.2009 appellant has been residing in her father's house. Respondent/husband filed a petition under Section 13 of the Hindu Marriage Act that after performing the rituals of the marriage, he brought the appellant wife to his house but since 04.07.2009 he was prevented from performing sexual intercourse with the wife. She used to avoid him every night on one or other pretext, upon asking she disclosed that she could not become a mother due to a biological disorder. She was treated at Kilkari Hospital, Gwalior. She left the house on 15.09.2009 along with all jewellery. He met his father-in-law on 02.11.2009 but he did not give a satisfactory reply. According to the husband since she cannot become a mother in future, therefore, the marriage is liable to be declared void. On the grounds above, he sought a decree of divorce.

(ii) Respondent/wife appeared and filed a reply denying every allegation made in the petition. According to her, a sufficient amount of dowry was given at the time of marriage, but the demand of rupees two lacs was made. Since her father is a pensioner now, therefore, he was not in a position to give rupees two lacs and due to this, she was expelled from the house only in one Saree and blouse on 16.09.2009.

(iii) Learned Court framed the issues for adjudication and the appellant examined five witnesses, namely, Sunil Soni, Smt. Munni Soni, Mahila Savitri Bai, Ramraja and Ramsahay Yadav and the respondent examined five witnesses, namely, Smt. Mamta Soni, Radheshyam Soni, Ramkumar Soni, Rakesh Se (Rikku) and

Dr. Smt. Usha Chaurasiya.

3. Respondent examined Dr Chaurasiya to establish that the allegation that she cannot become a mother is *per se* false. Para 17 and 18 of the impugned judgment are reproduced below:-

“17. डॉ. चौरसिया का कहना है कि प्रतिप्रार्थी का पी/व्ही परीक्षण करने पर उसकी यूटेरस रीटोवर्टिड (आर/व्ही) नॉर्मल आकार में था। डॉ. चौरसिया का आगे कहना है कि प्रतिप्रार्थी का मासिक धर्म दिनांक 20.04.10 को आया था। डॉ. चौरसिया के अभिमतानुसार प्रतिप्रार्थी का परीक्षण करने के आधार पर उन्होंने पाया था कि प्रतिप्रार्थी संभोग के लिये सक्षम थी। डॉ. चौरसिया ने प्र.डी.2 की रिपोर्ट देना प्रमाणित की है जिस पर उसके हस्ताक्षर हैं।

18. प्रार्थी की ओर से परीक्षण करने पर डॉ. चौरसिया ने कहा है कि प्रतिप्रार्थी के शरीर के आंतरिक सभी अंग सामान्य थे, इस कारण उसको मासिक धर्म निश्चित होता होगा। प्रतिप्रार्थी का गुप्तांग भी सामान्य था। डॉ. चौरसिया का कहना है कि गुप्तांग का परीक्षण दो उंगलियां डालकर करते हैं और यदि गुप्तांग में दो उंगलियां जाती हैं तो उसका गुप्तांग सामान्य होता है। डॉ. चौरसिया का आगे कहना है कि यदि दो उंगलियां गुप्तांग में प्रवेश नहीं करती हैं तो गुप्तांग सामान्य नहीं होता है। डॉ. चौरसिया का कहना है कि उनकी दो उंगलियां गुप्तांग में नहीं जाती हैं तो वह गुप्तांग की लंबाई की नाप लिखतीं। डॉ. ने स्पष्ट कहा है कि उनकी रिपोर्ट प्र.डी.2 में उन्हें गुप्तांग की लंबाई की नाप लिखने की आवश्यकता नहीं पड़ी।”

4. In rebuttal, the respondent/ husband has not filed any evidence to establish the infertility of the wife. After appreciating the evidence that came on record, the learned District Judge observed that the wife was not interested in performing the marital obligations with the husband, therefore, she made a false allegation of demand of dowry and police complaint against him in order to create a ground for separation. Therefore, allegations levelled by

the appellant show that she was avoiding having a physical relationship with her husband which comes under the category of cruelty. Vide judgment dated 25.08.2011, a decree of divorce has been granted.

5. Learned counsel for the appellant submits that he has not been in contact with her client since the date of filing. No one is appearing on behalf of the respondent. Neither of the parties is not aware of the current status. After the admission of this appeal in 2013 first time came up for hearing on 12.03.2024 and since then no one has been appearing on behalf of the respondent either. The fact remains that both husband and wife have been living separately since 17.09.2009. No one has made an effort to get the matter amicably settled. The wife has not filed any application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, therefore, the learned Court has rightly observed that she herself was not interested in performing marital obligations with the present respondent. The marriage is irretrievable and as the parties have been living separately since 2009, there is no possibility of their reunion. Under these circumstances, we have no option but to uphold the order of the Trial Court.

6. Consequently, this appeal is **dismissed**.

The record be sent back.

(VIVEK RUSIA)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE