



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27/1/2015

C O R A M

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THE HONOURABLE Ms.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD(MD) No.2192 of 2014
and MP(MD)No. 1 of 2014

Easwaribai

... Petitioner

Vs

Sayabai

... Respondent

Petition filed under Article 227 of the Constitution of India challenging the order dated 31/7/2014 made in I.A.No.41 of 2014 in H.M.O.P.No.40 of 2014 on the file of the Additional Subordinate Court, Thanjavur.

For petitioner

... Mr.L.Madhusudhanan

For respondent

... Mr.G. Karnan

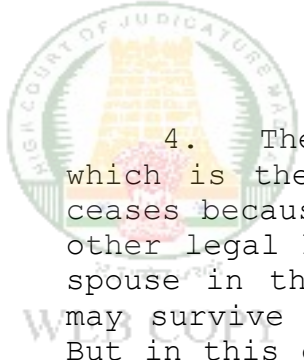
O R D E R

In a matrimonial proceedings, after the death of the husband of the petitioner, his mother has filed an application under Order 22 Rule 3 of the Code of Civil Procedure to implead herself in the petition which is allowed by the Court below. The said order is now challenged in the revision by the wife.

2. The petitioner herein was married to one Mukesh Rao on 3/8/2006 and a girl child was born out of the wedlock. Due to difference of opinion, the petitioner herein had left the matrimonial home on 8/7/2011. Therefore, the husband of the petitioner had filed H.M.O.P.No.67 of 2012 for divorce. It was dismissed for default on 24/3/2014. However, without restoring the same into file, the husband had filed another H.M.O.P.No.40 of 2014 on the file of the Principal Sub-Court, Thanjavur for divorce under Section 13 (1) (a) (6) of the Hindu Marriage Act. While the matter was pending, the husband died on 19/5/2014. Therefore, the respondent herein, who is the mother of the deceased and mother-in-law of the petitioner filed an application under Order 22 Rule 3 to implead herself in the proceedings and prosecute the case. It was objected to by the petitioner herein on the ground that the relief sought for is only for personal remedy and therefore, the mother-in-law cannot come on record in the capacity of the legal heir. The Sub-Court, Thanjavur tried the application and allowed the same. Aggrieved by the same, the above Civil Revision Petition has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The only question that has to be seen is whether the respondent herein, who is the mother of the deceased can be impleaded in the proceedings pending between the spouses.

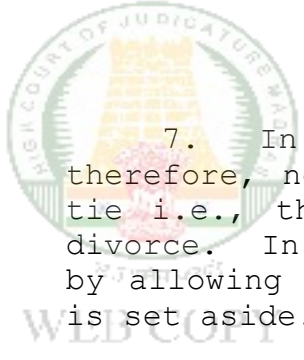


4. The proceeding has been initiated by the husband for divorce which is the personal remedy. On the death of the husband, the remedy ceases because the cause of action in such a case would not survive on any other legal heir. If the dispute is regarding the estate of the deceased spouse in the hands of his or her legal heirs, then the cause of action may survive on the mother who would be the legal heir of the deceased. But in this case, the O.P is filed by the husband for the matrimonial misconduct of the wife under Section 13 of the Hindu Marriage Act and the allegations made by the husband in the O.P is purely personal within the knowledge of the husband alone and the cause of action for the O.P is also the personal cause of action based on one or more of the matrimonial misconducts alleged under Section 13 of the Hindu Marriage Act.

5. Any decision based on the above allegations would only affect either of the spouses to the proceedings. In the event of death of one of the spouses, the cause of action cannot survive on the legal heirs of the deceased as no right get crystalised due to the death of the person. But the situation is different when a decree for divorce is granted ex parte or even bi-parte. As by virtue of the decree, the status of the party as well as the proprietary rights of them are affected. The trial Judge had followed the decision reported in AIR 1997 SC - 35 (SMT.YALLAWWA Vs. SMT. SHANTHAVVA) and allowed the application without application of mind. The said decision mainly deals with ex parte decree of divorce obtained against the wife whether can be set aside even after the death of the husband. Whereas in this case, the remedy of divorce being the personal one, the cause of action will not survive on the heirs of the deceased. In fact, in paragraph 6 of the said judgment, the Supreme Court has held as follows:-

'So far as the contention of the maintainability of the application of the respondent - wife is concerned, it must be kept in view that the petition of divorce was moved by the husband for getting his marriage with the respondent dissolved by a decree of divorce on the ground that the respondent deserted him for a continuous period of not less than 2 years immediately preceding the presentation of the petition. It is also to be kept in view that such petition for divorce can be moved either by the husband or the wife, as the case may be. To that extent, it is certainly a personal cause of action based on one or more matrimonial misconducts alleged in the petition against the erring spouse. Consequently, in such proceedings before any decree comes to be passed if either of the spouse expires pending the trial, then the personal cause of action would die with the person. Such civil proceedings would not abate only if right to sue survives after the death of one or more of the parties to the proceedings as laid down by Order XXII Rule 1 of the Code of Civil Procedure. However, if during the pendency of the petition for divorce either of the spouse expires, the cause of action being personal to both of them, the right to sue would not survive.'

6. The above said finding of the Supreme Court in the said decision was lost sight off by the trial Judge and had allowed the application to implead the mother of the deceased as the legal heir to the proceedings which is patently erroneous. The relief of divorce being a personal remedy, if the person seeking for the same is dead, the proceedings automatically would abate and the question of impleading her under Order 22 Rule 3 of the Code of Civil Procedure will not arise.



7. In view of the above principle, no action is necessary and therefore, nothing survives for the Court to snap of such a non-existing tie i.e., there remains no marriage to be dissolved by any decree of divorce. In such circumstances, there is no useful purpose will be served by allowing the impleadment. Consequently, the order of the trial Judge is set aside.

8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To
The Additional Subordinate Court, Thanjavur.

+1cc to Mr. G.KANNAN, Advocate in SR.No. 3396

+1cc to Mr. L.MADHUSUDHANAN, Advocate in SR.No. 3533

TS/23.02.2015/3P-4C

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27.01.2015