

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FAMILY COURT APPEAL NO.71 OF 2014

Smt. Kamal W/o Shivdas Kathane

-vs-

Shivdas S/o Tukaram Kathane, thr LR's

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.C.N. Deshmukh, counsel for the petitioner.
Mr.P.N. Randive, counsel for the LR's of Resp.

CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.

DATE : MARCH 18, 2016.

By this family court appeal, the appellant challenges the order of the Family Court, Nagpur dated 20.2.2007 dismissing the hindu marriage petition filed by the appellant with costs.

The hindu marriage petition was filed by the appellant, who claims to be the first wife of Shivdas Tukaram Kathane. In the hindu marriage petition filed by the appellant-wife against Shivdas, a prayer was made for a mandatory injunction directing Shivdas Kathane to cancel the name of Chanda who falsely claims to be the second wife of Shivdas Kathane, as a nominee for the pensionary and the provident fund benefits. The said petition filed by the appellant-wife was dismissed by the family court on 20.2.2007 with costs.

It is not in dispute that during the pendency of the family court appeal, Shivdas Kathane has expired. In our considered view, the cause of action would not survive in the instant case as the only prayer made by the appellant in the

hindu marriage petition is for a mandatory injunction directing Shivdas Kathane to cancel the name of Chanda Kathane who claimed to be the second wife of Shivdas Kathane as a nominee for receiving the pensionary and the provident fund benefits. It may be noted that the appellant had not joined either Chanda or the Government authorities in the said petition and had not sought any directions against them. In view of the death of Shivdas Kathane, the cause of action for filing the hindu marriage petition would not survive. In the circumstances of the case, specially when the appellant claims to be the first wife of Shivdas Kathane and since that the said fact is not disputed, the appellant would be entitled to take appropriate proceedings for seeking the pensionary and other benefits.

Since the first appeal abates on the death of the sole respondent, the same is dismissed with no order as to costs.

JUDGE

JUDGE

!! BRW !!