

**THE HONB'E SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**CMA.MP.Nos.1137 & 1190 OF 2016
IN/AND
CIVIL MISCELLANEOUS APPEAL NO.365 OF 2011**

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

The respondent herein - wife filed O.P.No.8 of 2009 on the file of the Court of the Senior Civil Judge, Markapur (for short, the trial Court) under Section 13(1) (ia) (ib) of the Hindu Marriage Act, 1955 seeking divorce by dissolving the marriage between her and her husband, who is the first appellant herein. The trial Court, by its order and decree dated 21.09.2010 allowed the said OP and granted decree of divorce by dissolving the marriage between the parties. Assailing the said order and decree, the husband - first appellant filed the present Civil Miscellaneous Appeal.

2. This Court, by order dated 29.06.2011 in CMAMP.No.724 of 2011, granted interim suspension of the order and decree of the trial Court. While so, the appellant - husband died on 27.04.2016. Later, his son filed CMAMP.No.1070 of 2016 seeking to permit him to come on record as the legal representative of his deceased father. A division Bench of this Court, by order dated 25.07.2016, allowed CMAMP.No.1070 of 2011, in pursuance of which, he was arrayed as second appellant in the appeal.

3. Thereafter, Smt.Pothireddy Yellmma, who is the mother of deceased appellant, filed CMAMP.No.1137 of 2016 and the relatives of the first appellant also filed CMAMP.No.1190 of 2016 stating that during the pendency of present appeal, the first appellant executed a Will on 16.01.2013 bequeathing some properties in their favour; that by virtue of the same, they have been in possession of the properties; that the second appellant, after he was brought on record in the present appeal, is trying to take steps to get over the properties mentioned in the Will dated 16.01.2013 and that therefore they sought to implead them as respondent Nos.2 to 6 in the present appeal. The said CMAMPs are pending adjudication.

4. Sri Nimmagadda Satyanarayana, learned counsel for the appellants, submitted that in view of the death of the first appellant, the present appeal is liable to be dismissed as abated.

5. It is brought to the notice of this Court that after the death of the first appellant, the respondent herein filed O.P.No.7 of 2016 on the file of the Court of Senior Civil Judge, Markapuram seeking succession certificate to declare her as the successor of her deceased husband and the same is pending.

6. Admittedly, during the pendency of the appeal, the first appellant –husband who filed the present appeal challenged the decree granting divorce, died. Hence, the appeal gets abated

and it is dismissed as abated insofar as first appellant is concerned.

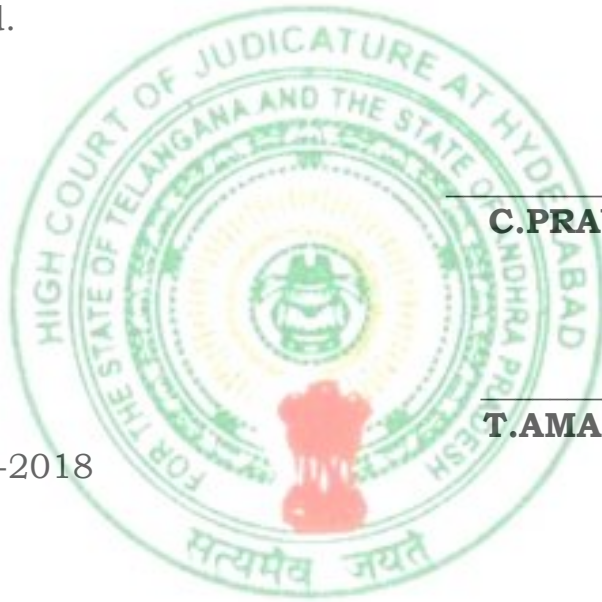
7. Insofar as second appellant is concerned, the order and decree of the trial Court does not speak of any monetary relief in his favour and thus no relief can be granted in this appeal. The son is not entitled for any relief in the appeal filed by his father against the divorce decree granted in favour of his mother. Hence, the appeal is dismissed against the second appellant.

8. Sri Chetluri Sinivas, learned counsel for the respondent, argued that but for the appeal filed by the deceased appellant and but for the stay granted by this Court, the respondent – wife could not get the divorce decree executed by way of going on for any second marriage or getting compromised with her husband by joining him in the conjugal life or for permanent alimony and hence, she should be declared as the legal heir in respect of her late husband's assets. This argument cannot be accepted, as the scope of the present Civil Miscellaneous Appeal is very limited to decide the question as to whether the divorce granted by the trial Court is valid or not. It is not for this Court to go into the other issues which are pleaded by the wife for the first time after the death of the husband.

9. Insofar as CMAMP.Nos.1137 and 1190 of 2016 are concerned, the same were filed by the wife and relatives of the deceased appellant who are no way related to the trial Court's

order and decree. Therefore, they cannot be impleaded in this Civil Miscellaneous Appeal. More so, in the appeal challenging the divorce decree, the question of impleading other parties basing on the Will does not arise. Hence, CMAMP.Nos.1137 and 1190 of 2016 are dismissed. However, it is open for the parties to pursue their remedies before the appropriate Court, if so advised.

10. The Civil Miscellaneous Appeal is dismissed as indicated above. No costs. Miscellaneous petitions pending, if any, shall stand closed.



C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

Date: 15-06-2018
TJMR