



CRP NPD.No.55 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP NPD No.55 of 2025 & CMP.No.468 of 2025

K.Jayavel [died]
Gowri

. . . Petitioner

Versus

D.Mangaladevi

. . . Respondent

PRAYER : Petition filed under Section 115 of Code of Civil Procedure to set aside the Order dated 15.10.2024 made in I.A.No.02 of 2024 in H.M.O.P.No.120 of 2017 passed by the Family Court, Krishnagiri.

For petitioner : Mr.K.Venkateswaran

ORDER

Challenging the Order allowing the application filed for impleading the mother-in-law of the applicant in I.A.No.2 of 2024 to pursue the application

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filed to set aside the exparte decree of divorce, the present Civil Revision
Petition has been filed.

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2. Brief background of the case is as follows :

The respondent herein has married one Jayavel on 12.10.2010 as per Hindu customs. As matrimonial dispute arose between them, HMOP.No.120 of 2017 came to be filed by the husband against the wife, wherein an exparte decree came to be passed against the respondent on 26.03.2018. However, the respondent has filed an application to set aside the exparte decree in I.A.No.1 of 2021. During the pendency of the said application, after service of notice, the husband of the respondent died on 26.01.2023. At this stage, an application has been filed to implead the legal representatives of the husband to continue the proceedings, which was allowed by the trial Court. Challenging the same, the present revision has been filed.



3. The learned counsel appearing for the petitioner would mainly submit that as the husband has died, the petition filed by the petitioner automatically abates, since the divorce decree is personal in nature. Therefore, impleading is not permissible.

4. I have perused entire materials available on record. As far as filing of the application under Order IX Rule 13 of Code of Civil Procedure by the wife after the death of her husband is concerned, the issue is no longer res integra. In the judgment in **A.Lakshmi Vs. K.Saraswathi Ammal** reported in **[1996] 6 SCC 371**, the Supreme Court has held that the wife has got the right to prosecute the divorce petition as against the legal heirs of her husband under Order 9 Rule 13 of Code of Civil Procedure and it has been further held that even though the husband passed away, since the decree is operating against the wife, she is entitled to prosecute the application filed under Order 9 Rule 13 of Code of Civil Procedure after the death of her husband as against the legal heirs of her husband.



5. In the judgment in **Yallawwa Vs. Shantavva** reported in [1997] 11 SCC 159, the Apex Court had confirmed the Order of the High Court in setting aside the Order of the trial Court which had dismissed the application filed by the wife to prosecute the application to set aside the exparte decree. That apart, this Court in **Jegadeesan [died] P.Jayalakshmi Vs. Gomathi [CMSA [MD] No.1 of 2013 dated 27.04.2023]**, considering the above settled position, has held that when there is an exparte decree for divorce, aggrieved spouse would be entitled to file an application under Order 9 Rule 13 of Code of Civil Procedure as against the legal heir of the decree holder and prosecute the same and once the exparte decree is set aside, there is no decree for divorce and the proceedings have to be dismissed as abated. Similarly in **CRP.No.2143 of 2022, dated 04.10.2024** [Sangeetha Vs. R.Chinnasamy [died], R.Gopiyammal], this Court has held that application under Order 9 Rule 13 of Code of Civil Procedure is maintainable.

6. In view of the above settled position of law, I do not find any merits in this revision petition.



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7. Accordingly, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order

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To,

The Judge,
Family Court, Krishnagiri.



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N. SATHISH KUMAR, J.

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