Supreme Court of India
Smt. Yallawwa vs Smt. Shantavva on 8 October, 1996
Author: S.B. Majmudar
Bench: N.P. Singh, S.B. Majmudar

PETITIONER:
SMT. YALLAWWA

Vs.

RESPONDENT:
SMT. SHANTAVVA

DATE OF JUDGMENT: 08/10/1996

BENCH:
N.P. SINGH, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. Majmudar, J:

The appellant had brought in challenge by special leave under Article 136 of the Constitution, an order passed by the learned Single Judge of the High Court of Karnataka allowing the revision application moved by the respondent. The High Court has set aside the ex parte decree for divorce passed against the opponent by the learned Trial Judge.

In order to appreciate the grievance of the appellant, who is alleged to be the ex-mother-in-law of the respondent, a few facts leading to these proceedings are needed to be noted ar the outset. The respondent was the married wife of one Basappa. The appellant is the mother of said Basappa. Respondent's husband, Basappa, filed a petition for obtaining divorce against the respondent on the ground of desertion. The said application was moved by said Basappa being M.C. No.25 of 1989 in the court of the learned Civil Judge, Gadag in Karnatake State. The said application was moved by Basappa under Section 13(1) (i-b) of the Hindu Marriage Act, 1955. The said divorce petition came to be decreed ex parte against the respondent on 15.12.1989. It is the case of the appellant, mother-in-law of the respondent, that her son Basappa having obtained the decree of divorce filed a suit being O.S No.42 of 1990 in the court of the Munsif at Ron for permanent injunction against the respondent contending that through she was no longer the wife of Basappa in view of the decree of

divorce yet she was unnecessarily interfering with his possession and enjoyment of the suit property. It is the further case of the appellant that on 1.3.1990 the respondent was served with the summons in O.S. No.42 of 1990 but remained absent. Said Basappa, husband of the respondent, died on 26.5.1990. It is thereafter that the respondent filed miscellaneous application being Miscellaneous case No.102 of 1990 under Order IX Rule 13 C.P.C. in the Court of Civil Judge at Gadag for setting aside the ex parte divorce decree passed on 15.12.1989 It was the case of the respondent that she has come to know about the ex parte divorce decree only on 31.3.1990; that she was not served with summons on the said petition filed by Basappa. She also filed an application for condonation of delay in filing the Miscellaneous case for setting aside the ex parte decree of divorce.

The learned Trial Judge held that the delay was not properly explained by the respondent and that the respondent was aware of the divorce proceedings much prior to the date on which she is alleged to have come to know about the divorce decree. The Trial Court, therefore, dismissed the respondent's application under Order IX Rule 13 C.P.C. as time barred by its order dated 27.7.1991. Respondent files a revision petition being Revision Petition No.3683 of 1991 under Section 115 of the C.P.C. in the High Court of Karnatake. The learned Single Judge of the High Court allowed the said revision application on the ground that the respondent being an illiterate lady would not have read the notice published in the newspaper about the pendency of the divorce proceedings taken out by the respondent's husband Basappa against her and, therefore, this was a fit case for condoning the delay in filing the miscellaneous application under Order IX Rule 13 C.P.C. and also for setting aside the ex parte decree. Accordingly the learned Single Judge set aside the ex parte decree by the impugned order and also ordered that the Hindu Marriage Petition be restored to the file. The learned Trial Court was directed to take up the matter and dispose it of in accordance with law as expeditiously as possible. It is this order of the High Court that has been made the subject matter of appeal by the appellant who claims to be the legal representative of her deceased son Basappa. It may be noted at this stage that the miscellaneous application under Order IX Rule 13 as moved by the respondent was also opposed by the present appellant, mother of the deceased Basappa, as deceased Basappa was already dead before the filing of application for setting aside the ex parte decree in the Trial court and that is how the appellant remained a party to the present proceedings all through out upto this Court.

Learned counsel for the appellant vehemently submitted that the High Court had patently erred in allowing the revision application. His submission was that the respondent was duly served by ways of substituted service under Order V Rule 20. That inspite of the publication of notice of pendency of the Hindu Marriage Petition in the newspaper having circulation in the local area, the respondent had not cared to content the proceedings and, therefore, the ex parte decree was rightly passed by the Trial Court. It was further contended that the respondent had knowledge of the ex parte decree at least form the day on which she was served with the summons in O.S. No.42 of 1990 on 1.3.1990 and still she filed miscellaneous application as late as on 3.7.1990 and she had made out no case for condoning the delay in filing the said application and, therefore, it was rightly rejected by the Trail Court and that the order has been wrongly set aside by the High Court. In the alternative, the learned counsel submitted that in any case the respondents application under Order IX rule 13 C.P.C. was not maintainable as deceased Basappa who had obtained the divorce decree against the respondent was already dead by the time the respondent filed the said application under Order IX

Rule 13 C.P.C. for setting aside the ex parte decree. Hence the proceedings by way of said application had stood abated as divorce proceedings represented a personal cause of action both for the husband as well as the wife and consequently the right to sue has not survived for challenging the ex parte divorce decree after the death of decree-holder husband. The application was, therefore, not maintainable even on that ground. Learned counsel, however, frankly submitted that this contention was not canvassed before the High Court but in his submission it goes to the root of the matter and hence deserves consideration. Learned counsel for the respondent-wife, on the other hand, submitted that the revision application ought to have been treated as an appeal from the order by the Trail Court as appeal did lie against the order of the Trial Court refusing to set aside the ex parte decree as per the provisions of Order XLIII Rule 1(d) C.P.C. He submitted that of the said proceeding was an appellate proceeding then the High Court was justified in interfering with the order passed by the learned Trial Judge for the obvious reason the respondent was tried to be served in way if substituted service under Order V Rule 20 C.P.C. That she being an illiterate lady had not read and could not have read the newspaper publication about the pendency of the Hindu Marriage Petition and consequently she had no knowledge about the pendency of the said petition. Even otherwise it was not shown that any case was mode out by the plaintiff in that case for getting the notice served by way of substituted service and no attempt was made to serve the respondent in ordinary manner as required by Order V Rule 12 as well as Order V Rules 15 and 17 C.P.C Consequently, the ex parte decree was a nullity being passed against a party which was not served in accordance with law and in case of such a null and void decree, there was no question of limitation or in ay case limitation ought to have been condoned in the interest of justice by the Trail Court itself and as that was not done, the High Court was justified in condoning the delay. It was not true that the respondent knew about the ex parte decree when she was served with notice on 1.3.1990. Even assuming that it was so, the delay of few months in applying for setting aside the ex parte decree deserved to be condoned in the interest of justice and as the High Court has rightly condoned the delay this Court under Article 136 of the Constitution may not interfere with the said discretionary order. So far as the alternative contention of concerned, it was neither canvassed before the High Court nor before the Trial Court, the said contention deserves to be rejected even on merits. The said contention has no force for the simple reason that once and ex parte decree is passed against the wife on the ground of desertion apart from the stigma which would be attached to the respondent by the said decree, she would lose proprietary right in the husband's property. In case of demise of the husband in the absence of such decree of divorce she would be entitles to inherit the deceased husband's property as his widow being heir of first class along with the appellant, mother of the deceased. Consequently, when an ex parte divorce decree has such pernicious consequences against the wife, it could not be said that proceedings for setting aside such an ex parte decree would abate on the death of the original petitioner- husband after he had obtained such an ex parte decree.

We have carefully considered the aforesaid rival contentions. In order to appreciate the main grievance of the appellant against the impugned order of the High Court, it is necessary to note at the outset that the respondent was seeking to get the order of the Trial Court dismissing her application under Order IX Rule 13 C.PC. quashed by the High Court. It is true that she moved a revision application for that purpose but the order of the Trial Court refusing to set aside the ex parte decree was clearly appealable under Order XLIII Rule 1(d) C.P.C. which provides that an

appeal shall lie from the orders listed in the said provision and in clause (d) is mentioned an order under Rule 13 if Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree granting divorce under Section 13(1)(i-b) whether ex parte or bipartite is a decree which is appealable under Section 28 of the Hindu Marriage Act, 1955. Consequently, the order of the Trial Court refusing to set aside such an ex parte decree and rejecting the application under Order IX Rule 13 C.P.C. could have been validly made the subject-matter of an appeal under order XLIII Rule 1(d). Therefore, the revision application filed by the respondent before the High Court should be treated in substance as one by way of miscellaneous appeal. Once the High Court has appellate jurisdiction over the impugned order of the Learned Trail Judge, it is obvious that the High Court was fully competent to interfere with the order by re-appreciation the facts of the case. The learned Single Judge had doubt that respondent being an illiterate lady living in a different town could not have known through the newspaper that her husband head filed a divorce petition against her and, therefore, she had no knowledge about the divorce petition. Consequently, the ex parte decree could be treated as one passed against the party which was not served and which had no knowledge about the said proceedings. The learned counsel for the respondent was also justified in submitting that the Trail Court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by order V Rules 12, 15 and 17 C.P.C. It must be kept in view that substituted service has to be restored as the last resort when the defendant cannot be served in the ordinary was and the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. In the present case, it appears that almost automatically the procedure of substituted service was restored to. It is also clear from the record of the case that respondent being an illiterate lady would not have known about passing of the ex parte decree earlier otherwise she could have moved for setting aside the decree on any day prior to the day on which she filed this application. Sufficient cause was therefore, made out for condoning the delay in filing the application for setting aside the ex parte decree. The High Court, in our opinion, has rightly code to this conclusion which calls for no interference under Article 136 of the Constitution, when substantial justice had been done to the parties and opportunity has been given to the wife to content the divorce petition which had terminated against her without giving any hearing to her.

That takes use to the consideration of the alternative contention canvassed by the learned counsel for the appellant. It is true that this contention was not canvassed either before the Trial Court of before the High Court. However, as this contention touches the maintainability of the application , we have thought it fit to hear the learned counsel on this point. So far as the contention of maintainability of the application of the respondent-wife is concerned, it must be kept in view that 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 fora continuous period of not less that two 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 case of action based on one or more matrimonial misconducts alleged in the petition against the erring spouse. Consequently, in such proceedings before and decree comes to be passed of either of the spouse expires pending the trial then the personal case of action would die with the person. Such civil proceedings would not abate only if

right it sue survivors after the death of one or more of the parties to the proceedings as laid down by Order XXII Rule 1 C.P.C. However, if during the pendency of the petition for divorce either of the spouses expires, the cause of action being personal to both of them, the right to sue would not survive. The next question is whether after the decree of divorce of passed ex parte or bipartite against the other spouse whether the right to sue would survive for the spouse against whom such decree had been passed by the Court and whether such a decree can be got set aside by the surviving spouse either by filing an appeal or by moving an application under Order IX Rule 13 C.P.C. for getting it set aside if it is an ex parte decree. The answer to the question will depend upon the legal effects of such a decree of divorce passed by the Trial Court under Section 13(1) of the Hindu Marriage Act. It is obvious that so long as the decree is not passed and proceedings are at any stage prior to the decree, no rights or obligations of either spouse get crystalized. The marital status of both the spouses remains the in tact as it was prior to the filing of the suit. But once a decree gets passed in such proceedings the rights and obligations of the respective spouses who are parties to such proceedings get crystalized under the orders of the court. The marriage gets dissolved; the status of the spouses gets changed and they become ex-husband and ex-wife. As a result of such a decree of divorce the marriage tie is snapped. Both of them become free to marry again as laid down by Section 15 of the Hindu Marriage Act. Not only that after such a decree when the spouses have ceased to be husband and wife and become ex-husband and ex-wife, proprietary right of both the spouses also get affected. As per Section 8 of the Hindu Succession Act, if a male Hindu dies intestate, his widow would be entitled to inherit his property being a relative specified in class 1 of the Schedule. Similarly, if the wife dies leaving behind her any property, as per Section 15 of the Hindu Succession Act, the property of the female Hindu shall devolve according to the riles set out in Section 16 - firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. Thus if a female Hindu dies leaving behind her children and husband, the husband also becomes entitled to inherit her property as first class heir. Consequently, because of a divorce decree when the spouses do not remain husband and wife, the mutual rights of inheritance in each other`s property on the death of either of them got extinguished. Therefore, apart from the divorce decree destroying the erstwhile status of husband and wife, it has a direct impact on the property rights of the concerned spouses. Even that apart, as per Section 9 of the Hindu Adoption and Maintenance Act, 1956, a Hindu widow is entitled to be maintained out of her deceased husband's`s estate and failing which by her father-in-law under circumstances laid down by the said section. Even this right will vanish after the decree of divorce, when her husband dies after obtaining the said decree against her. It has also to be kept in view that when a decree of divorce gets passed against a spouse on the grounds of matrimonial misconduct mentioned in Section 13(1) of the Hindu Marriage Act, it attaches a social sigma on the concerned spouse. Such a spouse cannot be said to be left without any remedy to get such finding vacated by filing an appeal or if it is am ex parte decree to get it set aside by filing an application under Order IX Rule 13 C.P.C. Cause of action for getting such an adverse finding stigmatising the concerned spouse, cannot be said to be purely a personal cause of action against the departed spouse who was armed with a decree in his or her favour based on such a finding. When such legal affects flow from divorce decree, it cannot be said with any emphasis that proceedings for setting aside such a decree either by way of appeal or if it is an ex parte decree by way of application under Order IX Rule 13 C.P.C. would also abate and such a right to sue for getting the divorce decree set aside by the aggrieved party whose status and proprietary rights get adversely affected by such decree would not survive to such

an aggrieved spouse, It is also pertinent to note that as per Section 305 of the Indian Succession Act, 1925 an executor or administrator has the same power to sue in respect of all causes of action that survive the deceased and may exercise the same power for recovery of debts as the deceased had whin living, Save and except the personal cause of action which dies withe the deceased on the principal of "actio personal is moritur cum persona," i.e. a personal cause of action dies with the person, all the rest of causes of action which have impact on proprietary rights and socio legal status of the parties cannot br said to have died with such a person.

Learned counsel for the appellant submitted one objection in connection with such proceedings. He submitted that if such an action survives and the challenge to a decree ex parte or bipartite for divorce is found to be maintainable at the instance of the aggrieved spouse against whom the decree has been passed then persons who are non- spouses will have go be joined in the litigation and this would go counter to Section 13 of the Hindu Marriage Act. This difficulty is more imaginary than real. Once a divorce decree is passed., the stage of launching any petition under Section 13(1) dies bot survive. It is true that Section 13 of the Hindu Marriage Act lays sown that marriage whether solemnized before or after the commencement of the Act may be dissolved by a decree of divorce on the grounds mentioned therein on a petition presented by either the husband or the wife. Thus, initially when such petition is to be presented, the person who presents such petition must be either wife or husband and the other party would be the other spouse. But once these proceedings are initiated by the concerned aggrieved spouse, the trial then proceeds further. It is of course true that pending such trial if either of the spouses expires then, as seen earlier, the personal case of action against the husband or the wife, as the case may be, dies with the departing spouse. As no rights are still crystalised by them against or in favour of either spouse, no proprietary effect or any adverse effect on the status of the parties would get generated by mere filing of such petition and the status quo ante would continue to operate during the trial of such petition. However the situation gets changed once a decree of divorce follows in favour of either of the spouses whether such decree id bipartite or ex parte. Thereafter, as noted earlier, direct legal consequences affecting the status of parties as well as proprietary rights of either of them, as noted earlier, would flow from such a decree. Under these circumstances, if the aggrieved spouse who suffers from such legal effects of the adverse decree against him or her is told off the gates of the appellate proceedings or proceedings for setting aside such ex parte decree, the concerned spouse would suffer serious legal damage and injury without getting any opportunity to get such as decree set aside on legally permissible grounds. Consequently, it may be held that once the petition under Section 13 of the Hindu Marriage Act results into any decree of divorce either ex parte on bipartite then the concerned aggrieved spouse who suffers from such pernicious legal effects can legitimately try to get them reversed through the assistance of the court. In such an exercise, all other legal heirs of deceased spouse who are interested in getting such a decree maintained can be joined as necessary parties. Section 13(1) of the Hindu Marriage Act can obviously come on the way of such proceedings being maintained against the legal heirs of the decree-holder spouse. A mere look at the ground of Section 13(1) will show that a Hindu marriage can be dissolved on the proof of matrimonial misconduct of very serious nature as mentioned in the concerned grounds, namely, that the offending spouse, after the solemnization of the marriage, has voluntary sexual intercourse with any person other than his or her spouse; or has treated the petitioner with cruelty; or had deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or has

ceased to be a Hindu by conversion to another religion; or has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder; or has been suffering from a virulent and incurable form of leprosy; or has been suffering from venereal disease in a communicable form; or has renounced the world by entering any religious order or had not been heard of as being alive for a period of seven years or more. These grounds to say the lease, to found established, against the offending spouse would be serious matrimonial misconducts or incapabilities and such a spouse will go with a stigma for the rest of his or her life which will have serious pernicious consequences not only social but also legal, as we have noted earlier. It a decree of divorce on these grounds whether ex parte or bipartite is not permitted to be challenges by the aggrieved spouse, it wold deprive the aggrieved spouse of an opportunity of getting such grounds re-examined by the competent court. It cannot, therefore be said that after a decree of divorce is passed against a spouse whether ex parte or bipartite such aggrieved spouse cannot prefer an appeal against such a decree or cannot move for getting ex parte divorce decree set aside under Order IX Rule 13 C.P.C. Such proceedings would not abate only because the petitioner who has obtained such decree dies after obtaining such a decree. The cause of action in such a case would survive qua the estate of the deceased spouse in the hands of his to her heirs or legal representatives. Consequently in such appellate proceedings or proceedings under Order IX Rule 13 C.P.C., other heirs of the deceased spouse could be joined as opposite parties as they would be interested in urging that the surviving spouse against whom such decree is passed remains a divorcee and is not treated to be a widow or widower of the deceased original petitioner so that she or he may not share with other heirs the property of deceased spouse. So far as the other heirs of the deceased spouse are concerned, they would certainly be interested in getting the decree of divorce confirmed by the appellate court or by the Trial Court by opposing application under Order IX Rule 13 C.P.C., if it is an ex parte decree against the concerned spouse. It must, therefore, be held that when a divorce decree is challenged by the aggrieved spouse in proceedings whether by way of appeal or be way of application under Order Rule 13 C.P.C. for setting aside the ex parte decree of divorce, right to sue survives to the aggrieved surviving spouse if the other spouse having obtained such decree dies after the decree and before appeal is filed against the same by the aggrieved spouse or application is made under Order IX Rule 13 by the aggrieved spouse for getting such an ex parte decree of divorce set aside. Similarly, the right to sue would also survive even if the other spouse dies pending such appeal or application under Order IX Rule 13 C.P.C. In either case proceedings can be continued against the legal heirs of the deceased spouse who may be interested in supporting the decree of divorce passed against the aggrieved spouse.

It is now time for us to refer to the direction of different High Courts on which strong reliance was placed by either side. Learned counsel for the appellant in support of alternative contention that proceedings under Order IX Rule 13 C.P.C. would abate on the death of the husband who had obtained an ex parte decree against his wife relied upon a decision of the Madras High Court in the case of Saraswati Ammal vs. Lakshmi (A.I.R. 1989 Madras 216) wherein a learned Single Judge no doubt had taken the view which is canvassed by the learned counsel for the appellant. It has been observed by the learned Judge that where on application by husband alleging that his wife deserted him intentionally and without any justification a decree of divorce was passed ex parte and the husband died subsequently on passing of the decree, the wife could not seek to set aside ex parte decree thereafter by impleading the legal representatives of the deceased husband. The proceedings

for divorce initiated by deceased husband was purely personal to him founded on the subsistence of the marriage between him and his wife and on death the proceedings at whatever stage they were stood abated. When the husband alleged that wife deserted him without any justification that complaint was purely a personal complaint of husband against his wife with which the husband's legal representatives had nothing whatever to do. The very basis for the initiation of proceedings for divorce was purely personal to husband and when he died, there was no question of its survival in the estate of deceased husband either for his benefit or for the benefit of wife. The deceased husband was not seeking the enforcement of any right, which on his death, would vest in his heir at law or the representative of his estate. It is difficult to appreciate this line of reasoning. It is true that such decree is passed in a petition moved by the husband on the ground of desertion by his wife. It is also true that these proceedings remain purely based on personal cause of action till they reach finality at the trial, but once a decree of divorce is passed certain legal effects regarding the status of parties and even proprietary effects flowing from such decree as noted earlier would arise as a direct consequence of such a decree. That will have a straight impact on the estate of the deceased husband or wife, as the case may be. Unfortunately learned Judge was not apprised of these legal pernicious effects flowing from ex parte decree of divorce against the aggrieved spouse. That had led the learned Judge to assume that there were no legal consequences of ex parte decree on the other spouse. It is also not correct to observe that legal representatives of the husband have nothing to do with these proceedings. As we have seen earlier, the proprietary right of other legal heirs of the deceased husband to get full share in the deceased husband's property would get directly affected and curtailed of such decree is set aside. On the other hand, such right would get enlarged if such a decree is sustained in appeal or is maintained under Order IX Rule 13 C.P.C. The aforesaid decision of the learned Single Judge of the Madras High Court, therefore, must be held to be erroneous. In Mst. Bhan Kaur vs. Isher Singh & Ors. (A.I.R. 1959 Punjab 553) a view similar to that of the learned Single Judge of the Madras High Court had been taken which in our view also does not lay down the correct law. On the other hand, we find that a learned Single Judge of the High Court of Bombay in the case of Kamalabai vs. Ramdas Manga Ingale (A.I.R. 1981 Bombay 187) has correctly held that where an appeal was filed by wife against the decree of divorce and the respondent died during the pendency of the appeal, the appeal cannot be treated as having abated on the death of the respondent. It was further observed that where the position is not free from doubt equitable consideration must prevail and bearing in mind the nature of the conclusion, the far-reaching effect of the findings of the Court, both on personal status and property rights, it is desirable that the party aggrieved by the decree of the trial court must have the opportunity to have the findings reversed and this opportunity must be assured irrespective of the death of the respondent. For coming to the aforesaid conclusion, the learned Judge had relied upon the earlier decision of the Division Bench of the High Court in the case of Suhas Manohar Panda vs. Manohar Shamrao Pande (A.I.R. 1971 Bombay

183) and the decision of the Division Bench of the Andhra Pradesh High Court in the case of Verma Sunanda vs. Vempa Venkata Subbarao (A.I.R. 1957 Andhra Pradesh 424). It must, therefore, be held that after a decree of divorce is obtained by the petitioning husband against his wife she has right to file an appeal and such appeal does not abate on account of the death of the respondent husband whether such death takes place prior to the filing of appeal or pending the appeal. Similarly, if an ex parte decree of divorce is obtained against the wife and thereafter if the husband dies, the aggrieved

wife can maintain an application under Order IX Rule 13 C.P.C., even though the husband might have died prior to the moving of that application or during the pendency of such application. In all such cases other legal heirs of the deceased husband can be brought on record as opponents or respondents in such proceedings by the aggrieved spouse who wants such decree to be set aside and when the other heirs of the deceased husband would naturally be interested in getting such decree confirm either in appeal or under Order IX Rule 13 C.P.C. The second alternative contention as canvassed by the learned counsel for the appellant, therefore stands rejected.

Before parting with the discussion on this point, we may mention that in a recent decision of two Member Bench of this Court consisting of B.P.Jeevan Reddy and K.S. Paripooran JJ. in C.A.Nos. 12664-65/96 dt.22.9.96 the decision of the learned Single Judge of the Madras High Court in Saraswathi Ammal vs. Lakshmi (supra) has been reversed and the learned Judges have taken the same view which we are inclined to take in the facts and circumstances of the present case.

Now remains the question as to whether the proceedings for divorce as restored by the High Court by its impugned order and required to be proceeded further or the curtain must be dropped on the said proceedings.

As the ex parte decree is found to be rightly set aside by the High Court, the marriage petition would automatically stand restored on the file of the learned Trial Judge at the stage prior to that at which they stood when the proceedings got intercepted by the ex parte decree. Once that happens it becomes obvious that the original petitioner seeking decree of divorce against the wife being no longer available to pursue the proceedings now, the proceedings will certainly assume the character of a personal cause of action for the deceased husband and there being no decree culminating into any crystalized rights and obligations of either spouse, the said proceedings would obviously stand abated on the ground that right to sue would not survive for the other heirs of the deceased husband to get any decree of divorce against the wife as the marriage tie has already stood dissolved by the death of the husband. No action, therefore, survives for the court to snap such a non-existing tie, otherwise it would be like trying to slay the slain. At this stage there remains no marriage to be dissolved by any decree of divorce. Consequently, now the ex parte decree is set aside, no useful purpose will be served by directing the Trial Court to proceed with the Hindu marriage petition by restoring it to its file. The Hindu Marriage Petition No. 25 of 1989 moved by Shri Basappa, the husband of the respondent, on the file of the Court of Civil Judge, Gadag will be treated to have abated and shall stand disposed of as infructuous. The appeal is disposed of accordingly. In the facts and circumstances of the case, there will be no order as to costs.