



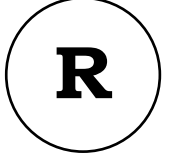
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 416 OF 2024 (GM-RES)



BETWEEN:

SMT. PARVATHAMMA

...PETITIONER

(BY SRI. SREERANGAIAH L., ADVOCATE)

AND:

THE JOINT DIRECTOR
THE SAINIK WELFARE AND RESETTLEMENT
NO.58, FIELD MARSHAL K.M. KARYAPPA BHAVAN
FIELD MARSHAL K.M.KARYAPPA ROAD
BENGALURU – 560 025

...RESPONDENT

(BY SRI. H.SHANTHI BHUSHAN, DSGI.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT TO ISSUE WIDOW ID CARD TO THE PETITIONER ON THE REPRESENTATION MADE BY THE PETITIONER VIDE ANNEXURE-D DTD 20.09.2022 AND ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

The petitioner is before this Court seeking a direction of issuance of a writ in the nature of *mandamus* directing the respondent to issue widow identity card in her favour in terms of the representation so submitted on 20th September, 2022.

2. Heard Sri. Sreerangaiah L., learned counsel appearing for the petitioner and Sri. H. Shanthi Bhushan, learned Deputy Solicitor General of India representing the respondent.

3. Sans details, facts in brief, germane are as follows:-

The petitioner is the wife of one L. Ramakrishna, who was an ex-service personnel. The petitioner gets married to L. Ramakrishna on 20th April, 1987 and from the wedlock, they also have a girl child born on 08.07.1995, who is presently with the petitioner. The husband of the petitioner at the time of marriage was serving in the Indian Army and the petitioner lived in the matrimonial house along with the father and mother of the husband. The husband used to visit the house once in a year for close to two months. Things go on well till the husband submits his resignation to the Indian Army and comes out of the military service in the year 2006. After the



husband resigns the job and comes to the matrimonial house, the problems begin between the husband and his wife. It is the case of the petitioner that the husband used to pick up quarrel unnecessarily and when it became difficult to sustain, the petitioner registers a complaint against the husband and his family members for several offences.

4. On the registration of complaint against the husband and his family members, the husband institutes M.C.No.3613 of 2017 invoking Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955 seeking dissolution of marriage, which had taken place 30 years ago. The concerned family Court issues notice once and on the ground that the wife did not appear before the Court grants an *ex-parte*, decree of divorce. This was not known to the petitioner. When the petitioner gets the knowledge of grant of divorce, that too *ex-parte*, she files an application before the concerned Court under Order IX Rule 13 of the Code of Civil Procedure seeking recall of the *ex-parte* decree. The application was pending consideration before the Concerned Court. During the pendency of the application, before the decree could be recalled, the husband of the petitioner dies. On the death of the husband of the petitioner,



an application is filed seeking to dismiss M.C.No.3613/2017, holding it to be abated. The concerned Court closes the petition by dismissing the petition as abated. Therefore, there is no decree of divorce that is hanging on the head of the petitioner. In that light, the petitioner submits a representation to the Sainik Welfare and Resettlement Department of the Defence seeking grant of an identity card being a widow of an ex-service personnel. The card is not granted ostensibly on the score that the petitioner was no longer a widow of the ex-serviceman, as she was divorced during the life time of the husband and, therefore, no consideration of the representation is yet to happen. It is this action that has driven the petitioner to this Court, in the subject petition.

5. The learned counsel appearing for the petitioner would vehemently contend that the brothers of the husband of the petitioner had forced the husband to take an *ex-parte* decree of divorce to knock off certain properties that were standing in the name of the husband and the Court passed an *ex-parte* decree of divorce. It is his submission that an *ex-parte* decree of divorce is no decree in the eye of law and the petitioner immediately on coming to know of grant of *ex-parte* decree of



divorce preferred Miscellaneous Petition No.95 of 2019 seeking recall of the order of divorce. The Miscellaneous Petition is later dismissed as abated. He would contend that the petitioner is entitled to an identity card for a widow, being a widow of ex-serviceman.

6. Per contra, the learned Deputy Solicitor General of India, Sri. H.Shanthi Bhushan displaying his usual fairness submits that the decree of divorce, which is granted *ex-parte* cannot be acted upon and the petitioner being a widow is entitled to the identity card for all the benefits of ex-serviceman. The learned DSGI would admit that proceedings in M.C.No.3613/2017 as on today are dismissed as abated. He would submit that it is the discretion of the Court to grant relief to the petitioner or otherwise.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.



8. The afore-narrated facts are not in dispute. The petitioner is the wife of one L.Ramakrishna who, at the time of marriage in the year 1987, was in the Army. Thirty years later, Ramakrishna resigns and comes back to his house. The couple also have a daughter who is now 28 years. After the husband comes back to the house, it appears that the relationship between the two flounders. The wife registers a crime against the husband and his family members. As a counterblast, the husband knocks at the doors of the Family Court seeking annulment of marriage in M.C.No.3613 of 2017. The concerned Court grants the *ex-parte* decree of divorce, as it is recorded in the order that in spite of service of notice, the wife did not appear and, therefore, the decree of divorce is granted. Wife comes to know of the grant of decree of divorce and files an application in Miscellaneous Petition No.95 of 2019 invoking Order IX Rule 13 of the CPC seeking recall of the *ex-parte* decree of divorce. This was filed in the year 2019 itself. The application was pending adjudication before the concerned Court. During the pendency of the application, the husband of the petitioner dies.



9. It is germane to notice certain orders passed by the concerned Court on the application filed by the petitioner under Order IX Rule 13 of the CPC. They read as follows:

The order dated 03.10.2020:

"Misc.95/2019

Case called out.

Both counsels present.

Respondent's counsel filed two IAs under Order 18 Rule 17 r/w sec.151 of CPC with statement of objection to main petition and memo is also filed to adopt the main petition objection as to the objection to IA filed u/s 5 of Limitation Act. Heard on IAs filed under Order 18 Rule 17 r/w sec.151 of CPC. In the interest of justice, both are allowed.

For enquiry on IA No.2 by 17.11.2020.

Prl. Judge."

The memo filed by the petitioner on 16.12.2021:

**"IN THE COURT OF THE PRINCIPAL
FAMILY JUDGE AT BANGALORE**

Mis. No.95/2019

BETWEEN:

Smt. Parvathamma

...Petitioner



And:

Ramakrishna.L

....Respondent

MEMO FOR DISMISSAL OF PETITION

Undersigned counsel for respondent submit that the respondent Ramakrishna.L was died on 31-11-2021 at Manipal Hospital (Old Airport Road) Bangalore. The Xerox copy of the death certificate is herewith enclosed. Therefore, in view of the facts above mentioned petition is does not survive for consideration. Wherefore, The above petition may be dismissed, in the interest of justice and equity.

Date: 16-12-2021.

Sd/-

Place: Bangalore Advocate for Respondent

B.E.PRASANNA"

(Emphasis added)

The order dated 09.02.2022:

"Misc. No.95/2019

Case called out.

Petitioner present.

Respondent's counsel present.

It is submitted by the petitioner that respondent died on 30.11.2021.

***Objection to memo is not filed.
Hence, petition is abated.***



Prl. Judge."

(Emphasis added)

In terms of the afore-quoted orders, the petition for divorce is dismissed as abated accepting the memo filed by the petitioner – wife. The situation now is, there is no decree of divorce hanging on the head of the petitioner. After the death of the husband, the petitioner submits a representation bringing it to the notice of the respondent/Authorities that the husband is no more and she has to be given a widow identity card. The representation reads as follows:

"To

The Joint Director,
The Sainik welfare and Resettlement,
No.58, Field Marshal KM Kariyappa Bhavan,
Field Marshal KM Karyappa Road,
Bengaluru-560 025.

From:

Smt. Parvathamma,
W/o Ramakrishna L,
R/at No.275, 2nd Cross,
Kalappa Block, Srinagar,
Bengaluru-650 050.

Respected Sir/Madam,

Sub: *Request to give department Identity card.*

I, the above named wife of Late, Ramakrishna L. S/o late Lingegowda, gave application to issue the widow I.D. Card, which arises due to the death of my husband. It is came



to know that, my husband brother relative one Lava, advocate create problem to me in your office.

My husband brothers Narayana and Gopalakrishna forced my husband to get the ex-parte divorce for loot my husband property and salary. Without my knowledge my husband has obtained Ex-parte judgment of divorce on 02-06-2018 in M.C. No.3613 of 2017.

My husband brothers by coercing fraudulently succeeded to obtain the judgment and decree of divorce to me and my daughter. I am always become wife of Ramakrishna. L, and not ready to lead life without husband, I have a daughter, my husband and his brothers tried to sell the property purchased by my parents investment, it is registered in the name of the me and my husband jointly, the proposed purchaser given a copy of the judgment of divorce recently. Thereafter, I have filed Misc.No.95/2019 before the Principal Family Judge, Bengaluru. During the pendency of the case my husband died. I am not aware the divorce judgment and no notice served to me by court. The all fraudulent acts of clearly stated in the petition.

After my husband death, my husband brothers and advocate Lava tried to knockoff my husband property. My daughter has filed OS. No.1782/2022 before the Hon'ble City Civil Judge, Bengaluru (CCH-8), the Hon'ble court was pleased granted temporary Injunction and restrained them from interfering in the possession of my husband property. The all copies have attached herewith. Kindly issue my widow I.D. Card, do the needful to widowed me and my daughter. Do the needful.

Thanking you,

Your faithfully,
Sd/- K.Parvathamma."

Since the representation has not met its favourable consideration, or any consideration even at the hands of the



respondent though submitted on 20th September, 2022, the petitioner has preferred the subject petition.

10. Any widow of an ex-serviceman who dies, becomes entitled to a widow identity card and there are several benefits that would flow from the card being granted to a widow. It is a benefit, a beneficial right of the widow to get the card. The right is said to be diluted in the case at hand on the strength of decree of divorce that was granted during the life time of the husband. The decree of divorce was an *ex-parte* decree. Immediately on coming to know of the *ex-parte* divorce decree, the petitioner files an application for recall of the decree. Today, the decree does not even exist as the petition is itself is dismissed as having abated. The representation of the petitioner is not considered on the score that the petitioner is a divorced wife and the decree was subsisting against the petitioner, a decree of divorce. The alleged non-consideration of the representation on the face of it, is erroneous. At the outset, the decree was an *ex-parte* decree, which, save in exceptional circumstance, is no decree in the eye of law. Even that is not staring at the respondent as on today, as the divorce petition is dismissed, as abated.



11. It becomes apposite to consider the judgment of the Apex Court rendered in an identical circumstance in **R. LAKSHMI v. K.SARASWATHIAMMAL**¹ has held as follows:

"3. *The appellant is the wife, against whom her husband had obtained an ex parte decree of divorce. After obtaining the decree, the husband died. The wife on coming to know of the ex parte decree, applied for setting aside the decree of divorce under Order IX Rule 13 of the Code of Civil Procedure. The trial court dismissed the said application observing that since the divorce is a personal remedy, it cannot be pursued after the death of the husband. On appeal, the trial court's view was reversed. But the appellate court's view has in turn been reversed by the High Court.*

4. *We are of the opinion that the wife should be and is competent to maintain the application under Order IX Rule 13. Even though the husband is dead, yet the decree obtained by him is effective in law and determines the status of the appellant. If the appellant says that it is an ex parte decree and ought to be set aside, her application has to be heard on merits. The decree of divorce determines her status as a wife apart from determining her rights in the properties of her deceased husband. This gives her sufficient locus standi and right to contest the divorce proceedings even after the death of her husband.*

5. *Accordingly, the appeal is allowed and the matter is remitted to the trial court to dispose of the application filed by the appellant under Order IX Rule 13 on merits in accordance with law. No costs.*

6. *Ms Bina Gupta says that the appellant has been provided a job in the Electricity Board on compassionate grounds on the basis that she is*

¹ (1996) 6 SCC 371



the wife of the deceased employee. Pending disposal of the divorce proceedings finally, it is directed that she will not be disturbed from the said post."

(Emphasis supplied)

A little later, the Apex court in the case of **YALLAWWA(SMT) v. SHANTAVVA (SMT)**² has held as follows:

"4. The 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 way of substituted service under Order V Rule 20. That in spite 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 contest 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 from the day on which she was served with the summons in OS 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 trial 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 respondent's application under Order IX Rule 13 CPC 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 CPC for setting aside the ex parte decree. Hence the proceedings by way of the 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

² **(1997) 11 SCC 159**



the right to sue had not survived for challenging the ex parte divorce decree after the death of the decree-holder-husband. The application was, therefore, not maintainable even on that ground. The 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. The 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 trial 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) CPC. He submitted that if 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 that the respondent was tried to be served by way of substituted service under Order V Rule 20 CPC. 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 made 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 CPC. 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 any case limitation ought to have been condoned in the interest of justice by the trial 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 is concerned, it was submitted that apart from the fact that 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 an 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 entitled 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.***

.....

6. That takes us 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 or 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 for a continuous period of not less than 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 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 spouses 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 CPC. 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 is passed ex parte or bipartite against the other spouse whether the right to sue would survive for the spouse against whom such decree has 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 CPC 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 crystallised. The marital status of both the spouses remains intact 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 crystallised 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 rights 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 I of the Schedule. Similarly, if the wife dies leaving behind her any property, as per Section 15 of the Hindu Succession Act, 1956, the property of the female Hindu shall devolve according to the rules set out in Section 16 – firstly, upon the sons and daughters (including the children of any predeceased 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 get 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 spouses concerned. Even that apart, as per Section 9 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu widow is entitled to be maintained out of her deceased husband'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 stigma on the spouse concerned. 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 an ex parte decree to get it set aside by filing an application under Order IX Rule 13 CPC. Cause of action for getting such an adverse finding stigmatising the spouse concerned, 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 effects 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 CPC 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 when living. Save and except the personal cause of action which dies with the deceased on the principle of actio personalis moritur cum persona i.e. a personal cause of action dies with the person, all the rest of the causes of action which have an impact on proprietary rights and socio-legal status of the parties cannot be said to have died with such a person.

7. The 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 to 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) does not survive. It is true that Section 13 of the Hindu Marriage Act lays down that marriage whether solemnised 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 aggrieved spouse concerned, 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 cause of action against the husband or the wife, as the case may be, dies with the departing spouse. As no rights are still crystallised by then 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 is 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 spouse concerned would suffer serious legal damage and injury without getting any opportunity to get such a 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 or bipartite then the aggrieved spouse concerned 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 the 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 in 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 solemnisation of the marriage, has voluntary sexual intercourse with any person other than his or her spouse; or has treated the petitioner with cruelty; or has 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 has not been heard of as being alive for a period of seven years or more. **These grounds to say the least, if found established, against the offending spouse would be serious matrimonial misconducts or incapacities 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. If a decree of divorce on these***



grounds whether ex parte or bipartite is not permitted to be challenged by the aggrieved spouse, it would 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 CPC. 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 or her heirs or legal representatives. Consequently in such appellate proceedings or proceedings under Order IX Rule 13 CPC, 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 the 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 CPC if it is an ex parte decree against the spouse concerned. It must, therefore, be held that when a divorce decree is challenged by the aggrieved spouse in proceedings whether by way of appeal or by way of application under Order IX Rule 13 CPC 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 CPC. 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.



10. Now remains the question as to whether the proceedings for divorce as restored by the High Court by its impugned order are 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 crystallized 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 that 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."

(Emphasis supplied)



The Apex Court elucidates the issue of a stigma of divorce hanging over the head of the wife; its serious effects and consequences upon a decree of divorce. The Apex Court holds that the offending spouse would be alleged of matrimonial misconducts or incapacibilities and such a spouse will have to live with a stigma for the rest of her / his life which will have a pernicious consequence, both social and legal and if a decree an *exparte* or bipartite is permitted to stand without an opportunity to challenge, this would lead to dire consequences.

12. The case at hand also projects a similar circumstance of an *exparte* decree of divorce against the wife and the husband dieing during the pendency of the application, seeking recall of the *exparte* decree. The petition is later closed on account of the death of the husband. Viewed from any angle, the stigma of divorce cannot be permitted to be hanging on the head of the petitioner for her to be denied of any benefit, of being a spouse of ex-serviceman. No impediment can now be projected against the petitioner for grant of an identity card by the respondents.



13. Grant of an identity card for being widow of an ex-serviceman, guarantees certain benefits to a widow. What the respondent ought to have had is, ***lots of empathy and little of sympathy*** towards the petitioner, as on the death of the husband, the sole bread winner of the family, the wife and family are driven to grave, impecuniosities and would be condemned by penury. The plight and plea of the widow is blissfully ignored by the respondent; the respondent ought to have, without driving the petitioner to this Court, issued a widow identity card, as was sought for. This Court would not shut its doors in the peculiar facts of this case without redressing the invisible pain of the widow - petitioner.

14. For the aforesaid reasons, I pass the following:

ORDER

- i) The Writ Petition is allowed;
- ii) A *mandamus* issues to the respondent to issue the petitioner - widow identity card to the petitioner, within two weeks from the date of receipt of a copy of this order;



- iii) It is declared that the petitioner is entitled to all consequential benefits that would flow from the grant of the identity card; and
- iv) It is made clear that the petitioner becomes entitled to all the benefits that would flow from the grant of identity card.

**Sd/-
JUDGE**

KG
List No.: 1 Sl No.: 7