

R. LAKSHMI
v.
K. SARASWATHI AMMAL

SEPTEMBER 27, 1996

[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Code of Civil Procedure, 1908:

Order IX Rule 13—Ex-parte decree—Application for setting it aside—Husband died after obtaining ex-parte decree of divorce—Wife's application for setting aside the said decree—Trial Court dismissed the application holding that since divorce is a personal remedy, it cannot be pursued after death of husband—Held, even though husband is dead, decree obtained by him is effective in law and determines the status of the applicant as wife apart from determining her rights in the properties of her deceased husband—This gives her locus standi and right to contest divorce proceedings even after death of her husband—Matter remitted to trial court to dispose of the application filed by the applicant under Order IX R, 13 on merits.

Family Law.

Divorce proceedings—Held, wife has locus standi and right to contest the application for setting aside ex parte decree of divorce even after death of her husband, as it determines her status apart from determining her rights in the properties of her deceased husband.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 12664-65 of 1996.

From the Judgment and Order dated 23.12.88 of the Madras High Court in C.R.P. No. 2556-57 of 1986.

Ms. Bina Gupta, Ms. T. Sudha and Ramesh Singh for the Appellant.

The following Order of the Court was delivered :

Though the respondent is served, no one appears for the Respondent.

Leave granted.

A 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.

C 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.

E 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.

F 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 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.

R.P.