

Budhi Devi Vs. Chandu Lal

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Court : Rajasthan

Decided On : May-21-2002

Reported in : I(2003)DMC473

Judge : Arun Madan, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rule 4

Appeal No. : Civil Misc. Appeal No. 1507 of 1999

Appellant : Budhi Devi

Respondent : Chandu Lal

Advocate for Def. : N.K. Joshi, Adv.

Advocate for Pet/Ap. : Anand Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

Arun Madan, J.

1. This appeal has been preferred by the appellant-wife against the judgment and decree of divorce passed by the learned District Judge, Dausa in Divorce Application No. 43/98, whereby the marriage between the parties was dissolved

on the ground of desertion. In this case, the parties were married on 13.5.1956. The divorce petition was filed in the year 1998 after about 42 years of solemnization of marriage. Three sons and a daughter were born out of the wedlock. Unfortunately all the three sons expired and the daughter is living with her in-laws. On the basis of the evidence on the record, the Trial Court dissolved the marriage on the ground of desertion. Since June, 1993, respondent-wife was not able to establish that she was living with the husband. It has been stated that the appellant is about 60 years of age while respondent is about 69 years and is a practising lawyer at Bandikui.

2. The appeal was admitted on 21.2.2000. I am informed that respondent-husband has expired on 12.3.2002. An application has been filed thereafter by the learned Counsel for the appellant for substitution of legal representatives of the deceased on the record.

3. It has been contended that Smt. Nirmala (daughter of deceased Chandulal), is the lone surviving legal heir.

4. Be that it may, the contention of the appellant is that she entertained bona fide impression that by getting the legal heirs of the deceased-respondent substituted on record, she will be entitled to claim her legitimate share in the estate of the deceased, is not tenable since adopting such approach to matrimonial proceedings by a decree of divorce which have already culminated in dissolution of marriage between the parties Under Section 13 of the Hindu Marriage Act, would be contrary to the statute itself. Moreover, the institution of proceeding for dissolution of marriage on any of the grounds as may be available to a party aggrieved Under Section 13 of the Act is based on personal injury establishing by evidence in accordance with law.

5. Right to claim share in the estate of deceased of either spouse of the deceased, except maintenance pendente-lite or permanent alimony, as the case may be, which can be awarded either during pendency of proceedings prior to the dissolution of marriage or consequent upon the decree of divorce in view of death of respondent-husband which even otherwise was available to the aggrieved party, no longer survives in the present situation. In my view, if the legal

representative of the deceased is substituted on record, no purpose would be served in keeping the appeal pending, because the respondent-husband (deceased) against whom the relief was sought for by the appellant-wife in view of the factum of death of the respondent has become infructuous. It is accordingly dismissed.

6. However, if any right to sue survives to the appellant as against the L.Rs. of deceased respondent (husband), so far as her interest in the estate of deceased even by dissolution of marriage upon decree of divorce or death of husband during pendency of appeal against divorce decree, is concerned, the appellant is at liberty to avail of such other remedy as may be available to her, for which this order will not come in the way of the appellant, in accordance with law.

7. Since the appeal itself is dismissed, as having aberted, the application filed Under Order 22 Rule 4, CPC also stands disposed of accordingly.

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