

Madhya Pradesh High Court

Premvati Patel@Asha Patel(Correct And ... vs Ashok Kumar Verma on 8 September, 2025

Author: Vishal Dhagat

Bench: Vishal Dhagat, Anuradha Shukla

NEUTRAL CITATION NO. 2025:MPHC-JBP:43133

1	FA-838-2025	IN	THE
HIGH COURT OF MADHYA PRADESH			AT
JABALPUR		BEFORE	
	HON'BLE SHRI JUSTICE VISHAL DHAGAT		
	&		
	HON'BLE SMT. JUSTICE ANURADHA SHUKLA		
	ON THE 8th OF SEPTEMBER, 2025		
	FIRST APPEAL No. 838 of 2025		
	PREMVATI PATEL@ASHA PATEL(CORRECT AND REAL NAME		
	IS SMT. ASHA PATEL W/O ASHOK KUMAR PATEL)		
	Versus		
	ASHOK KUMAR VERMA		
Appearance:		Shri Umesh	
Shrivastava - Advocate for appellent.			
	ORDER		

Per: Justice Vishal Dhagat Appellant has preferred this appeal under Section 19 of Family Court Act, 1984 challenging ex-parte judgment and decree dated 06/04/2015 passed by First Additional Principal Judge, Family Court, Jabalpur in Civil Suit No.66-A/2014, by which marriage dated 08/06/1990 between appellent and respondent was dissolved.

2. Appellant had filed I.A.No.10351/2025 under Order 22 Rule 4(4) of CPC, wherein prayer is made to appoint any person to contest appeal on behalf of deceased respondent.

3. It is submitted by counsel appearing for appellent that respondent had died on 07/12/2024. There is no legal heir to contest the NEUTRAL CITATION NO. 2025:MPHC-JBP:43133 2 FA-838-2025 case and appeal is personam in nature, therefore, one person may kindly be appoint under Order 22 Rule 4(4) of CPC to contest the case. Counsel appearing for appellent placed reliance on order 22 Rule 4(A) of CPC and submitted that when a party died during pendency of suit and has no legal representative, the Court on application of any party to a suit may proceed in absence of a person representing the estate of deceased person or may by order appoint administrator general or any officer of the Court to represent estate of deceased person for purpose of suit. It is also argued by counsel that provisions of Order 22 of CPC are not applicable in the case of divorce proceeding. Divorce proceeding is not a suit. Plaint is not filed before Court, but petition under Section 13 of Hindu Marriage Act, 1955 is filed. Appeal may not abate and Court is also at liberty to apply Order 22 Rule 4A of CPC and appoint administrator general or any other officer of the Court to contest the case. Since decree of divorce has been granted against appellent, therefore, appellent will not be entitled to claim property of deceased.

4. Heard counsel for the appellent.

5. Counsel for appellent is making two adverse arguments before this Court. On one hand he is making a prayer that Court may pass order under Order 22 Rule 4A of CPC for appointing administrator general to represent the estate of deceased. On the other hand he is making a prayer that Order 22 of CPC is not applicable in divorce petition and same is not a suit or a plaint.

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6. Considered issues raised by counsel appearing for appellent.

7. Petition is a formal request before Government or any other authority in power for any specific action. Said petition may be signed by one person or many. Writ Petitions are filed under Article 226 of Constitution of India for issuing writs. Party makes a prayer before High Court for issuing various writs under Article 226 of constitution of India. Formal request is made to the High Court and orders are passed by High Court on basis of affidavits filed and considering the law. Direction, order, writ is passed by the High Court. On other hand when any prayer is made before Civil Court for any relief based on civil rights under substantive civil laws, then said request is designated as a plaint. Judgment is passed on said cases and decree is prepared on basis of judgment. It is decree of the Court which is enforceable and said judgment and decree are appealable under Section 96 of CPC. Relief may be granted under substantive act, but procedure is determined in civil cases under CPC. However, in Writ Petition CPC is not applicable and High Court decides petition filed before it after giving opportunity of hearing to both the parties on basis of fundamental rights and other laws of the land. Procedure followed by High Court is to provide opportunity of hearing to all the parties and decide the case on basis of affidavits and law. High Court give directions, orders or passes Writ in the cases. Request made before Family Court for dissolution of marriage is termed as petition under Section 13 of Hindu Marriage act, 1955. In NEUTRAL CITATION NO. 2025:MPHC-JBP:43133 4 FA-838-2025 said cases procedure as laid down in CPC is followed and judgment and decree is prepared. Judgment and decree are made appealable under the law i.e. Hindu Marriage Act, 1955 and Family Court Act, 1984. Cases are also registered as Civil Suit or cases under Hindu Marriage Act. As per Section 21 of Hindu Marriage Act, 1955, CPC is made applicable in petitions filed under Hindu Marriage Act. Therefore, Section 13 deals with request for dissolution of marriage as petitions and same are based on personal law's and CPC is applicable to proceedings.

8. Counsel appearing for appellant made a prayer that order be passed to appoint administrator general under order 22 Rule 4A of CPC. Said request of appellant cannot be granted as in application under Section 5 of Limitation Act which is supported by affidavit it has been mentioned that there are other members, who are not allowing applicant to enter in the house. These persons are representing the property and estate of the deceased, therefore, no order could be passed under Order 22 Rule 4A of CPC. Order 22 Rule 4(4) of CPC is also not applicable in the case as exemption to substitute legal representatives can be granted in cases where defendant failed to file written statement. In appeal respondent was plaintiff and he contested the suit.

9. Apex Court in the case of Yallawwa (Smt) Vs. Shantavva (Smt) reported in (1997) 11 SCC 159 held that proceedings in matrimonial matter will not abate because a party after obtaining a decree of divorce has died. Cause of action in respect of proprietary rights will survive NEUTRAL CITATION NO. 2025:MPHC-JBP:43133 5 FA-838-2025 against the property or estate of the deceased which is being dealt with by legal representatives of deceased spouse. Such legal representatives can be joined as a party in appeal or in proceedings under Order 9 Rule 13 of the Code of Civil Procedure. Cause of action in respect of snapping of ties of marriage i.e. dissolution of marriage is personal to a party and same will come to an end. No litigation will survive after death of one of the spouse if surviving spouse is not interested to make any claim over any estate or to any inherit property of the deceased.

10. In this case, appellant wants restoration of her status as wife so that she may make a claim over the property of deceased/husband. Appellant had filed an application under Order 22 Rule 4(4) of the C.P.C. though her prayer is in accordance with Order 22 Rule 4(A) of C.P.C. Subject matter of application is to be considered on basis of facts mentioned in the application and not by law mentioned, therefore, application filed by appellant is treated to be an application under Order 22 Rule 4(A) of C.P.C.

11. In this case, appellant has mentioned in application under Section 5 of the Limitation Act that persons who are occupying the house of deceased spouse did not allow her to enter into the house which means that property of deceased has devolved upon persons who are staying in the house and they are legal representative in the case. Since, respondent is having legal representatives, therefore, provision of Order 22 Rule 4(A) of C.P.C. is not attracted in the case. Said provision is NEUTRAL CITATION NO. 2025:MPHC-JBP:43133 6 FA-838-2025 applicable in cases where deceased person does not have any legal representatives.

12. Appellant ought to have sought permission of this Court to continue the appeal against legal representatives of the deceased. No such application has been filed. Appeal was filed on 15.05.2025 and as per death certificate respondent expired on 07.12.2024. Appeal is filed against a dead person, therefore, same is not maintainable.

13. Resultantly, appeal is dismissed.

SHUKLA)

(VISHAL DHAGAT)

(ANURADHA

JUDGE

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