ANDHRA PRADESH HIGH COURT

Vempa Sunanda

Vs.

Venipa Venkata Subbarao

A.A.O. No. 619 of 1952

(Subba Rao, C.J. and Satyanarayana Raju, J.)

03.04.1952. 08.09.1955

JUDGMENT

Subba Rao, C.J.

1. This appeal raises an important point in the disposal of matrimonial causes.
2. The appellant was the wife of the respondent. They were married in the year 1942. On tenth February, 1951, the respondent filed an application in the Court of the Subordinate Judge, Guntur, under Section 5 (1) and (2) of the Madras Hindu (Bigamy Prevention and Divorce) Act (Act 6 of 1949-hereinafter referred to as the Act) to dissolve his marriage with the appellant. On third April, 1952, the learned Subordinate Judge made a decree dissolving the marriage. The appellant preferred an appeal against that decree to the High Court of Judicature, Madras ana it has subsequently been transferred to this Court. Pending the appeal, the respondent died. The question is whether the appeal alone abated leaving the decree intact or whether the petition itself abated with the result that the decree also was vacated.

3. Mr. C. V. Narasimha Rao, learned counsel for the appellant and Mr. T. Lakshmiah who, at our instance, appeared as amicus curiae ably presented their respective views and placed all the relevant decisions before us.

4. Learned counsel for the appellant contended that a decree for dissolution under the Act is analogous to a decree nisi under the Indian Divorce Act and therefore if the respondent dies pending appeal the entire suit abates. Alternatively he argued that in a divorce action, the husband or the wife puts in only his or her personal right for decision and if any one of them dies either during the course of the original proceedings or at the appellate stage the entire proceedings would abate. Mr. Lakshmiah countered this argument by stating that under the Act unlike under the Indian Divorce Act, there is no provision for a decree nisi and the decree made thereunder being one relating to a status is a judgment in rem and therefore when a party dies pending an appeal only the appeal abates leaving the decree appealed against intact.

5. It is well-settled that in the case of a decreenisi, if the petitioner dies before it is made absolute the entire proceedings abate. In Rayden on 'Divorce' 6th Edition, the learned author says at page

435 as follows :

> "The death of the petitioner before decree absolute causes a suit to abate altogether; there is, no transmissible interest; the object of the suit is gone."

The same rule prevails in America as is clear from a passage in 17 American Jurisprudence at page 241.

> "An action for divorce is of a purely personal nature .... such actions, in the absence of a statute providing to the contrary, abate absolutely upon the death of either party before judgment and cannot be revived in the name of or against the representatives of the deceased party. Accordingly if the statutes require a decree nisi to be entered in divorce cases which is not to be made absolute until after the lapse of a specified time, an absolute decree cannot be entered where a party dies after the decree nisi, but before the time for the entry of an absolute decree has arrived."

6. The same view is expressed in Halsbury's Laws of England edited by Lord Hailsham, Vol. 10 at page 741, thus :

> "The death of the petitioner or the respondent before decree absolute causes a suit to abate altogether."

Can a decree dissolving a marriage under the provisions of the Act be equated to a decree nisi? That could be ascertained only by a comparative study of the relevant provisions of the Act with those of the Indian Divorce Act and the Matrimonial Causes Act of England. The Madras Act was passed in 1949 and came into force on 29th March, 1949. As the provisions indicate the authors of that Act must have had their inspiration from the Indian Divorce Act and the English Matrimonial Causes Act. The object of the Act was to prohibit bigamous marriages among and to provide for a right of divorce on certain grounds for Hindus domiciled in the Province of Madras. The relevant provisions of the Act and the rules made thereunder read :

> "Section 4. - Notwithstanding any rule of law, custom or usage to the contrary, any marriage solemnized after the commencement of this Act between a man and a woman either of whom has a spouse living at the time of such solemnization shall be void, whether the marriage is solemnized within or out side the State of Madras.
>
> Provided that a man or woman whose marriage has been dissolved by a final order of a Court of competent jurisdiction under Section 5 or under any other law for the time being in force, or in accordance with any custom or usage permitting of divorce may solemnize a valid marriage with another, after the expiry of six months from the date of such final order or from the date on which the marriage was dissolved in accordance with such custom or usage, as the case may be.
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> Explanation. - An order shall be deemed to be a final order within the meaning of the above proviso, if no appeal lies against such order or if the time allowed for filing an

appeal against such order has expired without an appeal having been filed.

Section 5. - 1. Either party to a marriage solemnized before or after the commencement of this Act who has completed eighteen years of age may present a petition to the Subordinate Judge's Court the District Court or the Civil Court, within the limits of whose jurisdiction the marriage was solemnized or the other party to the marriage actually and voluntarily resides, praying that the marriage may be dissolved on the ground that the other party

3. In any petition presented under Sub-Section (1) or Sub-Section (2) whether defended or not, if the Court is satisfied that any of the grounds set forth in either of those sub-sections exist for dissolving the marriage, it shall, by order dissolve the marriage.

4. The procedure provided in the Code of Civil Procedure, 1908, in regard to suits, shall be followed, as far as it can be made applicable in all proceedings in any petition presented under Sub-Section (1) or Sub-Section (2).

5. Against any order passed on any such petition by the Subordinate Judge's Court, District Court or City Civil Court, an appeal shall lie to the High Court; and the decision of the High Court on such appeal shall be final.

Section 6. - 1. The State Government may, by notification in the Fort St. George Gazette, make rules to carry into effect the purposes of this Act.

2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for

* * * * *

(f) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is either made in the Indian Divorce Act, 1869, or considered to be necessary by the State Government for giving effect to the purposes of this Act.

Rule 9. - After framing issues, the Court shall adjourn the hearing of any petition under Sub-Section (1) or Sub-Section (2) of Section 5 of the Act for a period of not less than four months and may require evidence thereon, if it sees fit to do so."

7. The aforesaid provisions may be summarized thus. One of the spouses may file an application in the Court having jurisdiction praying for the dissolution of the marriage on one or more of the grounds mentioned in Section 5. That petition shall be disposed of in accordance with the procedure prescribed by the Civil Procedure Code. After the issues are framed, the hearing of the petition shall be adjourned for a period of riot less than four months. Thereafter the application will be heard on the merits and if the Court is satisfied that any of the grounds set forth in Section 5 exist, it shall dissolve the marriage. The party affected may file an appeal to the High Court and the decision of the High Court on such appeal is final. Though the marriage is dissolved by the First Court, either of the parties cannot marry again till after the expiry of six months from the date of the order of the High Court or from the date when the time prescribed for filing an appeal had expired. The Act, therefore, has not in terms provided for a decree nisi followed by a decree absolute after the prescribed time. The order of the Court dissolving a marriage under Section 5 (3) is a final adjudication of the petition though it is subject to an appeal. No doubt if an appeal is filed the finality is lost till the appeal is disposed of in one or other of the modes known to law but in no sense of the term can it be said that the order is a conditional one. If any appeal is filed,

it cannot be suggested, indeed suggested, that another order is required to be made by the Court to give it finality. The fact that under the proviso to Section 4, six months' time is prescribed from the date of the appellate order to enable the parties to marry again cannot in our view clothe the adjudication made by the first Court with the characteristics of a decree nisi. An order under Section 5 (3) is an order similar to that of any other adjudication of rights of parties which is subject to an appeal.

8. This position is made absolutely clear if the historical background of the Indian Divorce Act on which the Act is based is considered. The matrimonial jurisdiction in England was originally exercised by the Ecclesiastical Courts and later on by the Parliament. But in 1857 Parliament passed the Matrimonial Causes Act based upon the report of the Royal Commission appointed for that purpose. Under that Act the Court was given power among others to pronounce a decree of divorce on the grounds recognized by the House of Lords. But there was no provision for a decree nisi followed by a decree absolute. The Matrimonial Causes Act of 1860 provided that decrees for divorce should not be made absolute until after the expiration of not less than three months and conferred special powers of intervention on the Queen's Proctor to show cause why the decree should not be made absolute. This procedure was continued in the later Act with certain modifications as regards the time that should elapse between a decree nisi and a decree absolute. Finally in the year 1950 the statutes relating to matrimonial causes in the High Court were consolidated in the Matrimonial Causes Act, 1950. The relevant provisions of that Act may be noticed :

> "Section 12. - (1) Every decree for a divorce or for nullity of marriage shall, in the first instance, be a decree nisi not to be made absolute until after the expiration of six months from the pronouncing thereof, unless the Court by general or special order from time to time fixes a shorter time."
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> Clause (2) enables any person in the prescribed manner to apply to the Court to show cause why the decree nisi should not be made absolute. Under Clause (3) the decree nisi has to be made absolute after three months if no application was made. 'Section 13, which corresponds to the proviso to Section 4, of the Act says that where a decree of divorce has been made absolute and either there is no right of appeal against the decree absolute, or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, either party to the marriage may marry again. Section 40 prescribes the procedure for making a decree nisi absolute.

9. The provisions of this Act prescribing a decree nisi followed by a decree absolute have been in existence from 1860 with some variations with which we are not concerned in this case. Notwithstanding the fact that there is a decree absolute, this Act contains a provision similar to that found in the proviso to Section 4 of the Act, prohibiting a party from marrying till the appeal is disposed of. It cannot, therefore, be said that that proviso is a sure indication that the Madras Legislature intended to equate an order of dissolution of marriage by the first Court to a decree nisi, for even in the case of a decree absolute, the same provision is found in the English Act.
The Indian Divorce Act which was enacted in 1869, nine years after the English Act introduced the scheme of two decrees, followed the procedure prescribed in the Act of 1860. The Act was

modelled on the Matrimonial Causes Act of England. Indeed under Section 7, it was expressly enacted that the High Courts and District Courts shall, in all suits and proceedings there under act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief. Section 16 provides that every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court, shall in the first instance be a decree nisi not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs. In the case of a decree for dissolution of marriage made by a District Judge, Section 17 expressly says that it shall be made subject to confirmation by the High Court Section 57 corresponding to the proviso to Section 4 of the Act reads :

> "When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,
> or when six months, after the data of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction. or when any such appeal has been dismissed,
> or when in the result of any such appeal any marriage is declared to be dissolved,
> but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death;
> Provided that no appeal to the Supreme Court has been presented against any such order or decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death." This section prohibits re-marriage within a prescribed time after the decree has become final.

10. The aforesaid provisions therefore provide for a decree nisi and a decree absolute and keep in mind the distinction between a decree absolute and final decree. Till the decree has become final in the sense that no appeal is filed or if filed is disposed of remarriage is prohibited. The prohibition against remarriage till a particular event happened cannot therefore indicate that a decree dissolving a marriage is a decree nisi for the prohibition continues even in the case of a decree absolute.

11. Now coming to the Act in question for one reason or other the Madras Legislature modelled the Act on the provisions of the Matrimonial Causes Act, 1857, though even the Indian Divorce Act followed the procedure prescribed by the 1860 Act. It is not for us to say whether the departure was accidental or designed. There is no provision for a decree nisi under the Act at all; nor is there a provision as in the Indian Divorce Act that a decree made by Subordinate Court is subject to confirmation by the High Court. Perhaps the Legislature expected that under Section 6 (f) of the Act, rules would be made by Government bringing the procedure in conformity with that of the Indian Divorce Act The Government, by framing R. 9, might have thought that providing four months' time for hearing the case after the issues are framed would serve the

purpose for which two decrees are provided in the other Acts. The result is that a decree by the first Court under the Act is an absolute decree though it is liable to be set aside by the appellate Court From the mere use of the word 'final' in the proviso to Section 4 which contains a prohibition against re-marriage till a particular period, we cannot incorporate into the Act the procedure prescribed under the Indian Divorce Act.

12. To ascertain whether a decree for dissolution provided under the Act is similar to a decree nisi it is necessary to consider the characteristics of a decree nisi. Encyclopaedia Britannica, Vol. 7, at p. 127, describes a decree nisi or order nisi as a conditional order for a dissolution of marriage made by the Divorce Court. Wharton's Law Lexicon', 14th edn., gives the reason for the making of two decrees in a divorce action at p. 307 thus :

> "After the pronouncing of the decree nisi and before the decree is made absolute any person may, in the prescribed manner show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion or by reason of material not having been brought before the Court and in any such case the Court may make the decree absolute, reverse the decree nisi, require further inquiry or otherwise deal with the case as the Court thinks fit"

The Court of Appeal in *F. H. Norman v. Villars*[1], dearly stated that the status of a married woman is not affected by the pronouncing of a decree nisi for the dissolution of the marriage and that she continues to be subject to all the disabilities of coverture until the decree is made absolute. In *Sinclair v. Fell*[2], the question was whether a particular event happened during the coverture contemplated by a settlement. The answer to that question turned upon whether the decree determined coverture or whether the coverture subsisted until the decree was made absolute. At p. 159, Warrington, J., observes that for some reasons and for some purposes the decree nisi does not dissolve the marriage from its date even although it be afterwards made absolute. At p. 161, ha proceeded to observe :

> "The plaintiff was a femme covert; the two spouses were husband and wife; and so far as the status is concerned it remained unchanged. The coverture therefore continued and it was impossible to get rid of it."

This judgment therefore brings out the distinction between a decree nisi and a decree absolute and holds that till a decree absolute is made the status of the couple remains unchanged. In *Reeves v. Reeves*[3], Buckmill, J., explains that the object of the six

[1]1877-2 Ex. D 359 [3]1939-4 All England Reporter 378
[2]1913-1 Ch 155

months' interval between the decree nisi and the decree absolute is to enable the King's Proctor to make inquiries as to the *bona fides* of the petitioner's case. A Full Bench of the Nagpur High Court in *K. J. v. K*[4]., pointed out that the proceedings under Section 17 of the Indian Divorce Act for the confirmation of a decree nisi are nothing more than a mere continuation of the original suit which had been filed in the Court below. This case illustrates that the proceedings under Section 17 of the Indian Divorce Act are not in the nature of an appeal but only a continuation of a decree nisi passed by the first Court.

13. The aforesaid decisions, therefore, clearly establish that a decree nisi is only a conditional

decree and that it does not change the status of the parties. The parties continue to be husband and wife till a decree absolute is made. It cannot be said that a decree dissolving a marriage under Section 5 (3) of the Act is a conditional decree, for, it expressly empowers a Court by order to dissolve a marriage. That order has none of the characteristics of a decree nisi and it is analogous only to a decree absolute provided by the Indian Divorce Act and the English Matrimonial Causes Act.

14. The next question is what is the nature of a decree dissolving a marriage. Salmond in his valuable book on Jurisprudence says under the heading "The Law of Status", at p. 508, as follows:

> "The law of status is divisible into two branches dealing respectively with domestic and extra-domestic status. The first of these is the law of family relations and deals with the nature, acquisition, and loss of all those personal rights, duties, liabilities and disabilities which are involved in domestic relationship. It falls into three divisions concerned respectively with marriage, parentage and guardianship. The second branch of the law of status is concerned with all the personal rights, duties, liabilities and disabilities, which are external to the law of the family. It deals, for example, with the personal status of minors (in relation to others than their parents), of married women (in relation to others than their husbands and children) of lunatics, aliens, convicts and any other classes of persons whose personal condition is sufficiently characteristic to call for separate consideration."

This passage, therefore, indicates that the law of status governs the rights involved in the relationship of marriage. Phipson on 'Evidence', 9th edn., describes Judgment in rem' as 'an adjudication upon the status of some particular subject-matter by a tribunal having competent authority for that purpose.' The learned author gives a decree for dissolution or for nullity of marriage as an illustration of such judgments. In Halsbury's Laws of England, Vol. 7, Lord Simond's Edition, in the context of the binding nature of foreign judgment, it is observed at p. 115, that a decree for divorce once pronounced being a judgment affecting status is a judgment in rem. The House of Lords accepted the position and held in *Salvesen (or von Lorang) v. Administrator of Austrian Property*[5], that a decree of nullity of marriage pronounced by a Court of competent jurisdiction, whatever be the ground of the decree, is a judgment

[4] AIR 1952 Nag 395

[5] 1927 AC 641

determining the status and is equivalent to a judgment in rem. It is, therefore, clear from the aforesaid passages from the text-books of renowned authors and from the judgment of the House of Lords that a decree dissolving a marriage determines the status of the parties and is equivalent to a judgment in rem.

15. If it is a judgment in rem, the next question is what is the effect of the death of a respondent in an appeal filed against that decree. Under Order 22, Rule 1, Civil Procedure Code, the death of the plaintiff or defendant shall not cause the suit to abate, if the right to sue survives. Rule 11 makes the provisions of O. 22 applicable to appeals and under that rule, so far as may be the word 'plaintiff' shall be held to include an appellant, the word 'defendant' a respondent and the word 'suit' an appeal. By the combined operation of the aforesaid two rules, if the respondent dies and if the right to sue does not survive the appeal only abates.

16. In *Sundar Pande v. Mt. Kumari*[6], the plaintiff filed a suit for declaration of her title and for possession as the heir to the stridhanam of her step-mother and obtained a decree. The defendant preferred an appeal. Pending the appeal, the plaintiff died. The appellant contended that, as the plaintiff only had a life estate and the defendants were the next reversioners to the estate of the plaintiff's father, the suit itself abated. The learned Judges did not countenance that argument. They stated at p. 285 (of ILR All) :

> "We do not think, however, that we have any power to declare that the suit has abated. Order 22, Rule 4, provides that where a sole defendant dies and the right to sue survives, the Court upon an application made in that behalf shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Sub-clause (3) of the same rule provides that where within the time limited by law no application is made under Sub-Rule 1 the suit shall abate as against the deceased defendant. Applying R. 11 we must substitute in R. 4 the word 'respondent' for 'defendant' and the word 'appeal' for 'suit'. In sub-cl. 3 again the word 'appeal' must be substituted for the word 'suit'. We do not think that under this rule we have any power to declare that a suit, as distinct from an appeal, has abated in a case in which there has been a decree already made before the death took place."

This decision, therefore, lays down in clear terms that after a decree has been made on the death of a party the appeal abates without disturbing the finality of the decree.

17. The judgment of the Judicial Committee in *Marsh v. Marsh*[7], is a direct authority on the point. There, there was a decree nisi followed by a decree absolute dissolving the marriage. An intervener whose objections for not making the decree absolute were not heard, preferred an appeal by special leave. Before the appeal was disposed of, the husband died. The result was that the appeal was dismissed as having abated. Thereafter, the brother of the deceased filed a writ in the Supreme Court of Judicature, Jamaica, claiming to be the lawful brother of the deceased and claiming administration of the estate. The wife disputed the validity of the decree absolute. In disposing of this contention, their Lordships observed, at p. 189, as follows:

[6] ILR 41 All 283 : AIR 1919 All 355

[7] AIR 1945 PC 188

> "The first was, does the fact that at the date of the death of the deceased the intervener's appeal was pending prevent the decree absolute operating so as to deprive the appellant of her status as the wife of the deceased. This of course assumes that the decree absolute was a valid decree and on that assumption the question admits of only one answer. It dissolved the marriage from the moment it was pronounced and at the date when the appeal by the intervener abated it stood unreversed. The fact that neither spouse could remarry until the time for appealing has expired in no way affects the full operation of the decree. It is a judgment in rem and unless and until a Court of Appeal reversed it the marriage was for all purposes at an end."

This decision clearly lays down that, when an appeal abates, the decree is not automatically

vacated. It continues to have legal force till it is in an appropriate manner reversed or modified.

18. Nor can we accept the argument of the learned counsel that the principle recognised in India, viz., that an appeal is a continuation of a suit will make any difference in the legal position. In considering the question from when the period of limitation under Article 179 of Schedule II of the Limitation Act should be computed, a Full Bench of the Madras High Court in *Kristnamachariar v. Mangammal*[18], had to deal with the scope of an appeal filed against a decree in a suit. At p. 95, Bhashyam Ayyangar, J., says :

> "When an appeal is preferred from a Decree of a Court of first instance the suit is continued in the Court of appeal and re-heard either in Whole or in part, according as the whole suit is litigated again in the Court of appeal or only a part of it. The final decree in the appeal will thus be the final decree in the suit, whether that be one confirming, varying or reversing the decree of the Court of first instance." Applying that principle, the Full Bench held that the period of limitation for an application to execute a portion of the decree, which has not been appealed against runs under Section 230 (a) of the Code of Civil Procedure from the date of the decree on appeal. To say that for the purpose of limitation, the date of the final decree, i.e., the date of the decree made by the appellate Court is the starting point is not to say that a solemn decree made on an adjudication of the rights of parties is vacated the moment an appeal is filed. Its finality may be suspended and it may merge even in the appellate decree but it cannot be ignored for all purposes.

19. The decision in *Settappa Goundan v. Muthia Goundan*[9], applies the provisions of Section 52 of the Transfer of Property Act to a transaction that was effected between the date of the decree of the first Court and before an appeal was preferred against such decree. In dealing with that point, the learned Judges stated, at p. 270, thus :

> "The decree of the appellate Court is under the Code of Civil Procedure the final decree in the case and the proceedings in the appellate Court, therefore, must be treated so far as the question before us is concerned, as a continuation

[8] ILR 26 Mad 91

[9] ILR 31 Mad 268

> of the proceedings in the lower Court.....The law of lis pendens in this country is founded on the necessity, if possible, of final adjudication and it appears unjust that a plaintiff should be prejudiced by any act of the defendant subsequent to the institution of the suit and with notice thereof....."

In that case the question arose for consideration after the appeal was disposed of. For the purpose of lis pendens the appeal was considered as a confirmation of the suit. That case is not authority for the position that the decree of the first Court is vacated the moment an appeal is filed against the decree. For the purpose of abatement the provisions of O. 22, Civil Procedure Code, treat the appeal as an independent proceeding. In case the right to sue does not survive or even if it survives the legal representatives are not brought on record under that order the appeal alone

abates but not the suit.

20. The learned counsel for the appellant contended that in the case of personal claim when a party dies not only the appeal but also the suit abates. Where in a suit for malicious prosecution the plaintiff died, a Division Bench of the Madras High Court in *Palaniappa Chettiar v. Sethupathi*[10], held that the suit abated. Courts Trotter, C. J., held so on the ground that the cause of action of the plaintiff was the tortious act of which he was the victim and therefore, it did not survive to his legal representatives.

21. Strong-reliance is placed by the learned counsel for the appellant on the decision of a Division Bench of the Patna High Court in *Ramsarup Das v. Rameshwar Das*[11], There, a shebait of a defaulter property filed a suit to establish his personal right to an office, which would entitle him to possession of the property. He obtained a decree and the defendant preferred an appeal. Pending the appeal, the plaintiff died. The appellant contended that, on the death of the respondent, the suit had abated. The learned Judges, after considering the case-law on the subject, agreed with the contention and held that the suit itself abated. In dealing with the contention Sinha, J., who delivered the judgment on behalf of the Bench observed at p. 189 as follows :

> "But, where the plaintiff's suit is primarily to establish his personal right to an office which would entitle him to possession of the property in question on his death either during the pendency of the suit or during the pendency of the appeal, the right to sue would not survive and the suit will, therefore, abate." There the plaintiff had obtained the decree for possession in his personal right as Mahant and therefore with his death the decree became inoperative. It is not necessary to consider the correctness of this decision in this case. That decision can have no application to a case where the decree appealed against affects the status of the parties and is a judgment in rem. In that case unless the decree is vacated in some manner known to law, the suit cannot abate. It is not necessary to consider the other case cited in this branch of the law where, even in personal actions, the Courts have held that the death of a party did not cause an abatement of an appeal when the decree appealed against entrenches upon the properties or the estate inherited by a heir or a legal representative.

[10] ILR 49 Mad 208

[11] AIR 1950 Pat184

22. It is then contended that, if the suit itself does not abate, in the circumstances, the spouse against whom a decree is made will be deprived of her right to have the wrong decree of the Court of first instance vacated. Our view works both ways. If an innocent wife suffers by reason of the view expressed by us, if the contrary view is taken, a guilty wife also gets the benefit of it. Therefore, the question of anomalies or equities has no bearing when the law is clear.

23. We cannot leave this case without expressing our thanks to Mr. Lakshmiah for helping us as amicus curiae.

24. In the result, we hold that as the respondent died, the appeal abated and the decree of the Court below has become final.

Appeal abated.