

Judgment reserved on : 03.12.2025
Judgment pronounced on : 24.02.2026
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APHC010085782013



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3545]

TUESDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT**THE HONOURABLE SRI JUSTICE BATTU DEVANAND****THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA****FAMILY COURT APPEAL (FCA) NO: 189/2013****Between:**

1. SMT. GOMPA CHELLAYYAMMA, W/O G.LAKSHMANA RAO R/O
KUMMAPALLI, VEPADA MANDALAM, VIZIANAGRAM DISTRICT.

...APPELLANT**AND**

1. GOMPA LAKSHMANA RAO AND ANOTHER, (DIED AS PER LR NO.3)
S/O DEMUDU TECHNICIAN, ERS DEPARTMENT VISAKHAPATNAM
STEEL PLANT, VISAKHAPATNAM.

2. K DURGA RAO, S/O NOT KNOWN R/O D.NO. 13-752/14/1, PLOT NO.60,
SECTOR-II, B.T.R.NAGAR, ARILOVA,

3. GOMPA RENUKA, D/O. GOMPA LAKSHMANA RAO, AGED ABOUT 29
YEARS, R/O. NARSIPALLI KALLALU, VEPADU MANDAL,
VIZIANAGARAM. RESPONDENT NO.3 WAS BROUGHT ON RECORD
AS LR OF THE DECEASED RESPONDENT NO.1 VIDE COURT ORDER
DATED 05.11.2025 IN I.A.NO.3/2023

...RESPONDENT(S):

Counsel for the Appellant:

1.V SURENDRA REDDY

Counsel for the Respondent(S):

1.

2.GUTTAPALEM VIJAYA KUMAR

The Court made the following:

THE HONOURABLE SRI JUSTICE BATTU DEVANAND
&
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA
F.C.A. No.189 of 2013

JUDGMENT: *(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

Introductory:-

[i] This is an appeal directed against the Orders dated 15.04.2010 passed by the Judge, Family Court, Visakhapatnam in O.P.No.749 of 2007.

[ii] Respondent No.1 is the husband of the appellant. He has filed O.P.No.749 of 2007 with a prayer for dissolution of marriage between the appellant and the 1st respondent, invoking the grounds under Section 13 (1)(i)(a) and (b) of Hindu Marriage Act. The 2nd respondent is shown alleging that he is having illicit intimacy with the appellant (wife).

[iii] The Judge, Family Court, Visakhapatnam under the orders and decree dated 15.04.2010 allowed the petition filed by the husband, dissolving the marriage between the appellant and the 1st respondent/husband.

2. Feeling aggrieved by the said decree and order, present appeal is filed.

3. Before the Family Court, the 1st respondent herein is the petitioner, the appellant is the 1st respondent and the 2nd respondent herein is the 2nd

respondent. Since the 1st respondent/husband died during the pendency of the appeal, 3rd respondent was allowed to come on record as legal representative of 1st respondent. The 3rd respondent is the daughter of the appellant and the 1st respondent.

4. The 3rd respondent herein, who is the daughter of the 1st respondent and the appellant, appeared through an advocate but the learned counsel for the 3rd respondent would submit that the appellant and the 3rd respondent are living together and the 3rd respondent has no grievance, even if the appeal is allowed.

5. This is a case where the husband sought and got a decree of divorce. The wife questioned the same before this Appellate Court, and during the pendency of the appeal, husband expired. The 3rd respondent came on record in the capacity of legal representative of the 1st respondent.

6. It is also relevant to note that the appellant/wife along with the 3rd respondent herein, filed O.P. No.969 of 2007 under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 seeking maintenance, which was disposed of together with the present case. By the common order dated 15.04.2010, both the petition for maintenance as well as the present case seeking dissolution of marriage were allowed by the learned Judge, Family Court.

Case of the 1st respondent/Husband:-

7. [i] Marriage between the appellant and the 1st respondent has taken place on 09.03.1990 as per the Hindu rites and customs, and the marriage was consummated. During their wed lock, the 3rd respondent/appellant was born. Since the couple planned to have gap for the second issue, they stayed away from sexual life, but it was found that the appellant was carrying 5th month pregnancy. Then the couple opted for miscarriage. However, the husband was suspicious about the pregnancy, which contributed for mental and physical distance and differences. They lived separately under one roof.

[ii] The husband suffered with paralysis and heart ailment and he was referred to Apollo Hospital, Hyderabad. He has undergone heart surgery in August, 1994. Whereas the wife, instead of caring her husband, searched out for her fun and frequently visiting her parents house. Her conduct was doubtful, as she used to go to the terrace at night time, after bolting the doors while the husband was sleeping. She has even informed him that she was not interested in marrying him and has consented to the marriage at the instance of her parents. There was a quarrel on 23.11.1995, she has even beat her husband and thereafter left the matrimonial home.

[iii] Wife filed M.C.No.189 of 1999, which was allowed granting of maintenance @Rs.500/- per month each to the wife and the daughter, which the husband has been paying regularly.

[iv] The 2nd respondent is a resident of Aarilova, Visakhapatnam and friend of the appellant/wife, developed illicit intimacy with her and they are living together. The marriage between the appellant/wife and the 1st respondent broke down, and as the appellant/wife is living in adultery, he is entitled to the grant of divorce.

Case of the appellant/wife:-

8. Allegations are false and concocted. Since the appellant gave birth to female child, there was displeasure. With a view to avoid the legal and moral obligations, false allegations are made.

Case of the 2nd respondent:-

9. Allegations as to adultery are false. He is employed in hotel industry, staying at Chennai. His family and the appellant's family are friends. Except the family friendship, there is no other relationship and the allegations contra are false.

Findings of the Family Court:

10. Learned Judge Family Court granted divorce, by observing that wife is living in adultery, and that the appellant and the 1st respondent are living separately, therefore the marriage between the parties is irretrievably broke down.

Arguments in the appeal:-**For the appellant/wife:-**

11. [i] The husband is not interested to lead matrimonial life with appellant/wife and that the cruelty is from the end of the husband by suspecting the fidelity of wife.

[ii] Learned Judge, Family Court ought to have disproved the contention of the husband.

[iii] There is no legally acceptable evidence to believe the grounds for divorce and the conclusions drawn by the learned Judge, Family Court are baseless.

For the 3rd respondent-daughter:-

12. The 3rd respondent has no objection for allowing the appeal, by setting aside the decree of dissolution of marriage and the divorce granted by the Family Court.

13. Heard learned counsel on both sides.
14. Thoughtful consideration is given to the arguments advanced.
15. The points that arise for determination in this appeal are:
 - 1) *Whether the cause of action survives for an appellant spouse/wife or husband, disputing the matrimonial relief viz., the divorce granted, in the event of death of the other spouse viz., the wife or the husband, to prosecute the appeal? And whether the 3rd respondent herein is competent to represent the 1st respondent interest?*
 - 2) *Whether the concession of the daughter/3rd respondent alone shall form the basis to allow the appeal, or whether this Appellate Court must examine the merits in order to determine the propriety and sustainability of the impugned decree and judgment?"*
 - 3) *Whether the decree and judgment dated 15.04.2010 passed in O.P.No.749 of 2007 by the Judge, Family Court Visakhapatnam, dissolving the marriage between the appellant and the 1st respondent, are sustainable in law and on facts? Or whether any interference is necessary? If so, on what grounds and to which extent?*
 - 4) *What is the result of the appeal?*

Point No.1 :-**Survival of cause of action:-**

16. In view of Order XXII, Rule 11 of CPC, the provisions of Order XXII, are applicable to appeal proceedings also.

Order XXII and Rule 11 reads as follows:-

"11. Application of Order to appeals. - In the application of this Order to appeals, 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."

17. Order-22, Rule 1 of CPC provides that there shall be no abatement by party's death, if right to sue survives. **Order 22, Rule 1 reads as follows:-**

"1. No abatement by party's death if right to sue survives. -

The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives."

18. Appeal is continuation of Suit is the settled preposition of law. The right to claim or dispute entitlement for continuation or dissolution of marriage is a legal right, and a decree of divorce is generally considered as a judgment in *rem*, not merely a right *in personam*. It determines the legal status of the individuals. Marital status as a wife or husband or as a divorced wife or husband is a legal character and a right, which an individual can legally claim and agitate in properly instituted legal proceedings. The consequential rights such as maintenance etc.,

do survive even against the estate of the husband for a wife. Therefore, the question of abatement or any doubt regarding the non-survival of the cause of action need not be entertained. Therefore, the survival of cause of action to continue the legal proceedings, viz., the appeal, for the wife is clear. The status of a woman as a divorcee differs from that of a wife with respect to certain legal consequences and benefits that follow on the death of her husband. Viewed from the angles of stigmatic perspective, the legal character, or the legal rights, it is clear that the appellant-wife is entitled to continue the legal proceedings, viz., the appeal.

19. It is relevant to note as a precedential guidance that, in ***Yallawwa v. Shantavva***¹, the Hon'ble Apex Court while examining whether the cause of action survives and continues, particularly with regard to the rights of a spouse, where a decree-holder spouse, who obtained a decree of divorce, dies and with reference to Order XXII Rule 1, observed in paragraphs 6 and 7 of the judgment, as follows:-

“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

¹ (1997) 11 SCC 159 at page 167

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.”

Who is legal representative of the deceased spouse:-

20. The next question is against whom such right survives, to add such person as a legal representative. 'Legal representative' as defined under Section 2 (11) of C.P.C., would include the person, who intermeddles or interested to deal with the estate of the deceased. Section 2 (11) reads as follows:

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context,-

(11) "*legal representative*" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;"

21. As per Order XXII Rule 4 (1), where the sole defendant or respondent dies, and right to sue survives, the Court on application cause the legal representatives of the deceased defendant/respondent to be made as a party and proceed with the suit. The 3rd respondent, who is the daughter of the appellant and the 1st respondent, fits within the expression of legal representative, in terms of Section 2 (11) of CPC, and for inclusion as a legal representative in terms of Order XXII Rule 4(1) of CPC. It is relevant to note that maintenance has been awarded in favour of the 3rd respondent. Admittedly the 1st respondent/husband was paying the maintenance amount, and paternity of 1st respondent in respect of the 3rd respondent is not in dispute. Even the alleged suspicion of the 1st respondent against the fidelity of the appellant was after the

birth of the 3rd respondent. In that context, in the capacity of the 3rd respondent being Class-I legal heir for the estate of the 1st respondent, her entitlement, capacity, competency and suitability to be the legal representative and to advance her version, in respect of the present lis, need not be doubted. Therefore, we are of the considered view that the cause of action is surviving and the 3rd respondent is competent and fit to represent the interest of 1st respondent. Therefore, the proceedings can be continued. Point No.1 is answered accordingly.

Point No.2:-

22. It is relevant to note that the 3rd respondent prosecuted the legal proceedings along with the appellant against the 1st respondent in Maintenance Case. It is also relevant to note that she was a minor and on her behalf, the appellant, being the natural guardian prosecuted the proceedings. The legal competency of 3rd respondent to independently maintain or to take a decision either to proceed or not to proceed with Maintenance case, was not within her hands; therefore, the adverse interest of the 3rd respondent against the 1st respondent, merely because she was a co-claimant in the maintenance case along with the appellant against her father, who is the 1st respondent, cannot be considered as any cloud to suspect her *bona fides* in submitting that she has no grievance if the appeal is allowed. However, since the claim for divorce is on the

grounds of cruelty as well as the suspicion on the fidelity alleging adulterous life against the appellant, the case requires examination with reference to the evidence also; the decree need not be simply brushed aside, taking aid of the concession of the 3rd respondent, who is the daughter of the 1st respondent. Therefore, examination of the evidence and its sufficiency for dissolving the marriage is also necessary. Hence, we are of the view that the evidence also requires examination. Point No.2 is answered accordingly.

Point No.3:-

23. Grounds on which, the 1st respondent-husband claimed divorce are -

- 1) The appellant and the 1st respondent decided to have gap for second issue and maintain no sexual life and while observing such discipline, the appellant informed the 1st respondent that she became pregnant; on medical check-up 5 months of pregnancy was detected. On the decision of both, the appellant and the 1st respondent miscarriage of the pregnancy was opted. Thereafter, 1st respondent developed suspicion against the fidelity of his wife.
- 2) Differences continued thereafter.
- 3) The 1st respondent affected with paralysis but appellant did not take care of him.
- 4) The appellant /wife movements were doubtful.
- 5) The appellant developed illicit intimacy with the 2nd respondent.

6) She was frequently going to parental home.

7) The appellant filed Maintenance case along with the daughter (3rd respondent).

24. All these allegations are denied by the wife.

25. The 2nd respondent, who is allegedly having illicit intimacy with the appellant, denied all the allegations.

26. The 1st respondent-husband during the cross-examination stated that in Maintenance Case he did not plead about the 2nd respondent. He has denied the suggestion that he was suspecting his wife since the beginning. It is elicited during the cross-examination, that he did not mention the date and time when he has seen the 1st respondent and the 2nd respondent involved in any sexual activity and he cannot say to whom he has informed about the same.

27. The appellant (wife) as RW.1 denied all the allegations; she has admitted that after the birth of the daughter, she got abortion in the 4th month. She has volunteered that in the year 1993, she was sent to her parents house to get the land from her father and in that context, she went to her parental home. It was suggested to her that she developed aversion towards the 1st respondent-husband, as such she could not cooperate with him for sexual intercourse. She has stated that there were quarrels if any friends of the petitioner come, but she added that her husband/1st respondent used to suspect her character. It was

also suggested to the appellant that she used to insult the petitioner that he is a patient. She has denied the suggestion that she was insisting the petitioner to give divorce from the date of marriage. She has also stated that she has undergone operation after separating from the petitioner. Further, a suggestion was given to her that she has no symptoms of cancer but had undergone hysterectomy operation, in order to have free sexual life.

28. Upon careful examination of the evidence, the following points are found relevant -

- 1) Opting for miscarriage /abortion was at the instance of both the appellant and the 1st respondent, and it is not as if the appellant alone has opted to conceal pregnancy. There is clear admission of the 1st respondent/husband that appellant and he has opted for the abortion.
- 2) Any independent evidence creating any kind of suspicion regarding the fidelity of the appellant is not placed. Except the suspicion of the 1st respondent, there is no basis to believe the alleged adultery of the appellant.
- 3) The other grounds like cruelty or desertion are neither pleaded nor shown with any evidence.

29. It is relevant to note that the maintenance has been awarded by the same Court in the same proceedings by a common order. The evidence of PWs.2 and 3 is merely parrot talk about the appellant/1st respondent maintaining sexual distance, which cannot be expected to be within their knowledge. They did not say anything in legally acceptable tone or terms, as to the allegation of illicit intimacy between the appellant and the 2nd respondent. Therefore, it is clear that the 1st respondent /husband failed to substantiate the allegations, and it can safely be concluded that the learned Judge, Family Court did not appreciate the merits in proper perspective, and made a casual observation that the petitioner and the 1st respondent are living separately from each other and there is irretrievable break down of marriage, hence divorce can be granted. This is not a legally sustainable conclusion, and such a loose and unfounded observation ought not to have been made. Every separate living of the spouses for reasons of ordinary wear and tear in matrimonial life and personal emotional issues will not automatically constitute the animus for either cruelty or desertion, sufficient to invoke the jurisdiction to grant relief of dissolution of marriage.

30. It is also relevant to note that the allegation of adultery is a very serious one, even if it is in a matrimonial disputes; the standard of proof required shall be something beyond mere probability and the touchstone shall be near beyond reasonable doubt, since it operates as a stigma against a person and amounts to

character assassination. Proper, cogent, clinching and leally acceptable evidence must be there to appreciate and accept the allegations like adultery. The possessiveness, jealousy, inferiority complexes, and many other emotional issues in the conjugal life, often contribute to for making wild allegations against each other. However, when such matters come for scrutiny before the Courts, mere interested oral assertions are not sufficient, there must be supporting independent evidence, with the required corroboration/ probabilising the fact asserted. Otherwise, the foundation of the Indian family system will get shackled, and the esteem of Indian family and fabric of Indian society may get completely collapsed leading to many unpredictable consequences.

31. In view of the above discussion and in the facts and circumstances of the case, we are of the considered opinion that the 1st respondent/husband, failed to prove the allegations and failed to place the evidence establishing the grounds for dissolution of marriage and that the learned Judge, Family Court erred in granting the decree of divorce; consequently, the same is liable to set aside. Point No.3 framed, is answered accordingly.

Point No.4:-

32. In view of the reasons stated and the conclusions drawn under points 1 to 3, **in the result**, the appeal is **allowed** and the decree or order dated 15.04.2010

passed by the learned Judge, Family Court in O.P.No.749 of 2007 are set aside.

No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE BATTU DEVANAND

JUSTICE A.HARI HARANADHA SARMA

Dated: 24 .02 .2026

Note:

L.R. Copy be marked.

B/o.

Pnr

THE HON'BLE SRI JUSTICE BATTU DEVANAND
and
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

FAMILY COURT APPEAL (FCA) NO: 189/2013

Dt. 24.02.2026

Pnr

*** THE HONOURABLE SRI JUSTICE BATTU DEVANAND
AND
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA
FAMILY COURT APPEAL (FCA) NO: 189/2013**

% 24.02.2026

Smt. Gompa Chellayamma, W/o G.lakshmana Rao R/o Kummapalli, Vepada Mandala, Vizianagram District.

.... Appellant

Versus

\$ Gompa Lakshmana Rao, (Died As Per Lr No.3),
S/o. Demudu Technician , Ers Department Visakhapatnam Steel Plant,
Visakhapatnam And O2 Others.

.... Respondent/s

! Counsel for the Petitioner : Sri V SURENDRA REDDY

! Counsel for the Respondents : Sri GUTTAPALEM VIJAYA KUMAR

< Gist:

> Head Note:

? Cases referred:

(1997) 11 SCC 159

THE HONOURABLE SRI JUSTICE BATTU DEVANAND
AND
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA
FAMILY COURT APPEAL (FCA) NO: 189/2013

Smt. Gompa Chellayamma, W/o G.lakshmana Rao R/o Kummapalli, Vepada Mandala, Vizianagram District.

.... Appellant

Versus

\$ Gompa Lakshmana Rao (Died As Per Lr No.3),
 S/o. Demudu Technician , Ers Department Visakhapatnam Steel Plant,
 Visakhapatnam And O2 Others.

.... Respondents

DATE OF ORDER PRONOUNCED: 24.02.2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE BATTU DEVANAND
AND
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

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|---|--------|
| 1. Whether Reporters of Local Newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copies of Order may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Order ? | Yes/No |

JUSTICE BATTU DEVANAND

JUSTICE A.HARI HARANADHA SARMA