



2026:AHC:53216-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 969 of 2025

Smt. Geeta Rani And 2 Others

.....Appellant(s)

Versus

Smt. Maya Devi And 4 Others

.....Respondent(s)

Counsel for Appellant(s) : Ratnesh Kumar Pandey, Sanjay Kumar Mishra
Counsel for Respondent(s) : Rajjan Singh, Shreya Gupta, Shreyas Srivastava

Court No. - 29

**HON'BLE ARINDAM SINHA, J.
HON'BLE SATYA VEER SINGH, J.**

(Per: Arindam Sinha, J.)

1. The appeal stands preferred against judgment dated 6th October, 2025 of the Family Court, allowing the applications made by respondent in the original matrimonial case, for condonation of delay and setting aside ex-parte judgment dated 13th November, 1991.

2. By said ex-parte impugned judgment dated 13th November, 1991 the marriage of respondent no. 1 with her husband, since deceased stood dissolved. During his life time said deceased husband remarried. Appellants are the second wife and her children. Respondents are first wife and her children. The man died on 12th April, 2023. Respondent no. 1 through her brother applied for death benefits from his employer. On being told there was already claim made by the widow (the second wife)/appellant no. 1, respondent no. 1 approached the Family Court on gross delay, for setting aside the ex-parte judgment and decree with application for condonation of delay. By impugned judgment dated 6th October, 2025, the delay was condoned and the ex-parte judgment and decree dated 13th November, 1991 set aside, for the matrimonial case

being restored to its original file and number. Furthermore, the matrimonial case itself was thereby brought to an end. Appellants are in appeal against said judgment.

3. Mr. Ratnesh Kumar Pandey, learned advocate appears on behalf of appellants and on earlier occasion he had handed up English translation of impugned judgment. Ms. Shreya Gupta, learned advocate appears on behalf of respondents.

4. The appeal was moved before us on 25th November, 2025. On subsequent occasion we had formulated a question of law. It appears from paragraph 3 in our order dated 26th February, 2026. The paragraph is reproduced below.

"3. The short point to be answered is whether a judgment decreeing a matrimonial suit can be set aside under rule 13 order IX, Code of Civil Procedure, 1908, where on the date of application the decree holder was dead and the right to sue of appellants (no.1) seeking setting aside the judgment dissolving the marriage, does not survive."

Ms. Gupta submits, the Supreme Court in **Smt. Yallawwa vs. Smt. Shantavva** reported in **(1997) 11 SCC 159**, answered the question. She submits further, the Family Court followed this judgment to restore the matrimonial case and thereupon bring it to an end as abated.

5. Ms. Gupta submits further, fraud was practiced on her client by her late husband. He had initially filed for divorce. Her client, upon being served with the summons, entered appearance and filed written statement, to contest the case. The husband thereafter failed to prosecute and the case was dismissed for default. Subsequently, giving incorrect address of her client, he filed second case for divorce and fraudulently obtained said ex-parte judgment and decree dated 13th November, 1991. She relies on rule 9 in order IX to submit, the second case was barred. Furthermore, upon summons not duly served, the deceased husband had obtained direction for substituted service. The notice was published in an evening publication circulated in western Uttar Pradesh. Her client resides at Jewar, Gautam Budh Nagar, while she was purportedly noticed as residing in Haryana. The publication was made on contention that she

resides in Bulandshahr. Thus, her client demonstrated with particulars, proof of fraud practiced by her deceased husband in obtaining since set aside ex-parte judgment and decree dated 13th November, 1991. She submits still further, order sheet in the second matrimonial case reveals the publication was made on 29th October, 1991. Service was held to be sufficient on 11th November, 1991 and on 13th November, 1991 the ex-parte judgment and decree was passed. The Family Court thereafter, upon being presented with pleadings, particulars and proof of the fraud practiced was pleased to condone the delay and set aside the ex-parte judgment. There was no error, either on facts or in law, for interference in appeal. Mr. Pandey submits, appellant no. 1 and her deceased husband had duly solemnized their marriage on 31st December, 1991.

6. Undisputed facts are, there was ex-parte judgment and decree dated 13th November, 1991 dissolving the marriage of respondent no. 1. Said respondent applied for setting it aside on 24th May, 2023. Undisputed is also, the deceased married appellant no. 1 on 31st December, 1991. Undisputed because appellants were got impleaded in the setting aside application. It was made more than 30 years after said judgment and decree had been passed and the marriage solemnized on 31st December, 1991. Little over a month from date of death of the husband, who died on 12th April, 2023, respondent no. 1 applied on 24th May, 2023 for setting aside the ex-parte judgment and decree. So we made query and Ms. Gupta submits, her late husband used to reside with her in the same village at Jewar.

7. One thing is clear to us. It is that appellants cannot prove anything as fact regarding service of summons nor substituted service taken place in the second matrimonial case, decreed ex-parte on 13th November, 1991. Appellant no. 1 was stranger to the proceeding. Hence, respondents could not prosecute the application for setting aside the decree against such persons, as substitutes of the dead person. Restoration of the original matrimonial case in such circumstances renders respondent no. 1 to have status of widow, thereby displacing respondent no. 1 completely, without her being able to say anything in respect of the allegations on questions of fact regarding service of the summons nor the substituted service. Section 15 in Hindu Marriage Act, 1955 bars a divorced person from remarrying

till the time for appealing from the decree has expired, without appeal filed. The ex-parte judgment and decree was passed on 13th November, 1991. Section 19 in Family Courts Act, 1984 provides prescribed period of 30 days for preferring appeal. The period expired by 15th November, 1991. The second marriage was solemnized on 31st December, 1991. So far as respondent no. 1 is concerned, she cannot be held guilty of any wrong on her part, for her to lose status of widow. Said respondent's status was thus taken away without her having any scope of defending it. Here we may rely on declaration of law by the Supreme Court on its judgment rendered by a Bench of 11 learned Judges in **The State of Bombay vs. Kathi Kalu Oghad** reported in (1962) 3 SCR 10 for meaning of phrase "to be a witness". A passage from the judgment is reproduced below.

"The matter may be looked at from another point of view. The giving of finger impression or of specimen signature or of handwriting, strictly speaking, is not "to be a witness". "To be a witness" means imparting knowledge in respect of relevant fact, by means of oral statements or statements in writing, by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry, or investigation. A person is said 'to be a witness' to a certain state of facts which has to be determined by a court or authority authorised to come to a decision, by testifying to what he has seen, or something he has heard which is capable of being heard and is not hit by the rule excluding hearsay or giving his opinion, as an expert, in respect of matters in controversy....."

8. The Supreme Court in **Smt. Yallowwa** (supra) gave directions regarding maintainability of the application for setting aside the ex-parte decree in the matrimonial case against a deceased spouse and that upon restoration, the matrimonial case was to come to an end as abated. Paragraph 10 is reproduced below.

"10. Now remains the question as to whether the proceedings for divorce as restored by the High Court by its impugned order are required to be proceeded further or the curtain must be dropped on the said proceedings. As the ex parte decree is found to be rightly set aside by the High Court, the marriage petition would automatically stand restored on the file of the learned trial Judge at the stage prior to that at which they stood when the proceedings got intercepted by the ex parte decree. Once

that happens it becomes obvious that the original petitioner seeking decree of divorce against the wife being no longer available to pursue the proceedings now, the proceedings will certainly assume the character of a personal cause of action for the deceased husband and there being no decree culminating into any crystallized rights and obligations of either spouse, the said proceedings would obviously stand abated on the ground that right to sue would not survive for the other heirs of the deceased husband to get any decree of divorce against the wife as the marriage tie has already stood dissolved by the death of the husband. No action, therefore, survives for the court to snap such a non-existing tie, otherwise it would be like trying to slay the slain. At this stage there remains no marriage to be dissolved by any decree of divorce. Consequently, now that the ex parte decree is set aside, no useful purpose will be served by directing the trial court to proceed with the Hindu marriage petition by restoring it to its file. The Hindu Marriage Petition No. 25 of 1989 moved by Shri Basappa, the husband of the respondent, on the file of the Court of Civil Judge, Gadag will be treated to have abated and shall stand disposed of as infructuous. The appeal is disposed of accordingly. In the facts and circumstances of the case, there will be no order as to costs."

We have perused the judgment for facts in the case dealt with by the Supreme Court. Appellant before said Court was mother of the husband. She may not have been a stranger to the proceeding as mothers of petitioning spouses do take the box to give evidence supporting the cause being contended. In our humble and respectful interpretation of the judgment, we can only say, the Court exercised its power under article 142 in the Constitution, in respect of the case before it.

9. Respondents have not been otherwise able to answer in the affirmative, the question of law we framed. In our view the answer is in the negative. The application of respondent no. 1 for setting aside the ex-parte judgment and decree dated 13th November, 1991, with purpose of thereby erasing the second marriage solemnized on 31st December, 1991, the application filed more than 30 years after date of the decree but soon after death of the deceased, was not maintainable. Respondent no. 1 had contested the first matrimonial case and says, her husband lived with her

till he died. So she went to claim the death benefits from the employer. Said respondent if had allowed him to maintain a second family upon obtaining a decree of Court, cannot in this way undo the decree, to have her allegation of fraud upheld against the alleged perpetrator, who died soon before the application was made.

10. Impugned judgment is reversed in appeal. The setting aside application is dismissed.

11. The appeal is allowed and disposed of.

(Arindam Sinha,J.)

(Satya Veer Singh,J.)

March 16, 2026
Jaswant