

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 3127 of 2025**

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DINABEN LUCASBHAI MACWANA W/O LATE DAUDBHAI BENARDBHAI
CHAUHAN
Versus
DAUDBHAI BENARDBHAI CHAUHAN THROUGH HIS PROPOSED LEGAL
HEIRS & ORS.

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Appearance:
MR.AAKASH K MODH(9791) for the Appellant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 09/07/2026

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This appeal, under Section 19 of the Family Courts Act, 1984, is directed against the judgment and decree dated 19.09.2022, passed by the learned Judge, Family Court, Anand in Family Suit No.16 of 2020, whereby the Family Court by allowing the suit, dissolved the marriage of the parties.
2. The appellant being a wife, defendant, has preferred this appeal.
3. Admittedly, parties are Christian by Caste.
4. The respondent-husband, in whose favour, the decree passed is died, on 23.02.2024, i.e. after the dissolution of the marriage. The appellant-wife, pending the appeal, has joined the legal heirs of the deceased-husband, inter alia, stating that, the proceedings challenging the decree is maintainable, as the cause of action would survive with



respect to the estate of the deceased which is in the hands of legal heirs.

5. We have heard learned counsel Mr. Akash Modh appearing for and on behalf of the appellant-wife.

6. As referred above, the marriage of the parties was solemnized on 05.06.1976 and out of their wedlock, six children were born out. The marriage life of the parties was not cordial and on the ground of desertion as well as withdrawal of the wife from the society of the husband, the petition for dissolution of marriage under Section 10 (1-7), 10(1-9) of Divorce Act, 1879 was filed before the Family Court. The appellant-wife, though served, did not contest the family suit and in her absence, the ex-parte decree of divorce was passed. Thereafter, the husband was died. The appellant herein with the delay condonation application, had challenged the decree of divorce. In the meantime, on 23.02.2024, the husband passed away. The legal heirs have been joined as respondents.

7. Mr. Modh, learned counsel for the appellant while assailing the judgment and decree, has submitted that, there was absolutely no material before the Family Court to hold that, the appellant had deserted the husband and withdrawn herself from the society; after the judgment and during the pendency of the appeal proceedings, the husband passed away and therefore, it is submitted that, the wife's rights to the status of a widow and the resultant right to property would survive. Relying on the case of *Yallawa (Smt.) vs. Shantava (Smt.)*



[(1997) 11 SCC 159], it is submitted that, the question with regard to the abatement of an appeal in a matrimonial case on the death of one of the parties of marriage, was the issue before the Supreme Court. It was held by the Supreme Court that, once the decree passed in such proceedings, the status of the spouse gets changed, as a result, it has direct impact on the property right of the spouses concerned and it attaches a social stigma on the spouse concerned and such spouse cannot be said to be left without any remedy to get such findings vacated by filing an appeal and therefore, the cause of action in such case would survive qua the estate of the deceased spouse in the hands of his or her heirs or legal representatives.

8. In such circumstances, Mr. Modh would urge that, the findings of the Family Court on the issue of desertion seems to be unfounded and the judgment and decree may be set aside.

9. Having regard to the facts of the present case and in view of the ratio laid down by the Supreme Court in the case of *Yallawa (supra)*, the issue falls for our consideration as to whether the case is made out by the appellant to set aside the impugned judgment and decree as referred?

10. In the facts of the present case, it is not in dispute that, after decree of divorce and pending the appeal, the husband Daudbhai Chauhan has passed away. Parties are Christian by Caste. The legal representatives joined herein are the children of the appellant herein. In such circumstances, the right to sue would survive. It is relevant to



note that, if the husband died before decree could be passed, then, pending the trial, the personal cause of action would die with the person and the suit would be abated. However, as laid down by the Supreme Court, once the decree passed, the status of the spouses gets changed and they become ex-husband and ex-wife, as a result, it destroying the erstwhile status of the husband and wife and it has direct impact on the property rights of the spouses and also it attaches the social stigma on the spouse concerned. In such circumstances, the cause of action would not die with the person and right to sue would survive after death of any of the party to the proceedings and party concerned is entitled to challenge the findings of the court concerned. Thus, therefore, without much discussion on merits of the case, considering the peculiar facts and circumstances of the present case, we are of the opinion that, the findings of the Family Court that the wife has intentionally deserted the deceased husband are require to be set aside and having regard to the right of the appellant-wife, with respect to the property etc., if any, we deem it fit to set aside the impugned judgment and decree.

11. In the result, the appeal is allowed. The judgment and decree dated 19.09.2022 passed in Family Suit No.16 of 2020 at Anand is set aside. There shall be no order as to costs.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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