PETITIONER:
MAHARANI KUSUMKUMARI AND ANR.

Vs.

RESPONDENT:
SMT. KUSUMKUMARI JADEJA AND ANR.

DATE OF JUDGMENT01/02/1991

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
PUNCHHI, M.M.

CITATION:
1991 SCR (1) 193 1991 SCC (1) 582
JT 1991 (1) 278 1991 SCALE (1)103

ACT:
Hindu Marriage Act, 1955: Section II-Petition to declare marriage a nullity-Whether maintainable after death of petitioner's spouse.
Practice and Procedure: Proceedings involving issues relating to marital status-Question dependent upon nature of action and the law governing the same-Provisions of the relevant statute very material.

HEADNOTE:
The appellant No.1 -Maharani was married to a Maharaja in 1960 and the daughter-appellant no.2 was born of the wedlock in 1964. The relationship between the husband and the wife thereafter ceased to be cordial and the appellant started living in Bombay and the Maharaja within his estate in Madhya Pradesh.
It is the case of the respondent No.1 that the Maharaja decided to remarry without legally separating from the appellant. The respondent who is a relation of the Maharaja's mother, respondent No.2,was misled both by the Maharaja and his mother, respondent No.2 was misled both by the Maharaja and his mother in believing that the first marriage of the Maharaja had been dissolved and under that belief she married the Maharaja had been dissolved and under that belief she married the Maharaja and several issues were born of this wedlock.
In 1974 when the Maharaja died, on application for grant of Letters of Administration was filed by the appellant-Maharani, and the respondent No.1 applied for probate on the basis of an alleged will. This will was denied by the appellants. These proceedings are still pending.
Respondent No.1 filed an application under Section 11 of the Hindu Marriage Act, 1955 for declaring her marriage as nullity, and the Maharaja's mother was impleaded as the sole respondent. The appellants intervened and were impleaded as parties.
The maintainability of the aforesaid application was challenged by the appellants on the ground that the marriage could not be declared

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a nullity after the death of the Maharaja but both the

trial court and the High Court have rejected this plea.

In the appeal to this Court it was contended on behalf of the appellants that having regard to the very special relationship between husband and wife,a marriage cannot be dissolved or declared to be a nullity unless both of them are parties thereto. The martial status of a person sands on a much higher footing than other positions one may hold in the society and cannot be allowed to be challenged lightly,and that the marriage of a person, therefore, cannot be declared as nullity after his death when he does no have an opportunity to contest. Reliance was placed upon the language of Section 11 of the Hindu Marriage Act.

On behalf of the respondent, it was pointed out that having regard to the language of Section 16 of the Hindu Marriage Act as it it stood before its amendment in 1976,he children born of the respondent would not have been entitled to the benefit of the section in absence of a decree declaring the marriage of their parents as nullity, and this was precisely the reason that the respondent had to commence the present litigation

On the question: whether a petition under Section 11 of the Hindu Marriage Act, 1955 for declaring the marriage of the petitioner as a nullity is maintainable after the death of the petitioner's spouse.

Dismissing the appeal, this Court,

HELD: 1 .An application under Section11 of the Hindu Marriage Act, 1955 before its amendment in 1976, was maintainable at the instance of a party to the marriage even after the death of the other spouse.[201B].

2. In the instant case, the proceeding was started in 1974 that is, before the amendment was made in the Hindu Marriage Act,1955. Section II did not contain the words "against the other party". At that time all that was required was that the application had to be filed by a party to the marriage under challenge. On the plain language of the section as it stood then,it could not be claimed that in absence of the other spouse as a party to the proceedings, the same would not be maintainable.[197F]

3.Under the general law a child for being legitimate has to be

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born in lawful wedlock and if the marriage is void or declared to be so by the Court, it will necessarily have the effect ofbastardising the child born of the parties to such a marriage.[199F]

4. By enacting Section 5(i) of the Hindu Marriage Act, 1955 the legislature abolished polygamy, which had always remained permissible and prevalent among the Hindus in the past. The Act was bringing about a very significant departure in this regard; and taking into account the possibility of violation of the law in numerous cases at least for sometime to come special provisions were included under Section 16 of the Act with the object of protecting the legitimacy of the children.[199G]

5. The benefit of Section 16 was confined to only such cases where a decree of nullity was granted under Section 11 or section 12. It did not extend to other cases. in 1976 section 11 was amended by inserting the words "against the otherparty" and alongwith the same section 16 was amended.[200D]

6. By the amendment in section 11, in so far the cases where marriage can be declared as nullity, the application of the rule protectingthe legitimacy was widened. If that had notbeen,the children born of such marriages would have been deprived of the advantage on the death of either of the

parents. By the simultaneous amendment of the two sections it can safely be deducted that the Parliament did not hold identical views as expressed by the law Commission in its59th Report.[200F-G]

7. The intention of the legislature in enacting section 16 was to protect the legitimacy of the children who would have been legitimate if the Act had not been passed in 1955.[200H]

8. There is no reason to interpret section 11 in a manner which would narrow down its field. With respect to the nature of the proceedings, what the court has to do in an application under section 11 is not to bring about any change in the marital status of the parties. The effectof granting a decree of nullity is to discover the flow in the marriage at the time of its performance and accordingly to grant a decree declaring it tobe void. [201A-B]

Butterfield v. Butterfield; I.L.R.(Vol.50) Calcutta 153 and Stanhope v. Stanhope, [1886] 11 P.D. 103, and Law Commission of India 59th Report Chapter 6, para 6.1A referred to.

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9.It is not correct to suggest that one uniform rule shall apply for deciding the maintainability of all proceedings involving issues relating to marital status. The question will be dependent upon on the nature of the action and law governing the same. The provisions of the relevant statue relating to a question will be very material.[198H-199A]

Rayden and Jackson's Law and Practice in Divorce and Family Matters, (15th Edn.). p.650, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No.2215 of 1977.

From the Judgement and Order dated 237 1976 of the Madhya Pradesh High Court in Misc. Appeal No.23 of 1976.

T.U.Metha, S.K. Gambhir, Vivek Gambhir and Surinder Karnail for the Appellants.

Uday U. Lalit and A.G.Ratnaparkhi for the Respondents.

The Judgement of the Courtwas delivered by

SHAREMA,J,.The question for decision in this appeal by special leave is whether a petition under s.11 of the Hindu Marriage Act, 1955, for declaring the marriage of the petitioner as nullity is maintainable after the death of the petitioners' spouse.

2. The appellent no. 1, hereinafter referred to as the Maharani, was marriedto Maharaja Rameshwarsighji in1960 and a daughter, the appellant no.2, was born of the wedlock in 1964. The relationship between the husband and the wife thereafter ceased to be cordial and the appellants started living in Bombay and the Maharaja within his estate in Madhya Pradesh. According to the case of the respondent no.1 the Maharaja decided to remarry without legally separating from the appellant Maharani. The respondent who is a relation of the Maharaj's mother, respondent No.2, was misled both by theMaharaja and his mother in believing that the first marriage of the Maharaja had been dissolved and under the belief she married the Maharaja and the couple got several issues. In 1974 when the Maharaja died, an application for grant of Letters of Administration was filed by the appellant Maharani and the respondent applied for probate on the basis of an alleged will which is denied by the appellant. The proceedings are still pending. In this

background the respondent

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no. 1 filed the present application under s. 11 of the Hindu Marriage Act for declaring her marriage as nullity. The Maharaja's mother was impleaded as the sole respondent. When the appellants learnt about the case, they intervened and were joined as parties.

3. The appellants challenged the maintainability of the application on the ground that the marriage could not be declared nullity after the death of the Maharaja. Both the trial court and the High Court have rejected the appellants' plea.

4. mr. Mehta, the learned counsel for the appellants, has contended that having regard to the very special relationship between husband and wife, a marriage cannot dissolved or declared to be a nullity unless both of them are parties thereto. The marital status of a person stands on a much higher footing than other positions one may hold in the society or may have in relation to a property; and cannot be allowed to be challenged lightly. The marriage of a person, therefore, cannot be declared as a nullity after his death when he does not have an opportunity to contest. He relied upon the language of s.11. After its amendment in 1976 the section read this:

> "11. Void marriages:- Any marriage solemnized after the commencement of this Act shall be null and void and may , on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i),(iv) and (v) of Section 5."
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> (emphasis added)

5. The present proceeding was started in 1974, that is, before the amendment, and the section did not contain the words which have been underlined by us above. At that time all that was required was that the application had to be filed by a party to the marriage under challenge. On the plain language of the section as it stood then, it could not be claimed that in absence of the other spouse as a party to the proceeding, the same would not be maintainable. The argument of Mr. Mehta is that the section had the same meaning before and after the amendment and the addition of the words in 1976 was merely clarificatory in nature. He strongly relied upon the 69th Report of the Law Commission..

6. The Report recommended several amendments in the Hindu Marriage Act which led to the passing of the Amending Act of 1976.

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Reliance was placed on paragraph 6.1A of Chapter 6 of the Report which referred to the divergent views taken by the High Courts of Punjab and Madras on the question of maintainability of a petition under s.11 after the death of the other spouse. The Commission, thereafter, observed thus:

> "We ought, however, to point out that in such a case, the proper remedy is a suit under the Specific Relief Act. A petition under section 11 of the Hindu Marriage Act cannot be appropriate, because the other spouse is an essential party to any such petition. This should be clarified by an amendment."

It has been argued before us that the view of the Madras High Court referred to in the Report is the correct view which was accepted by the Law Commission, and since there

was scope for controversy on the language of the section, the legislature agreeing with the Law Commission added the aforementioned additional words by way of clarification. It is urged that such interpretation of the section did not lead to any injustice inasmuch as a suit for such a declaration was and is maintainable in the civil court. Reliance has also been placed on "Rayden and Jackson's Law and Practice in Divorce and Family matters." (15th Edn.), and several English cases in support of the proposition that on the death of a party to a matrimonial action the cause of action does not service. Reference has been made to the case of Butterfield v. Butterfield, I.L.R. (Vol.50) Calcutta 153, where after the wife had obtained a decree nisi for dissolution of her marriage the husband died. Following the English case of Stanhope v. Stanhope,[1886] 11 P.D.103, it was held that the decree could not be confirmed.

7. The learned counsel for the respondent relied upon certain observation made in other High Courts' judgments supporting his stand. He pointed out that having regard to the language of s. 16, as it stood before the amendment, the children born of the respondent would not have been entitled to the benefit of the section in the absence of a decree declaring the marriage of their parents as nullity, and this was precisely the reason that the respondent had to commence the present litigation.

8. We have considered the argument of Mr. Mehta closely but do not find ourselves in a position to agree with him. It is not correct to suggest that one uniform rule shall apply for deciding the maintainability of all proceedings involving issues relating to marital status. The

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question will be dependent upon the nature of the action and law governing the same. The provisions of the relevant statute relating to a proceeding in question will be very material. This aspect has been taken note of by Rayden and Jackson also in their book which has been relied upon by Mr. Mehta. The passage at page 650 summarises the position in the following words:

> "Death of a party: effect on suit. In many cases the fact of the death of one of the parties will render the process meaningless by reason of the circumstances that a marriage brought to an end by death could no longer be dissolved by an Act of the court. But there is no general rule that, where one of the parties to a divorce suit has died, the suit abates, so that no further proceedings can be taken in it. It has been said that it is unhelpful to refer to abatement at all. The real question in such cases is whether, where one of the parties to a divorce suit has died, further proceedings in the suit can or cannot be taken. The answer to that question, when it arises, depends in all cases on two matters and in some cases also on a third. The first matter is the nature of the further proceedings sought to be taken. The second matter is the true construction of the relevant statutory provision or provisions, or of a particular order made under them, or both. The third matter is the applicability of section I (I) of the Law Reforms (Miscellaneous Provisions) Act 1934."

9. The dispute issue in the present appeal has to be answered by considering the nature of the proceedings and the true construction of the relevant provisions of the Hindu Marriage Act. Under the general law a child for being

legitimate has to be born in lawful wedlock, and if the marriage is void or declared to be so by the court, it will necessarily have the effect of bastardising the child born of the parties to such a marriage. By enacting s. 5(i) of the Act, the legislature abolished polygamy, which had always remained permissible and prevalent among the Hindus in the past. The Act was bringing about a very significant departure in this regard; and taking into account the possibility of violation of the law in numerous cases atleast for sometime to come special provisions were included under s.16 of the Act with the object of protecting the legitimacy of the children. The original section before the amendment of 1976 read as follows:

> "16. Where a decree of nullity is granted in respect
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> of any marriage under section 11 or section 12, any child begotten or conceived before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of having been declared null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity.
>
> Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared null and void annulled by a decree of nullity any rights in or to the property of any person other than the parents in any case where, but for the passing of this Act, such child would have been incapable of possession of acquiring any such rights by reason of his not being the legitimate child of his parents."

It will be seen that the benefit of the section was confined to only such cases where a decree of nullity was granted under s. 11 or s.12. it did not extend to other cases. In 1976 s.11 was amended by inserting the words "against the other party", and along with the same s.16 was amended as it read now. the following words in s. 16(i).

> "...and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act."

enlarged the applicability of the beneficial provisions, so as not to deny the same to children who are placed in circumstances similar to those of the present respondent. By the amendment in s.11, in so far the cases where marriage can be declared as nullity, the application of the rule protecting the legitimacy was widened. If that had not been done, the children born of such marriage would have been deprived of the advantage on the death of either of the parents. By the simultaneous amendment of the two sections it can safely be deduced that the Parliament did not hold identical views as expressed by the Law Commission's Report.

10. Even if it be assumed that the meaning of the section was not free from ambiguity, the rule of beneficial construction is called for in ascertaining its meaning. The intention of the legislature in enacting s.16 was to protect the legitimacy of the children who would have been

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legitimate if the Act had not been passed in 1955. There is no reason to interpret s.11 in a manner which would narrow down its field. With respect to the nature of the proceeding, what the court has to do in an application under

s.11 is not bring about any change in the marital status of the parties. The effect of granting a decree of nullity is to discover the flaw in the marriage at the time of its performance and accordingly to grant a decree declaring it to be void. we, therefore, hold that an application under s.11 before its amendment in 1976, was maintainable at the instance of a party to the marriage even after the death of the other spouse. Accordingly, this appeal is dismissed with costs.

N.V.K. Appeal dismissed

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