

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**FAO No.210/2018  
Decided on 21.09.2026**

---

Parveen Kumar .....Appellant.

Versus

Prem Lata .....Respondent.

---

*Coram*

***The Hon'ble Mr. Justice Bipin Chander Negi, Judge.  
Whether approved for reporting?<sup>1</sup>***

For the Appellant : Mr. Surinder Saklani, Advocate,  
for the appellant.

For the Respondent : Mr. Pranjal Munjal Advocate, vice  
Mr. Ajeet Pal Singh Jaswal,  
Advocate.

---

***Bipin Chander Negi, Judge (oral).***

Learned counsel appearing on behalf of the appellant has placed on record the death certificate of the appellant in the case at hand. The same is taken on record. From a perusal of the same, it is evident that the appellant had died on 19.12.2025.

2. The deceased, in the case at hand, had preferred a petition under Section 13 of the Hindu Marriage Act against his wife/respondent, Smt. Prem Lata, seeking dissolution of marriage/decreed of divorce on the grounds of cruelty and desertion. The petition so preferred had been dismissed. Feeling aggrieved, the deceased had preferred the present appeal.

3. The cause of action for institution of the proceedings of divorce by the deceased against the respondent herein was purely personal to him, and on his death, the cause of action does not survive to anyone else and the same died with him. The deceased was not seeking the enforcement of any right which, on his death, would vest in his heir at law or the representative of his estate. A man, after his death, can no more be divorced or secure a decree of divorce than he can be considered to be married or even condemned to death. On his death, the matrimonial knot inter se the parties no longer existed, and hence, after death, there cannot be a decree of divorce dissolving the marriage [See: AIR 1989 Madras 216 titled *Saraswathi Ammal vs. Lakshmi*].

4. The "Right to Sue", as contained in Order 22 Rule 1 of the Code of Civil Procedure, has been succinctly described in ((1906) 36 Cal 1799 at p. 1801 titled *Sarat Chandra v. Mani Mian*, wherein it has been held that "the right to sue" means the right to the same relief which the deceased plaintiff asserted at the time of his death. (See: (1973) 1 SCC 688 titled *Phool Ran and others vs. Sh. Naubat Rai Ahluwalia*).

5. The principle that a personal action dies with the person is expressed in the maxim 'actio personalis cum moritur persona'. The aforesaid maxim is not only applied during the pendency of a suit for a personal action, but also in cases wherein the plaintiff dies during the pendency of an appeal in the appellate court. This is for the

reason that dismissal of the suit by the trial court or the 1st appellate court relegates the plaintiff to his original position before the trial court. In this respect, reference can be made to (1988) 1 SCC 556 titled *M. Veerappa v. Evelyn Sequeira & Ors.*. Relevant extract whereof reads as under:-

“10. The maxim 'actio personalis cum moritur persona' has been applied not only to those cases where a plaintiff dies during the pendency of a suit filed by him for damages for personal injuries sustained by him but also to cases where a plaintiff dies during the pendency of an appeal to the Appellate Court, be it the First Appellate Court or the Second Appellate Court against the dismissal of the suit by the Trial Court and/or the First Appellate Court as the case may be. This is on the footing that by reason of the dismissal of the suit by the Trial Court or the First Appellate Court as the case may be, the plaintiff stands relegated to his original position before the Trial Court. Vide the decisions in [Punjab Singh v. Ramautar Singh](#), (supra), *Irulappa v. Madhva*, (supra), *Manirammla v. Mt. Chalti Bai & Anr.* (supra), *Baboolal v. Ram Lal*, (supra) and [Melepurath Sankunni Ezhuthassan v. Thekittil Gopalankutty Nair](#), (supra). In [Palaniappa Chettiar v. Rajah of Ramnad](#) (supra), and *Motilal v. Harnarayan*, (supra) it was held that a suit or an action which has abated cannot be continued thereafter even for the limited purpose of recovering the costs suffered by the injured party. The maxim of actio personalis cum moritur persona has been held inapplicable only in those cases where the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong doer vide [Rustomji Dorabji v. W.H. Nurse](#), (supra) and *Ratanlal v. Baboolal*, (supra) as well as in those cases where a suit for damages for defamation, assault or other personal injuries sustained by the plaintiff had resulted in a decree in favour of the plaintiff because in such a case the cause of action becomes merged in the decree and the decretal debt forms part of the plaintiff's estate and the appeal from the decree by the defendant become a question of benefit or detriment to the estate of the plaintiff which his legal

representatives are entitled to uphold and defend (vide [Gopal v. Ramchandra](#), ([supra](#)) and [Melepurath Sankunni v. Thekittil](#), ([supra](#)).

6. In view of the aforesaid, nothing further survives for adjudication. Accordingly, the appeal stands disposed of, so also the pending miscellaneous applications, if any.

**(Bipin Chander Negi)**  
**Judge**

21<sup>st</sup> September, 2026  
(Tarun Singh)