

of the provisions of section 7 of the Limitation Act (*Periasami v. Krishna Ayyan*(1)). I agree therefore in dismissing their petition with costs.

PARE
v
VARIAN-
GATTIL
RAMAN
MENON.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

SAMBASIVA CHETTI AND ANOTHER—MINORS BY THEIR GUARDIAN
RUKMANI AMMAL (PETITIONERS—LEGAL REPRESENTATIVE OF
FOURTH DEFENDANT), PETITIONERS, 1904.
October 28.

v.

VEERA PERUMAL MUDALI AND OTHERS (PLAINTIFFS),
RESPONDENTS.*

*Civil Procedure Code, ss. 108, 234, 368—Death of defendant after ex parte decree
—Application by representatives of the defendant to be brought on record.*

Section 368 of the Code of Civil Procedure only applies to the case of a defendant who dies before a decree is passed.

Where, therefore, a defendant dies after a decree *ex parte* has been passed against him, his representatives cannot apply to set aside the *ex parte* decree unless the plaintiff has brought them on the record as representatives under section 234 of the Code of Civil Procedure.

Section 108 of the Code of Civil Procedure applies only to the defendant against whom the *ex parte* decree is passed.

THE facts necessary for this report are set out in the judgment.

K. Jayanadha Ayyar for petitioners.

K. R. Subrahmaniam Sastri for respondents.

JUDGMENT.—On the 24th April 1903, a decree was passed by the District Munsif *ex parte* against the fourth defendant in the suit.

The fourth defendant died in May-June 1903, and on the 9th September 1903, the petitioners put in a petition before the District Munsif under section 108, Civil Procedure Code, as the

(1) I.L.R., 25 Mad., 431.

* Civil Revision Petition No. 138 of 1904, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the decree of A. C. Tate, Esq., District Judge of South Arcot, in Civil Miscellaneous Appeal No. 10 of 1903, presented against the order of the Court of the District Munsif of Tirukkoyilur in Miscellaneous Petition No. 469 of 1903 in Original Suit No. 102 of 1903.

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representatives of the deceased fourth defendant praying to set aside the decree against the deceased fourth defendant and to add the petitioners as his legal representatives.

The petition was dismissed by the District Munsif and on appeal to the District Judge his order was confirmed.

This civil revision petition is put in to set aside those orders under section 622, Civil Procedure Code.

We are of opinion that the orders are right.

By the Civil Procedure Code, the representatives of a deceased defendant can only apply to be brought on the record under section 368, Civil Procedure Code, which only applies to a case where the defendant dies before decree. Here the decree has been passed and the section applicable after decree is section 234, Civil Procedure Code, which does not authorise any application to be made by the representatives of the deceased judgment-debtor to bring them on to the record, but only authorises the plaintiffs to make such an application.

The article of the Limitation Act applicable to an application to bring on to the record the representatives of a deceased judgment-debtor is article 164 which provides that limitation shall begin to run from the first notice of proceedings in execution.

Section 103, Civil Procedure Code, under which the application is made only authorises applications by the defendant against whom an *ex parte* decree has been made.

We are of opinion that, until the representatives have been brought on to the record under section 234, Civil Procedure Code no application can be made to set aside the *ex parte* decree and we dismiss this petition with costs.
