

## APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Møller.

1907  
October 3, 1906.

VIERAPPA CHETTY AND OTHERS ... (PLAINTIFFS),

v.

TINDAL PONNEN AND OTHERS (DEFENDANTS AND HIS  
LEGAL REPRESENTATIVES).\*

*Jurisdiction*—Where suit instituted against a deceased person, Courts have no jurisdiction to allow the plaint to be amended by substituting the names of the representatives of the deceased.

There is nothing in the Code of Civil Procedure to authorize the institution of a suit against a deceased person and the Courts have no jurisdiction to allow the plaint in such a case to be amended by substituting the names of the representatives of the deceased, even when the suit is instituted *bonâ fides* and ignorance of the death of the defendant.

*Mohun Chunder Koondoo v. Azem Gazeer Chowkedar*, (12 W. R., 45), followed.

*Mallikarjuna v. Pullayya* (I.L.R., 16 Mad., 319), distinguished.

THE facts are thus stated in the judgment of the lower Court.

“The plaintiff filed this suit on 5th September 1905 against one Tindal Ponnen on two promissory notes, exhibits A and B, dated 25th September 1902 and 16th October 1902, respectively, executed by him in favour of V. M. V. Sundarasekhara Iyer, V. M. V. is plaintiff's *Vilasam*, and Sundarasekhara Iyer is their duly constituted agent under power-of-attorney, exhibit II.

On 19th April 1906, a petition was put into the effect that the defendant was dead, and asking for the minor defendants Nos. 2 and 3 to be brought on the record with their mother as guardian. Notice was sent to her but she did not appear and Lakshmana Row, the Court Interpreter, was appointed their guardian on 27th April 1906, and the plaint was amended accordingly.

Mr. Dorasamy Iyengar appeared, subsequently, as *vakil* for the guardian of the said minors, and put the plaintiffs to proof of the claim, and took the objection that the suit was filed against

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\* Referred Case No. 7 of 1907 stated under section 69 of the Presidency Small Cause Courts Act, XV of 1882, and Rule 428 of the Rules of Procedure of the said Court by the Chief Judge of the Presidency Court of Small Causes, Madras, in Suit No. 12682 of 1905.

first defendant after his death, of which fact plaintiffs were then cognizant and that defendants Nos. 2 and 3 were added without notice and, at a time, when, the claim was barred against them.

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With regard to the other question it is proved by the evidence of Murugan that first defendant died in Pulania Deli, Sumatra, on 4th September 1905. Exhibit I supports his evidence; it is written by Ker Veera Pillai to the wife of the deceased, and dated 13th September 1905 from Deli, informing her of his (her husband's) death on the said date and is proved by Murugan. It however contradicts Murugan's evidence that he was present after the death, but I have no reason to doubt its genuineness. I find it proved that first defendant died on 4th September 1905, the day before the suit was filed, but there is nothing to show that the plaintiffs were aware of his death at that time.

Under these circumstances the question arises whether the suit lies, having been originally instituted against a defendant who was dead at the time of the filing of the suit.

The plaintiffs' vakil applied under section 69, Presidency Small Cause Courts Act XV of 1882, for a reference to the High Court, and as there is no direct authority reported in the Law Reports on the point I dismiss the suit with costs and vakil's fee Rs. 46, subject to the opinion of the High Court on the following question:—Whether the Court has jurisdiction to allow a plaint filed against a deceased person to be amended by bringing his legal representatives on to the record?

Accordingly the following reference was made to the High Court:—

Whether the plaintiff, who institutes a suit *bonâ fide*, and in ignorance of the fact of the death of the defendant before the institution of the suit, is entitled, on his subsequently becoming aware of the defendant's death, to have the plaint amended and the legal representatives of the deceased defendant brought on record as defendants, when a fresh suit against the said representatives of the deceased would not be barred by limitation?

Whether the Court has jurisdiction to allow a plaint filed against a deceased person to be amended?

*C. V. Anantakrishna Ayyar and S. E. Sankra Ayyar for plaintiff.*

The defendants were not represented.

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JUDGMENT.—The question for our decision is whether, when a plaint is presented by a plaintiff for the purpose of instituting a suit against a defendant in accordance with the provisions of the Code, and it afterwards turns out that the defendant had died before the presentation of the plaint, the Court has jurisdiction to substitute the representatives of the deceased as defendants and allow the suit to proceed as against them. In *Mohun Chander Koondoo v. Azeem Gasee Chowkeedar* (1), it was held by Sir Barnes Peacock and Mr Justice Mitter that, owing to the death of the defendant before the filing of the plaint, the Court had no jurisdiction to decide upon the case, or, in other words, to entertain the suit. The Code of 1859, Act VIII of 1859, was then in force, but the modifications introduced into the present Code, Act XIV of 1882, do not appear to affect the question. The point appears to have arisen subsequently in *Mallikarjuna v. Pullayya* (2) but it was unnecessary to decide it as the case was disposed of on the ground that such an amendment ought not to be allowed on appeal if it might preclude the defendant from pleading limitation. We do not consider that the decision in any way shakes the authority of *Mohun Chander Koondoo v. Azeem Gasee Chowkeedar* (1) as it was unnecessary for the Court to express any opinion on the present point and they appear to have intentionally abstained from so doing. In our opinion the decision of the Calcutta High Court was right and should be followed. At common law the Courts had no jurisdiction to entertain a suit against a dead man, and on the death of the defendant the action abated. To mitigate this hardship, a rule based on the supposed equity of the statute of limitations was introduced under which the issue of a writ against a defendant during his life-time, even if not served before his death, was allowed to stop time running and prevent a fresh suit against the representatives of the deceased from being barred (*Swindell v. Bulkeley* (3)). It does not appear to have ever been suggested that the issue of a writ against a dead man could be anything but a nullity, and we see no reason for regarding the presentation of a plaint, which under our system corresponds to the issue of the writ, as anything more. Although

(1) 12 W. R., 45.

(2) I. L. R., 16 Mad., 319.

(3) L. R. 18 Q. B. D., 250.

the rule that on the death of the defendant the action abated and the Court lost jurisdiction over it, was abolished, in England, by the Common law Procedure Act, it is still retained in a modified form in the Code of Civil Procedure which provides in section 368 that unless the plaintiff applies within the prescribed time to substitute the representatives of the deceased defendant the suit shall abate. Not only then is there nothing in the Code to authorize the institution of a suit against a dead man as distinct from a suit against his legal representatives, but the death of the defendant puts an end to the suit within a prescribed period unless steps are taken within that period for bringing in the legal representatives. Under these circumstances we agree with the decision of the Calcutta High Court, and are of opinion that, the question referred to us must be answered in the negative.

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## APPELLATE CIVIL—FULL BENCH.

*Before Sir Arnold White, Chief Justice, Mr. Justice Subrahmania Ayyar and Mr. Justice Miller.*

RAMU AIYAR (PLAINTIFF), PETITIONER,

v.

SANKARA AIYAR, MINOR BY GUARDIAN LATCHUMI  
AMMAL (DEFENDANT), RESPONDENT.\*

1907.  
August 2, 13,  
October 23.

*Court Fees Act, Act VII of 1870, s. 7, cl. (4) c, and art. 17 (6), sched. II—Registration Act, s 77 - Suits Valuation Act, s. 8—Suit for registration of document under s 77 of Registration Act does not fall for purposes of Court fees within s. 7, cl. (4) c of the Court Fees Act, but under art. 17 (6) of sched. II of the Act—Such suit to be valued for purposes of jurisdiction on the value of the property.*

A suit for registration of a document under section 77 of the Registration Act is not, for the purposes of payment of Court fees, a suit for a declaratory decree with consequential relief within section 7, clause (4) c of the Court Fees Act, but is a suit in which it is not possible to estimate at a money value the subject matter in dispute, within article 17 (6) of

\* Civil Revision Petition No. 513 of 1904, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of L. G. Moore, Esq., District Judge of Trichinopoly, in Civil Miscellaneous Appeal No. 10 of 1903, presented against the order of M. R. Ry S. Doraiswami Ayyar, District Munsif of Trichinopoly, in original Suit No. 133 of 1903.