

SORNALINGA  
MUDALI  
v.  
PACHAI  
NAICKAN.  
SPENCER, J.

No doubt a promissory note that is without consideration creates no obligation between the parties to the transaction (section 43 of the Negotiable Instruments Act), but here the District Munsif has made the other persons, defendants Nos. 1 to 4, who signed it liable. This is, therefore, not a case in which the negotiable instrument was made without consideration. The respondents' pleader relies on *Sesha Aiyar v. Mangal Dcs Jee* (1). This was not a case on several executants but of one executant. There was a finding that the promissor was a mere name-lender for the real obligor, and therefore the learned Judges who decided that case held that there was no consideration by which the former could be bound.

I therefore agree in the order now pronounced by my learned brother.

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## APPELLATE CIVIL.

*Before Mr. Justice Oldfield.*

M. SUBRAMANIA AIYAR (PETITIONER), PETITIONER.

v.

VAITHINATHA AIYAR AND ANOTHER (RESPONDENTS  
Nos. 2 AND 3), RESPONDENTS \*

*Defendant, death of—Legal representative not brought on record—Decree subsequent to such death, validity of—Objection to such decree in execution.*

A decree passed after the death of the defendant and before his legal representative was brought on the record is a nullity.

*Janardhan v. Ramchandra* (1902) I.L.R., 26 Bom., 317, *Radha Prasad Singh v. Lal Sahab Rzi* (1891) I.L.R., 13 All., 53 and *Imdad Ali v. Jagun Lal* (1895) I.L.R., 17 All., 478, followed.

*Goda Cooporamier v. Soondrammall* (1910) I.L.R., 38 Mad., 167, distinguished. Objection to that effect can be taken in the execution proceedings.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the order of C. KRISHNASWAMI RAO, the Subordinate Judge of Mayavaram at Kumbakonam, in Miscellaneous Application No. 1662 of 1910 in Small Cause Suit No. 1219 of 1910.

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(1) (1910) 20 M.L.J., 144.

\* Civil Revision Petition No. 390 of 1911.

The facts of the case appear sufficiently from the judgment.  
*K. R. Krishnaswami Ayyangar* and *S. V. Paāmanabha Ayyangar* for the petitioner.  
*N. Rajagopala Achariyar* for the respondents.

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 v.  
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 AIYAR.

JUDGMENT.—It is admitted that the decree under execution was passed after the death of the defendant and before his legal representatives were impleaded. It is argued firstly that this did not affect its validity, and secondly that the decree passed is not void but must be set aside in separate proceedings for that purpose, before it can be treated as a nullity. OLDFIELD, J.

*Goda Cooporamier v. Soondrammall*(1) is relied on. But it deals with exceptional circumstances and the case of a plaintiff; and it is not clear that the decision would have been the same, if a decree against a defendant had been in question. On the other hand in *Janardhan v. Ramachandra*(2), *Radha Prasad Singh v. Lal Sahab Rai*(3), and *Imdad Ali v. Jagan Lal*(4), the two last mentioned cases relating to decrees against defendant, it was held that the decrees were nullities. Authority is therefore against the petitioner's contention on this point; and, the decree under execution being null and void, proceedings to avoid it are unnecessary.

It is argued next that the respondents could not take objection to the decree in execution proceedings. But their objection was to the jurisdiction of the Court to pass it. It was therefore rightly considered and allowed.

Lastly, it is argued that the present application to join the respondents as legal representatives of the deceased defendant and for execution should have been treated as one for the former relief and for setting aside the abatement and that the trial of the suit should have been resumed. It does not appear that this was suggested in the Lower Court; and in fact the defendant's death is referred to incorrectly as in the petition as subsequent to the passing of the decree. For this reason and on its merits the suggestion is unacceptable.

The Civil Revision Petition is dismissed with costs.

(1) (1910) I.L.R., 33 Mad., 107.

(2) (1902) I.L.R., 26 Bom., 317.

(3) (1891) I.L.R., 13 All., 53.

(4) (1895) I.L.R., 17 All., 473.