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the accounts to Muthiah. That was done in obedience to the order of the plaintiffs' in that behalf thereby revoking the agency. The first to fifth respondents' vakil relied on *Jogesh Chandra* alias *Dhalu Ghose v. Benode Lal Roy*(1), for the position that when there is a special contract fixing a date for the rendering of the accounts, the article applicable to suits by principals against agent is 115 and not article 89. The fixing of a date for rendering accounts cannot stop the termination of the agency. The authority relied upon in *Jogesh Chandra* alias *Dhalu Ghose v. Benode Lal Roy*(1) has been dissented from by MACLEEN, C.J., in *Hafezuddin Mandal v. Jadu Nath Saha*(2). Mr. Justice MOOKERJEE in *Shib Chandra Roy v. Chandra Narain Mukerjee*(3), held that article 89 would apply to a case like the present. I am therefore constrained to hold that the suit is barred by limitation.

S.V.

## APPELLATE CIVIL.

*Before Mr. Justice Ayling and Mr. Justice Hannay.*

GANDI RAMASWAMI (SECOND DEFENDANT), APPELLANT,

v.

PURAMSETTI PEDAMUNAYYA AND SEVEN OTHERS

(PLAINTIFFS, NOS. 1 TO 6 AND FIRST DEFENDANT),

RESPONDENTS.\*

*Civil Procedure Code (Act V of 1908), sec. 2, cl. (1), O. XXII, r. 1—Legal Representative—Survival of right to sue—Daughter's suit for possession of father's estate—Death of daughter—Right of father's heirs to continue suit.*

Pending a suit by a daughter to recover possession of her father's property as his heir, from strangers whom she alleged to be trespassers, the plaintiff (daughter) died. In an application by the grandsons of the deceased plaintiff's father's brother as his heirs to continue the suit, *Held* (1) that the right to sue survived within the meaning of Order XXII, rule 1, Civil Procedure Code (Act V of 1908), and (2) that the applicants were her legal representatives within the meaning of section 2, clause (1) of Civil Procedure Code.

*Fremmoy Choudhrai v. Preonath Dhar* (1896) I.L.R., 23 Calc., 638 and *Rikhai Rai v. Sheo Pujan Singh* (1911) I.L.R., 33 All., 15, followed.

(1) (1909) 14 C.W.N., 122.

(2) (1906) I.L.R., 35 Calc., 298.

(3) †(1906) I.L.R., 32 Calc., 719.

\* Second Appeal No. 776 of 1913.

SECOND APPEAL against the decree of F. A. COLERIDGE, the acting District Judge of Kistna, in Appeal No. 164 of 1912, preferred against the decree of S. NILAKANTAM PANTULU, the Additional District Munsif of Masulipatam, in Original Suit No. 313 of 1910.

RAMASWAMI  
D.  
PERAMU-  
NAYYA.

The facts of the case appear from the judgment.

V. *Ramadas* for the appellant.

V. *Ramesam* for the respondents Nos. 1 to 5.

The following JUDGMENT of the Court was delivered by HANNAY, J.—The suit out of which this Second Appeal arises was brought by one Peramma to establish her right to certain inam land and to recover possession after ejecting the defendants. Her case was that the suit property belonged to her father Bapulu, that after his death her mother Venkamma enjoyed the land and that on Venkamma's death, the plaintiff became entitled to the land as daughter of Bapulu but that the defendants prevented her from taking possession.

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The defendants alleged that Bapulu had made over the land to one Rattam, the husband of the third defendant, to do the Inam service for him over fifty years before suit, and that their family had held the land and done service ever since.

The plaintiff Peramma died pending the suit and the plaintiffs Nos. 2 to 5 were then brought on record as being her legal representatives. The plaintiffs Nos. 2 to 5 are the grandsons of Bapulu's brother. Both the lower Courts on the merits have given a decree in favour of the plaintiffs Nos. 2 to 5 and it is conceded by the present appellants that on the findings of fact arrived at by the lower Courts the decree in favour of the plaintiffs Nos. 2 to 5 cannot be impeached. They contend, however, that upon the death of Peramma, the suit abated and that the plaintiffs Nos. 2 to 5 could not be added as legal representatives of the deceased Peramma or continue the suit, as they claim, not as legal representatives of Peramma but as reversioners of the last male holder, i.e., Bapulu. The lower Appellate Court relying upon the cases *Premmoyi Choudhrani v. Preonath Dhar*(1), *Rikhai Rai v. Sheo Pujan Singh*(2), *Tribhuvan Sundar Kuar v. Sri Narain Singh*(3) and *Mussamut Parbutty v. Mussamut Higgin*(4), held that the plaintiffs Nos.

(1) (1896) I.L.R., 23 Cal., 536.

(2) (1911) I.L.R., 33 All., 15.

(3) (1898) I.L.R., 20 All., 341.

(4) (1872) 17 W.R., 475.

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2 to 5 were rightly added as plaintiffs and the question for determination is whether that decision is correct or not.

This point involves the determination of the questions whether the right to sue survived after the death of Peramma and whether the plaintiffs Nos. 2 to 5 are her legal representatives.

The appellants rely upon *Sakyahani Ingle Rao Sahib v. Bhavani Bozi Sahib*(1), *China Veerayya v. Lakshminarasamma*(2) and *Arunachalam v. Vellaya*(3). The first two cases were suits by presumptive reversioners on their own behalf to set aside a widow's alienation. On the death of the plaintiff in each case, it was held that the right to sue did not survive to the next reversioners. In the former case, it was decided that the right to sue in such cases was a personal right and that such suits could not be treated as representative suits, reversioners who are not actual parties to such litigations not being bound by the adjudications thereon.

This decision was followed in the latter case *China Veerayya v. Lakshminarasamma*(2). *China Veerayya v. Lakshminarasamma*(2) is authority for the view that for the purposes of deciding the question whether the right to sue survives or not, there is no distinction between suits to set aside an adoption and suits to set aside an alienation. It was there held that the right to sue to set aside an adoption would not survive after the death of the mother of the last male owner, who was the plaintiff in the suit, notwithstanding that [as held in *Chiruvolu Punnamma v. Chiruvolu Perrazu*(4)] an adjudication in such a suit would have been binding on the other reversioners, if there had been a fair trial, for the rights of the reversioners remain, subject to the rule of law laid down in *Chiruvolu Punnamma v. Chiruvolu Perrazu*(4).

The respondents contend that these rulings do not conclude the points for determination in this case, as they relate to declaratory suits whereas the present is a suit for possession.

*Premmoyi Choudhrani v. Preonath Dhur*(5) and *Rikhai Rai v. Sheo Pujan Singh*(3) relied upon by the lower Appellate Court, clearly support the view that in suits such as the present

(1) (1904) I.L.R., 27 Mad., 588.

(2) (1914) I.L.R., 37 Mad., 406, s.c., 22 M.L.J., 375.

(3) (1912) 23 M.L.J., 719.

(4) (1906) I.L.R., 29 Mad., 390 (F.B.)

(5) (1896) I.L.R., 23 Calc., 686.

(6) (1911) I.L.R., 38 All., 15.

the right to sue survives to the reversioners, who are the legal representatives of the widow for the purposes of such suits, although they do not claim title through her but only as reversioners of the last male owner. These two cases are referred to in *China Veerayya v. Lakshminarasamma*(1). It was observed as regards *Premmoyi Choudhrani v. Preonath Dhur*(2), that it could not be reconciled with the Madras Cases relating to declaratory suits upon the question of the survival of the rights to sue, etc., on the ground that the claim there was to recover possession of property. *Rikhai Rai v. Sheo Pujan Singh*(3) was also distinguished on the ground that it was a suit for possession. We think that these cases are not in conflict with the Madras cases relied upon by the appellants on the ground of distinction given in *China Veerayya v. Lakshminarasamma*(1). In this connection, the respondents rely upon the observations in *Sakyahani Ingle Rao Sahib v. Bhavani Bozi Sahib*(4). There is no analogy between the case of widows and other qualified female holders entitled to present possession of property and the case of reversioners, presumptive or otherwise, whose rights are absolutely contingent. The vested right to the estate and possession in the case of the former renders it necessary and proper to invest them with the right to bind those who may come in succession to them by any adjudication duly made in litigation to which they were parties. Upon this basis the line of reasoning adopted in *Premmoyi Choudhrani v. Preonath Dhur*(2) appears to be entirely applicable here upon the question of the survival of the right to sue. Upon the second point also, viz., whether in the circumstances of this case, the plaintiffs Nos. 2 to 5 are the legal representatives of the deceased Peramma, that case as well as *Rikhai Rai v. Sheo Pujan Singh*(3) are fully in point. The widow sued in a representative capacity as representing the estate which would after her death go to the succeeding heirs and as found by both the lower Courts, the plaintiffs Nos. 2 to 5 are the persons on whom the estate has devolved on the death of Peramma. The plaintiffs Nos. 2 to 5 therefore fall within the terms of the definition of a legal representative contained in section 2 (11) of the present Civil Procedure Code.

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(1) (1914) I.L.R., 37 Mad., 408, s.c., 22 M.L.J., 375.

(2) (1896) I.L.R., 23 Calo., 686.

(3) (1911) I.L.R., 33 All., 15.

(4) (1904) I.L.R., 27 Mad., 588.

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In these circumstances therefore we hold that the right to sue in this case survived on the death of Peramma to the plaintiffs Nos. 2 to 5 as legal representatives and that the plaintiffs Nos. 2 to 5 were therefore rightly added as plaintiffs on the death of Peramma.

The second appeal is dismissed with costs.

[See *Venkatanarayana Pillai v. Subbammal*(1) as regards some of the observations in the above judgment as to continuing a suit for a declaration—Ed.]

N.R.

## APPELLATE CIVIL.

*Before Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.*

P. M. A. M. VELLAYAN CHETTY (APPELLANT IN APPEAL  
No. 235 OF 1911 ON THE HIGH COURT), PETITIONER,

v.

JOTHI MAHALINGA AIYAR (SECOND RESPONDENT),  
RESPONDENT.\*

ALAGIA SUNDARAM PILLAI AND TWO OTHERS (LEGAL  
REPRESENTATIVES OF THE DECEASED  
SECOND RESPONDENT), RESPONDENTS.†

ALAGIA SUNDARAM PILLAI (PROPOSED GUARDIAN OF THE  
MINOR LEGAL REPRESENTATIVES OF THE DECEASED  
SECOND RESPONDENT), RESPONDENT. ‡

ALAGIA SUNDARAM PILLAI AND TWO OTHERS (LEGAL  
REPRESENTATIVES OF THE DECEASED SECOND RESPONDENT  
AND ASSIGNEE—DECREE HOLDER), RESPONDENT. §

*Appeal, parties to an—Death of one of the respondents, decree passed in ignorance of Appellant not entitled to rehearing.*

The death of one of the defendants or respondents does not abate a suit or appeal.

*Duke v Davies* (1890) L.R., 2 B., 260, referred to.

An unsuccessful litigant has no right, therefore, to argue his case more than once merely on the ground that one of the other parties to the proceeding was dead at the time of the hearing.

(1) (1915) I.L.R., 38 Mad., 406 at pp. 412 and 413 (P.C.).

\* Civil Miscellaneous Petition No. 1792 of 1914.

† Do. No. 1793 of 1914.

‡ Do. No. 1794 of 1914.

§ Do. No. 1795 of 1914.