

APPELLATE CIVIL.

*Before Mr. Justice Wallace and Mr. Justice
Tiruvenkata Achariyar.*

1928,
March 19.

SUNDAYEE AMMAL (LEGAL REPRESENTATIVE OF APPELLANT IN
L.P.A. No. 292 OF 1926), PETITIONER,

v.

KRISHNAN CHETTI (RESPONDENT), RESPONDENT.*

*Letters Patent Appeal—Death of appellant—Appeal under
Letters Patent against an order in a matter in execution of
a decree—Right of legal representative to continue the
appeal.*

In a Letters Patent appeal against an order in execution of a decree of a Subordinate Court, the legal representative of the deceased appellant can be brought on record for proceeding with the appeal; the ruling in *Palaniappa Chettiar v. Valliammai Achi*, (1927) I.L.R., 50 Mad., 1, should not be extended to such a case.

PETITION praying to bring on record the legal representative of the deceased appellant in L.P.A. No. 292 of 1926, preferred against the order of the High Court in A.A. A.O. No. 3 of 1925.

This petition arises out of an application filed in the Original Court by the assignee from a decree-holder to be recognized as such and to be allowed to execute the decree. The Original Court dismissed the application. The applicant (assignee) appealed, and the lower Appellate Court dismissed the appeal as incompetent. He prepared a civil miscellaneous second appeal and succeeded. The respondent in the miscellaneous second appeal preferred an appeal under the Letters Patent, pending which she died, and her legal representative presented this petition to be brought on the record and to be allowed to continue the appeal.

* Civil Miscellaneous Petition No. 631 of 1927.

C. A. Seshagiri Sastri for petitioner.

Watrapp S. Subramania Ayyar for respondent.

SUNDAYEE
AMMAL
v.
KRISHNAN
CHETTI.

JUDGMENT.

WALLACE, J.—Respondent contends that, as this is an appeal in a matter in execution, the appeal became incompetent, when appellant died on 16th November 1926, and that the ruling of this Court in *Palaniappa Chettiar v. Valliammai Achi*(1), will preclude the maintainability of the appeal, and that the present petitioner's remedy is by way of a fresh execution petition. The ruling in *Palaniappa Chettiar v. Valliammai Achi*(1), did not relate to the case of an appeal against an order in execution, and there are obvious difficulties, e.g., questions of limitation, the maintainability of successive applications, etc., which will arise if the ruling is applied to cases of appeal.

WALLACE, J.

We are not prepared to extend the application of the ruling to the present case and see no reason why the ordinary procedure relating to appeals when an appellant dies should not apply.

We reject the objection. The trial Court has held that petitioner is the legal representative of the deceased appellant. We allow the petition.

K.R

(1) (1927) I.L.R., 50 Mad., 1.
