

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Devadoss.

V. ACHUTAN NAIR AND ANOTHER (DEFENDANTS 7 AND 8),
APPELLANTS,

1928,
January 5.

v.

MANAVIKRAMAN *alias* KUNHATTAN RAJA AND:
ANOTHER (1ST PLAINTIFF AND L.R. OF PLAINTIFF 2),
RESPONDENTS.*

Civil Procedure Code (V of 1908), O. XXII—Legal representatives of a deceased defendant or respondent, already on record—Application within three months to bring on legal representatives, whether necessary—Procedure—Abatement—Limitation.

When the legal representatives of a deceased defendant or respondent are already on the record, an application to bring on the legal representatives within three months is not necessary: It is enough if the plaintiff or the appellant, at some time or other before the hearing of the suit or appeal, states the fact and gets it noted on the record.

APPEAL against the order of the Subordinate Judge of Calicut in Appeal Suit No. 143 of 1927 preferred against the order in O.S. No. 496 of 1923 on the file of the Court of the Additional District Munsif of Calicut.

The material facts appear from the judgment.

P. R. Ramakrishna Aiyar and *P. R. Vasudeva Aiyar* for appellant.

P. S. Narayanaswami Aiyar and *P. K. Manavikraman Raja* for respondent.

JUDGMENT.

We do not think that, when the legal representatives for a deceased defendant or respondent are on record,

* Appeal against Order No. 345 of 1927.

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an application to bring on the legal representatives within three months is necessary. It is enough if the plaintiff or appellant at some time or other before the hearing of the suit or appeal states the fact and gets it noted on the record. The decision in *Shankar Bai v. Motilal*(1) on this matter was not necessary for the case. Anyhow we do not agree with it. The decision in *Gurditta Mal v. Muhammad Khan*(2) has been dissented from by the Lahore High Court itself in *Gopal Das v. Mulchand*(3). See also *Maung Po v. Ma Shwe Ma*(4) and the decision of JACKSON, J., in C.R.P. No. 527 of 1927, with which we agree.

The result is there was no abatement of the suit even as regards first defendant. When the District Munsif stated in his order, dated 8th August 1925, that the abatement as regards first defendant will stand, but the suit will proceed against the rest; it was an ambiguous order. One is apt to construe it as an order that there is no abatement against defendants 2 to 25 which is the necessary legal result if they are the legal representatives of the first defendant and if the suit abated against first defendant. The District Munsif made this clear when he passed the order of the 23rd October and this has been appealed against. There is then no substance in the argument that the order of the 8th August ought to have been appealed against and has become final.

We think the Subordinate Judge is right, and dismiss the appeal with costs.

K.R.

(1) (1925) A.I.R. (Bom.), 122 at 123.

(2) (1925) 90 I.C., 41.

(3) (1926) I.L.R., 7 Lah., 399.

(4) (1924) I.L.R., 2 Rang., 445.