

## APPELLATE CIVIL.

*Before Mr. Justice Wallace and Mr. Justice  
Pakenham Walsh.*

MANIKKA S. BALARAMIER (PETITIONER IN  
C.M.P. Nos. 763 AND 764 OF 1928 AND IN C.R.P.  
No. 801 OF 1926), PETITIONER,

1929,  
July 17.

---

v.

VASUDEVAN AND OTHERS (RESPONDENTS) (LEGAL  
REPRESENTATIVES OF RESPONDENT IN C.R.P. No. 801  
OF 1926), RESPONDENTS.\*

*Civil Procedure Code (Act V of 1908), O. XXII, r. 6—Death of respondent before hearing of a civil revision petition—Legal representatives not brought on record—Case heard and judgment pronounced after death of respondent—Judgment, validity of—Right of petitioner to apply to bring on legal representatives and retain the judgment—Right to bring legal representatives within three months of the death, and have case re-argued.*

Where, after the death of the respondent in a civil revision petition in the High Court and without his legal representatives on the record, the case came on for hearing, arguments heard on both sides and judgment was pronounced in favour of the petitioner, the judgment had no validity in law; the petitioner was entitled to apply, within three months of the respondents' death, to bring his legal representatives on the record and to have the case re-argued, but he was not entitled to have the former judgment retained without a re-hearing by merely adding the legal representatives on the record.

PETITIONS (Civil Miscellaneous Petitions Nos. 763 and 764 of 1928) filed in Civil Revision Petition No. 801 of 1920, in the High Court, to bring the legal representatives of the deceased respondent on the record, and to have the civil revision petition re-argued or to have the

---

\* C.M.P. No. 763 of 1928 and C.M.P. No. 764 of 1928.

BALARAMIER  
v.  
VASUDEVAN. judgment in the case retained after entering the names of the legal representatives in the record.

The material facts appear from the judgment.

*V. Sundaram Ayyar* for petitioner.

*S. Rangaswami* for respondents.

### JUDGMENT.

WALLACE, J. WALLACE, J.—(The judgment was written by WALLACE, J., and pronounced by PAKENHAM WALSH, J., on behalf of the Bench.)

We are concerned with two petitions, C.M.Ps. Nos. 763 and 764 of 1928, both arising out of the hearing by this Court of C.R.P. No. 801 of 1926. That petition was heard by Mr. Justice DEVADOSS and Judgment was pronounced on 6th December 1927. It has subsequently come to light that the respondent in the civil revision petition died on 26th November 1927, a few days before the judgment was pronounced. The formal order of this Court on the civil revision petition shows respondent's name. The petitioner before us, on 2nd February 1928, within 3 months of the death of the respondent, has put in the present two petitions, No. 764, to bring on the legal representatives of the deceased in the civil revision petition, and No. 763, to have the civil revision petition re-heard. He contends, however, that the latter petition is unnecessary and that he is entitled to have the legal representatives brought on and the Judgment of Mr. Justice DEVADOSS to stand against them. His main contention is that when a party to a legal action has died and the legal representatives have been brought on in time so that the action does not abate, the bringing on of the legal representatives validates all proceedings in the action up to the date of their being brought on, which have taken place since the death of the party. This involves the

proposition that proceedings, to which the legal representatives are not parties and to which no representative of theirs was a party, will nevertheless bind them. It is argued that that is not improper or illegal, because the case of the respondent in the civil revision petition, though he was dead, was fully argued by his learned Advocate, and therefore the case of the legal representatives has not suffered. But that is to bind the legal representatives by the case of the respondent and it cannot be argued that that cannot in law ever prejudice them. .

BALARAMIER  
v.  
VASUDEVAN.  
WALLACE, J.

The point is practically *res integra*, but I consider that the true view must be that a legal action, on the death of a party to it, passes into a state of suspense, which itself, if the legal representative is not brought on record within time, passes into a state of abatement, and that while the action is in a state of suspense, no valid act, which is not purely formal or processual, but involves a decision on the merits of any part of the action, can be done by the Court. A simple but not exhaustive test would be: would the order by which it is sought to bind the legal representative be of the nature of a *res judicata*? I do not think that the rulings cited before us are of much assistance. So far as the intention of the legislature may be gathered, rule 6 of Order XXII is an indication that it did not intend to apply the principle contended for by petitioner beyond the restricted operation of that rule. It is easy to foresee that the adoption or the rejection of petitioner's principle will alike give rise to difficulties. These will have to be dealt with as they arise. In the present case I consider that the proper order to pass is to hold that the civil revision petition has been in suspense since the date of the respondent's death, to bring on the legal representatives in it now and to have the

BALARAMIER  
 v.  
 VASUDEVAN.  
 WALLACE, J. civil revision petition re-heard, since the order pronounced in it by Mr. Justice DEVADOSS has now no validity in law. I would grant both petitions, and post the civil revision petition for fresh hearing and direct each party to bear his own costs in these petitions.

PAKENHAM WALSH, J.—I agree.

K.R.

---

## APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.*

1928,  
 July 24.

PARINAM RAMA RAO AND ANOTHER (RESPONDENTS),  
 APPELLANTS,

v.

PARINAM KRISTNAMMA (PETITIONER), RESPONDENT.\*

*Married Women's Property Act (III of 1874), sec. 6—Amending Act (XIII of 1923), sec. 2—Applicability of sec. 6 to policies effected by Hindus in Madras before 31st December 1913—Effect of sec. 2 of Act XIII of 1923.*

Section 2 of Act XIII of 1923, which declares that section 6 of the Married Women's Property Act, 1874, shall apply to any policy effected by any Hindu in Madras after the 31st December 1913, does not take away the applicability of that section to similar policies effected before that date, as held by the Full Bench in *Balambal v. Krishnayya*, (1914) I.L.R., 37 Mad., 483.

APPEAL against the order of the District Court of Ganjām in Original Petition No. 45 of 1926.

This appeal arises out of an application for letters of administration made by the widow of one P. Subba Rao in respect of a policy of life insurance effected by him

---

\* Civil Miscellaneous Appeal No. 333 of 1927.