APPELLATE CIVIL.

Before Mr. Justice Waller and Mr. Justice Krishnan Pandalai.

1930, March 6.

VELLAPALLI SEKHARA MENON (SIXTH RESPONDENT), PETITIONER,

v.

NARAYANAN *alias* PARAMESWARAN NAMBUDRI AND OTHERS (APPELLANTS AND RESPONDENTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XXII, rr. 3 and 10—Appeal in a suit for redemption by one of several trustees of a devaswom impleading other trustees and mortgagees as respondents—Death of a trustee, who was respondent, before judgment—Judgment passed without bringing legal representative of deceased trustee—Abatement of appeal—Judgment, if valid.

Where, during the pendency of an appeal in a suit for redemption, by a trustee of a devaswom impleading the other trustees as well as the mortgagees as respondents, one of the trustees, who was a respondent, died and his legal representative, the succeeding trustee in his place, was not brought on the record, and judgment was passed in the appeal in favour of the devaswom, and a member of the mortgagee's family, who was a respondent, applied to set aside the judgment as invalid, on the ground that the appeal had abated as the legal representative of one of the trustees of the devaswom was not on the record of the appeal;

Held, that the appeal had not abated; that the devaswom was sufficiently represented in the appeal even after the death of the trustee; and that the judgment was binding on both the parties.

PETITION filed in the High Court to set aside the judgment and decree in Letters Patent Appeal No. 71 of 1924 and to dismiss the said appeal as having abated.

* Civil Miscellaneous Petition No. 1622 of 1929.

P. Govinda Menon for petitioner.

T. R. Ramachandra Ayyar for respondents.

JUDGMENT.

This is a petition for review of judgment in a Letters Patent Appeal based on an alleged defect of procedure which occurred during the pendency of the appeal, which, it is said, invalidates the judgment.

The suit was brought in 1919 to redeem a kanom on behalf of a Malabar devaswom by one out of the four Uralans, the other three being joined as twenty-fourth to twenty-sixth defendants. The other defendants were members of the tenant's tarwad of which the first defendant was the karnavan. The District Munsif gave a decree as prayed. The District Judge on appeal and PHILLIPS J. on second appeal, held that the suit was barred by Order IX, rule 9, by reason of the dismissal of a former suit brought for the same relief and dismissed the suit. The plaintiff preferred a Letters Patent Appeal under clause (15) of the Letters Patent and on 7th December 1928 a Bench of this Court consisting of DEVADOSS and WALLER JJ. set aside the judgments of the first and second Appellate Courts and remanded the appeal to the District Judge to hear and determine it on the merits. We were informed at the hearing of this application that the District Judge has since heard the appeal and confirmed the decree awarded to the plaintiff by the District Munsif.

The petitioner is the sixth respondent in the Letters Patent Appeal, a junior member of the tenant's tarwad. He now objects that, on 21st May 1928, i.e. more than six months before the judgment, the third respondent (twenty-fourth defendant) had died, that the petitioner knew this only on January 28 (1929), that as the appellant took no steps to bring on record the legal

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representative of the deceased third respondent, one of the four Uralans, without whom the appeal could not proceed, the appeal abated or became incompetent before the judgment, and that, therefore, the judgment in the appeal reversing the decisions of the lower Appellate Courts was wrong.

The petitioner's Advocate argues that, as it is necessary in every suit brought on behalf of a devaswom to have all the Uralans as parties either as plaintiffs or as defendants, it follows that, on the death of one of them in a pending suit to which they have all been made parties, a necessary party is eliminated, and that, unless the legal representative of the deceased who was the next Uralan is added within the time allowed, the suit or appeal abates and its continuance becomes incompetent for want of necessary parties, that, thereafter, subject to the abatement being set aside, the only legal order possible is one of dismissal, and that, if a judgment on the merits is passed in ignorance of the death, such judgment is one of no effect or validity. When the judgment was pronounced, no one was aware that the respondent had died. The question, in such circumstances, is not whether in the first instance all the Uralans or trustees should have been impleaded which had been done—but whether the death or removal of one of several trustees or Uralans who had been impleaded, *ipso facto*, makes the further progress and decision on the merits of the suit or appeal illegal till his successor has been impleaded. It is material that the objection is raised not by the devaswom or on its behalf by the Uralans but by its opponent who has been defeated on the merits.

No decision exactly applicable was cited. But reliance was placed on an unreported decision of

DEVADOSS J. in *Manikkal Sankaran* v. *Rama Variar*(1). In that case, the death of one of the Uralans being known before judgment, an application to set aside the abatement and bring in the new Uralan had been made but, however, was refused. Thereupon, the learned Judge, while also basing his judgment on the merits, held that the appeal could not proceed in the absence of all the Uralans. Whether that opinion was right or not, that is not the case here.

Similarly the case in *Arayil Kali Amma* v. *Sankaran Nambudripad*(2), was one in which the death of the co-Uralan was known before the judgment and apparently there was no petition to set aside the abatement or bring in his successor. The decisions in *Shanmuga Moopanar* v. *Subbayya Moopanar*(3) and *Kannan Kutty* v. *Velu*(4) are of no assistance to the petitioner.

There is authority for the proposition that, in order that a decree may bind a devaswom, it is not necessary to have all the trustees or Uralans as parties, provided that the litigation was conducted *bona fide* in the interests of the devasthanam by those Uralans who were parties; *Madhav* v. *Keshavan*(5). The ground of this was explained and approved in *Rangamma* v. *Narasimhacharyulu*(6). The principle governing the representation in suits of mutts, temples, etc., by Dharmakartas, Uralans or Matathipathis is illustrated by other decisions of this Court. In *Ratnam Pillai* v. *Annamalai Desikar*(7), Nataraja Desikar, who had no rights to a mutt, brought a suit on its behalf purporting to do so as head of the mutt. Pending the suit he was declared by the Privy Council not entitled to the headship. On the death of Nataraja Desikar, the person declared to be

(1) S.A. No. 292 of 1921.
(2) (1910) I.L.R., 34 Mad., 292.
(3) (1921) 42 M.L.J., 133.
(4) (1923) 46 M.L.J., 122.
(5) (1887) I.L.R., 11 Mad., 191.
(6) (1916) 31 M.L.J., 26, 30.
(7) (1923) 46 M.L.J., 341.

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the rightful head applied to be impleaded and it was held that the case really fell under Order XXII, rule 10, though the rule quoted was Order XXII, rule 3, and that the applicant should be allowed to continue the suit. The principle is that on the death or removal of an Uralan impleaded as such in a suit, what takes place is devolution of the office and the person entitled to be impleaded in the suit is the successor to the office. This is not affected by the fact that the office is hereditary or belongs to a tarwad, which merely means that the office-holder must be sought among the heirs or in the tarwad of the deceased. That this is the correct view was indicated in *Sivakasi Viswanathaswami Devasthanam* v. *Koodalinga Nadan*(1). There one of two trustees who were parties to an appeal on behalf of a devasthanam had died and the other had resigned and his resignation had been accepted and two other persons had been appointed trustees by the Temple Committee but had not taken charge of their office. In this state of affairs, the appeal was heard and decided without bringing on record the new trustees. The contention raised in the High Court by the new trustees, that the decision in the lower Appellate Court was incompetent, was negatived on the ground that the new trustees had not taken charge of their office on the date of the judgment in the Court below. But SRINIVASA AYYANGAR J. also said that the case fell really under Order XXII rule 10 and that the policy of the Code is that, if the proceeding originally instituted is right and proper, any decision obtained therein is binding on all persons on whom the interest or right may devolve under that rule pending the disposal of the proceeding. Similarly in *Ittuman Panikkar* v. *Narayana Bharatikal*(2), which

(1) (1927) M.W.N., 743.

(2) (1928) M.W.N., 746.

was a case of a mutt, it was held that a trustee, who files an action which is properly framed and constituted at the time of its institution, does not cease to be entitled to maintain and continue the suit merely because of his removal from office during the pendency of the suit. It was pointed out that the expression "by leave of the Court," in Order XXII, rule 10, indicates that it was optional on the part of the assignee to apply and it is also in the discretion of the Court to allow him to do so or not. If this is so in the case of a plaintiff Uralan, it is *a fortiori* so in the case of a *pro forma* defendant like the deceased third respondent, who by his written statement merely supported the plaintiff's claim and whose death at the time of the judgment was not known to any one.

In this view, the petition so far as it is based on the idea that there was any abatement in the proper sense of the term is misconceived.

In addition, we are satisfied that the devaswom was substantially and sufficiently represented in this Letters Patent Appeal even after the death of the third respondent, and that the decision given after contest between the devaswom and the petitioner's tarwad is binding upon both and is not liable to be questioned for failure to implead the successor of the third respondent.

The petition is dismissed with costs.

K.R.