

confined to the actual facts of the case. We are of opinion that section 145 applies and an order for execution against the surety may be made. In *Ko Maung Gyi and others v. Daw Tok*(1) there was no suit or proceeding consequent on the suit.

SANKARA
MAHADEVA
SETTY
v.
SANVASAYYA,
RAMESAM J.

We reverse the order of the Court below and remand the matter for fresh disposal according to law. The appellant will have costs of this appeal. Costs in the Court below will abide the result.

G.R.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice Bardswell.*

APPAJI REDDIAR (RESPONDENT), APPELLANT,

v.

THAILAMMAL (PETITIONER), RESPONDENT.*

1933,
January 24.

Letters Patent (Madras), cl. 15—Judgment—Appeal—Appellant deceased in—Legal representative of—Order directing respondent to be brought on record as—Not a judgment and not an appealable order.

An order directing the respondent in an appeal to be brought on the record as the legal representative of the deceased original appellant is not an appealable order, because it is not a judgment which finally settles the rights of parties but has the effect of allowing litigation which is proceeding to further proceed to a final adjudication.

LETTERS PATENT APPEAL preferred to the High Court under clause 15 of the Letters Patent against the order of JACKSON J., dated 28th November 1929 and made in Civil Miscellaneous Petition No. 5009 of 1928 in Appeal

(1) (1928) I.L.R. 6 Rang. 474.

* Letters Patent Appeal No. 4 of 1930.

APPALI
v.
THAILAMMAL. No. 299 of 1927 (Original Suit No. 18 of 1925, Sub-Court, Cuddalore).

N. S. Srinivasa Ayyar for appellant.

K. Bhashyam Ayyangar and *T. R. Srinivasan* for respondent.

JUDGMENT.

BEASLEY C.J. BEASLEY C.J.—This is a letters patent appeal from an order of JACKSON J. The question raised here is whether that order which was one ordering the respondent in this appeal to be brought on the record as the legal representative of the deceased original appellant is an appealable order or not. In my view, it is not. Applying the test applied by WHITE C.J. in *Tuljaram Row v. Alagappa Chettiar*(1) this is certainly not an appealable order. That test has so often been referred to and I do not propose to restate it here. I may however summarise my reasons for saying that this is an order which is not appealable. An order to be appealable must of course be a judgment within the meaning of clause 15 of the Letters Patent. In my view, this is not a judgment which finally settles the rights of parties but has the effect of allowing litigation which is proceeding to further proceed to a final adjudication. The facts of the case here are that the deceased original appellant filed this appeal and whilst it was pending died. Then an application was made to bring on record the respondent as her legal representative. The question as to whether or not the respondent was the legal representative of the deceased original appellant depended upon the genuineness or otherwise of a will. That was a matter which came before our learned brother. He first of all considered whether the will was

(1) (1910) I.L.R. 35 Mad. 1.

a genuine one or not and, having found that it was genuine, he brought upon the record the respondent, the person who by the will was established to be the legal representative of the deceased original appellant. What was the effect of the order? Upon the death of the original appellant the appeal would have abated if within the period allowed for doing so no legal representative of the deceased original appellant had been brought on the record. The result would have been that if no application had been made the appeal would have abated and the judgment of the lower Court would have stood in favour of the appellant here. The effect of the order made by our learned brother is that the final adjudication upon this matter is not stopped by the death of the deceased original appellant. On the contrary the order makes it possible for an adjudication upon the matter under the appeal. I am clearly of the opinion that the cases quoted on behalf of the appellant here, namely, *Kyroon Bee v. Administrator-General of Madras*(1) and *Sarat Chandra Sarkar v. Maihar Stone and Lime Co., Ltd.*(2), are of no application here at all. Those cases dealt with the position of suits which had already abated and the question was whether an order setting aside the abatement was an order which was appealable or not. The reason for deciding that the order was appealable was because by reason of the abatement of the appeal the respondent had acquired a valuable right and that the order setting aside the abatement had the effect of depriving the respondent of that valuable right. Hence it was held that there should be an appeal from such an order. That is not this case at all. For the reasons I have given, in my view, the preliminary objection taken by Mr. K. Bashyam

APPAJI
v.
THAILAMMAL.
BEASLEY C.J.

(1) (1915) 2 L.W. 948.

(2) (1921) I.L.R. 49 Calc. 62.

APPABI is a sound one and I must hold that there is no appeal
v.
 THAILAMMAL from such an order as in this case.

This letters patent appeal must, therefore, be dismissed with costs.

BARDSWELL J.—I agree.

A.S.V.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
 Mr. Justice Bardswell.*

MODALI ADEMMA (PETITIONER), PETITIONER,

2.

LANKA VENKATA SUBBAYYA AND ANOTHER (RESPONDENTS
 2 AND 3), RESPONDENTS.*

*Decree—Transmission for execution—Jurisdiction of transferee
 Court to entertain application for execution—Receipt of
 copy of decree by it not a condition of.*

The transfer of a decree to another Court for execution dates from the date when the order of transfer is made, and, when once the order of transfer is made, the Court to which the decree is transferred has jurisdiction to entertain applications for execution even though a copy of the decree has not been received by it.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the order of the Court of the District Munsif of Markapur, dated 30th October 1928, in Execution Petition No. 267 of 1928, in Small Cause Suit No. 326 of 1916 on the file of the Court of the District Munsif of Kanigiri.

Kasturi Seshagiri Rao for petitioner.

L. S. Veeraraghava Ayyar and *M. V. Venkatesan* for respondents.

* Civil Revision Petition No. 734 of 1929.