

2015-5-L.W. 885

**IN THE HIGH COURT OF
JUDICATURE AT MADRAS**

11.12.2015/ M.P.No.1 of 2015 in
S.A.Sr.No.41479 of 2015

S.Nagamuthu, J.

Amsavalli (Died) and others
..Petitioners / Appellants
- Vs -

Sarangabani ..Respondents
Prayer:- It is prayed that this Court may be pleased to (A) accept the cause title as shown in above second appeal S.A.S.R.No.41479 of 2015 and (B) pass an order of injunction restraining the respondent, his men, agents or any person claiming under him from putting up any construction in the property described as 'B' schedule hereunder, being the subject matter of suit in O.S.No.270 of 2008, on the file of the Principal District Munsif Court, Mayiladuthurai pending disposal of the above second appeal.

Practice/To accept cause title, death of appellant in second appeal, petition whether needed, when,

C.P.C., Order 22, death of party, to accept cause title, second appeal stage, need for, section 153, court's power to amend cause title, scope of.

Petition filed by legal representatives of deceased second appellant requesting court to accept Cause Title as shown in appeal memorandum — Insistence by Registry of such petition whether proper.

Death of a party during pendency of appeal, death of one of the parties after passing of decree before presentation of appeal, how to be dealt with.

Death of a person after passing of decree, before presentation of appeal, appellant to file application to amend cause title —

If there is a delay, application to be filed for court to condone it.

held: right of appeal, created by statute, no permission required to file appeal, to accept cause title by LR's of deceased, but make a statement in appeal memorandum as to how they are legal representatives of deceased — Procedure followed by this court to accept Cause Title not correct.

Legal heirship certificate not to be insisted by Registry — Appeal against a dead person, who died after judgment before appeal presented order 22 not applicable.

If a party to a decree died before presentation of appeal or if party died after decree but before filing appeal, appeal can be filed against legal representatives without any petition to accept cause title — various other situations noted — See para 26.

The petitioners herein are the children of Mrs.Amsavalli and thus, they are her legal representatives Mrs.Amsavalli died on 01.05.2015. They have filed a second appeal before this Court challenging the decree and judgment of the Courts below. The said second appeal is yet to be numbered and the same is pending in S.A.Sr.No.41479 of 2015. Along with the said second appeal, the petitioners have filed a miscellaneous petition in M.P.No.1 of 2015 requesting this Court to accept the cause title as shown in the appeal memorandum. Para 2

Admittedly, so far as this Court is concerned, it is a long standing practice of the Registry to insist for such a petition from the legal representatives of the deceased, be it the legal representatives of the appellant or the respondent, to make such an application with a request to accept the cause title so as to include the names of the legal representatives of the deceased party as parties to the appeal. Para 4

Issues involve two types of situations. The first one is the death of a party during the pendency of a civil appeal either first appeal or second appeal. The second situation is when one of the parties to the decree of the lower Court dies after the passing of the decree and before the presentation of the appeal before the appellate Court. Para 7

There is no specific provision anywhere in the Code, like Order 22 C.P.C., to deal with the cases where a party to the decree dies after passing of the decree and before the presentation of the appeal before the appellate Court. However, the right of appeal being a statutory creation, it does not require either permission or leave to appeal against the same by the legal representatives of the judgment debtor. Para 9

From these judgments, it is crystal clear that in the event the respondent against whom the appeal is preferred had died after the passing of the decree by the lower Court, but before the date of presentation of the appeal and if the appeal is presented against him without knowing that he is dead, the proper procedure is to allow the appellant to make an application to simply amend the cause title so as to include the legal representatives of the deceased respondent also as respondents in the appeal memorandum. If, on the date of such application, the limitation for presentation of the appeal itself had expired, then, an application seeking to condone the delay should also be filed. Therefore, the Court may have to condone the delay in filing the appeal and also allow the appellant to amend the cause title so as to include the legal representatives of the deceased respondent against whom the appeal was wrongly presented. If the death of the party against whom appeal is to be preferred is already known to the appellant, the appellant may present the appeal against the legal representatives of the deceased straightaway, in which case, no petition whatsoever is required (For clarity, see para 21 of this order). Para 13

Since the right of appeal is a creation of the Statute, no permission or leave is required

from the Court to file appeal by or against the legal representatives of the deceased. Therefore, without there being any necessity for filing any petition, either to accept the cause title as it is in practice in this Court or an interlocutory application to recognize the legal representatives of the deceased as it is in practice in some of the Subordinate Courts, the appeal can be straightaway filed by the legal representatives of the deceased who was a party to the decree under challenge. Para 15

Thus the decision of the Division Bench of this Court in Ramanada Sastri case has been followed by many other High Courts, thereby making it clear that if an appeal has to be filed by the legal representatives of a party to the decree of the lower court, who dies after the date subsequent to the passing of the decree, the legal representatives can straightaway file an appeal without any petition either to accept the cause title or to recognize them as the legal representatives of the deceased. However, they have to make a statement in the appeal memorandum as to how they are the legal representatives of the deceased. Though that is suffice for the Court to entertain the appeal, if there is any dispute in respect of the correctness of the said claim made, it can be raised during the hearing of the appeal and the said issue may be decided after hearing both the parties later on. Para 20

Similarly, if a party to the decree of the lower Court dies after the passing of the decree and in the event the adverse party knows about it, he can straightaway file an appeal against the legal representatives of the deceased without there being necessity for filing any petition to accept the cause title or to recognize the legal representatives of the deceased. It is enough for the appellant to make a statement in the appeal memorandum itself and also to file an affidavit making a statement that the party against whom the appeal is now filed are the right legal representatives of the deceased. Para 21

Thus, from the judgments referred to above, more particularly the Division Bench judgment of this Court in Ramanada Sastri case (cited supra), the procedure being

followed in this Court to accept the cause title is not the correct procedure as the legal representatives of the deceased have a right of appeal straightaway. Para 22

It was also submitted by some of the learned counsel that the Registry is insisting upon the legal heirship certificate from the jurisdictional Tahsildar in order to entertain an appeal or petition at the instance of or against the legal representatives of the deceased. In my considered view, legal heirship certificate need not be insisted upon invariably in all cases, because, the legal representatives, as defined in sub-section (11) of Section 2 of C.P.C. need not necessarily be the legal heirs of the deceased party. Insisting for legal heirship certificate may cause unnecessary hardship to the party who intends to prefer an appeal because obtaining such legal heirship certificate from the Tahsildar may cause enormous delay and at times, the Tahsildar may even decline to issue such a certificate. If such a legal heir certificate is available at the hands of the party, very well, he can produce it and if such a certificate is not readily available, as has been concluded already, he may file an affidavit that the persons concerned are the legal representatives of the deceased and by describing as to how they are the legal representatives. Para 24

To sum up:-

- (i) In respect of an appeal presented against a dead person who died after the judgment of the lower Court and before the appeal is presented, Order XXII of C.P.C. is not applicable.
- (ii) (a) If an appeal is presented against a person who is dead on the date of presentation, without knowing that the said person has already died after the judgment of the lower Court, the Court may under Section 153 of the C.P.C. permit the appellant to amend the cause title or may return the appeal memorandum for amendment and for re-presentation.
- (b) On the date when such an application under Section 153 of C.P.C. is filed for

amending the cause title, if the period of limitation for appeal had already expired, the appellant shall file an application under Section 5 of the Limitation Act, seeking to condone the said delay.

(c) If the delay is condoned, then the petition to amend the cause title of the appeal memorandum may be allowed.

(d) On the date when such an application under Section 153 C.P.C. is filed for amending the cause title if the period of limitation for the appeal has not expired, then the said application may be allowed and accordingly the cause title may be amended thereby including the legal representatives of the deceased as parties to the appeal.

(iii) If a party to the decree had died before the presentation of the appeal and the same is known to the appellant, he can straightaway file the appeal against the legal representatives of the deceased without any petition such as a petition to accept the cause title or a petition to recognize the legal representatives.

(iv) If a party to the decree had died after the passing of the decree and before filing of the appeal, the legal representatives of the deceased may file an appeal straightaway without any petition such as a petition to accept the cause title or a petition to recognize him as the legal representative of the deceased.

(v) The procedure herein above stated shall also be applicable to a case where a party dies after the final conclusion of the hearing and before the pronouncement of the judgment by the lower Court.

(vi) While presenting an appeal by or against the legal representatives of the deceased, the appeal memorandum shall contain a statement that the said parties are the legal representatives of the deceased and shall also file an affidavit describing as to how they are the legal representatives.

(vii) The above procedure shall be uniformly followed by all the Courts in the State of Tamil Nadu and the Union Territory of Puducherry. Para 26

In the instant case, Mrs.Amsavalli died after the judgment of lower Court, but before the date of presentation of appeal by the appellants. The appeal is on time. There is also no dispute that they are the legal representatives of the deceased Mrs.Amsavalli. So, the appellants have right to present the appeal straightaway and thus, M.P.No.1 of 2015 in S.A.Sr.No.41479 of 2015 is not maintainable. Hence, M.P.No.1 of 2015 in S.A.Sr.No.41479 deserves to be dismissed. Para 27

Adusumili Gopalakrishnayya and another v. Adivi Lakshmana Rao (1926) 23 L.W. 418 = AIR 1925 Madras 1210;

Union of India and another v. K.Abborvam (Deceased) and 15 others 1995 (II) CTC 329;

Mohamed Ibrahim and others v. Chellammal reported in 1991-1-L.W. 256;

Ramananda Sastri Vs. Minachi Ammal, (1881) 3 Mad 236;

Risal Singh and another Vs. Chandgi and others AIR 1939 Lahore 34;

Mela Ram and others Vs. Amar Nath and others AIR 1954 HP 65; and

Murari Lal Vs. Srimathi Gurdei and others 1971 ALL LJ 1121; — **Referred to.**

Registry directed to number appeal.

For Petitioner: Mr.S.Sounthar

For Registrar General, Madras High Court.:
Mr.R.Muthukumaraswamy Senior
Advocate/Standing Counsel

Amicus Curiae: Mr.N.Anand Venkatesh

ORDER

The suit in O.S.No.270 of 2008 on the file of the learned Principal District Munsif, Mayiladuthurai, was filed by one Mrs.Amsavalli for recovery of possession of the suit property from the respondent herein. The trial Court, by decree and judgment dated 27.02.2014, dismissed the suit. As against the same, Mrs.Amsavalli, the sole plaintiff, filed an appeal in A.S.No.35 of 2014 before the learned Principal Subordinate Judge,

Mayiladuthurai. By decree and judgment dated 27.01.2015, the first appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court.

2. Subsequently, Mrs.Amsavalli died on 01.05.2015. The petitioners herein are the children of Mrs.Amsavalli and thus, they are her legal representatives. They have filed a second appeal before this Court challenging the decree and judgment of the Courts below. The said second appeal is yet to be numbered and the same is pending in S.A.Sr.No.41479 of 2015. Along with the said second appeal, the petitioners have filed a miscellaneous petition in M.P.No.1 of 2015 requesting this Court to accept the cause title as shown in the appeal memorandum.

3. When the said miscellaneous petition came up for hearing, a doubt arose in the mind of this Court as to how such a petition is maintainable and what is the legal necessity for such a petition? The learned counsel, present in Court, expressed divergent views in respect of the maintainability of such a petition. There is also no uniformity of procedure being followed in various Courts throughout the State in the Subordinate Judiciary as well as in this Court.

4. Admittedly, so far as this Court is concerned, it is a long standing practice of the Registry to insist for such a petition from the legal representatives of the deceased, be it the legal representatives of the appellant or the respondent, to make such an application with a request to accept the cause title so as to include the names of the legal representatives of the deceased party as parties to the appeal.

5. In some of the District Courts in this State, the procedure adopted is for the appellant to file an interlocutory application first requesting to recognize the legal representatives of the deceased. After hearing both sides on notice, if the petition

is allowed, then the appeal is entertained. Thus, the said order is treated as a judicial order. It is also brought to my notice that in some other districts, the practice is that the appellants may straightaway file the appeal making a statement as to who are all impleaded as the legal representatives of the deceased party who died subsequent to the judgment of the lower Court and such appeal is entertained without insisting for any petition like a petition seeking an order to accept the cause title as it is done in the High Court or by filing an interlocutory application to recognize the petitioners as the legal representatives of the deceased party. Thus, it is quite clear that there is no uniformity of procedure being followed amongst the Courts in the State of Tamil Nadu.

6. In view of the divergent views expressed and since there is no uniformity, I felt that it is necessary to examine the correctness of the procedure being followed by this Court and elsewhere in the other Courts in the subordinate judiciary. Considering the importance of the issue, this Court directed the Registrar (Judicial) of the Madras High Court to make his submissions through the standing counsel for the High Court. Accordingly, Mr.R.Muthukumarasamy, the learned Senior Counsel appeared for the Registry of the High Court. This Court also invited the Bar members to express their views and to make their submissions. Accordingly, a number of counsel took pains to make their submissions on this issue. Mr.Anand Venkatesh, the learned counsel, acting as Amicus Curiae of this Court, made elaborate submissions. Though the counsel appearing for the petitioner(s) in similar petitions pending before this Court also made submissions, I have taken up this case as the lead case, to decide the issue so that the decision in this case could be followed in the other petitions which were also heard together today.

7. Let us now go into the issues. These issues involve two types of situations. The first one is the death of a party during the pendency of a civil appeal either first appeal or second appeal. The second situation is when one of the parties to the decree of the lower Court dies after the passing of the decree and before the presentation of the appeal before the appellate Court.

8. So far as the first kind of cases are concerned, viz., if a party to the proceedings, including an appeal, dies during the pendency of the proceedings, admittedly Order 22 of the Code of Civil Procedure (C.P.C.) is applicable. For our present discussion, we are not concerned with such kind of cases.

9. The second kind of cases (about which we are now concerned) are all cases where a party to the decree dies after the passing of the decree by the lower Court. Undoubtedly, as has been repeatedly held by various Courts including this Court, Order 22 of C.P.C. is not applicable because Order 22 is all about abetment of the suit or appeal and the procedure to be followed for bringing on record the legal representatives. There is no specific provision anywhere in the Code, like Order 22 C.P.C., to deal with the cases where a party to the decree dies after passing of the decree and before the presentation of the appeal before the appellate Court. However, the right of appeal being a statutory creation, it does not require either permission or leave to appeal against the same by the legal representatives of the judgment debtor. Therefore, the question is as to why a petition should be filed before this Court requesting the Court to accept the cause title.

10. In this regard, let us have a survey of the judgments from various Courts. The earliest judgment on this issue is from a Full Bench of this Court in *Adusumili*

Gopalakrishnayya and another v. Adivi Lakshmana Rao reported in AIR 1925 Madras 1210 : 1926 XXIII L.W. 418. That was a case where the appeal was presented against a person (Respondent) who was dead on the date of presentation of the appeal before the appellate Court without knowing the fact that the respondent had passed away already after the passing of the decree. The question before the Full Bench was whether the appeal memorandum should be returned for amendment for re-presentation or to permit the appellant to amend the cause title under Section 153 of C.P.C. Before the Full Bench, a Division Bench judgment of this Court in *Govinda Kaviraj Purohita v. Gauranga Saw* reported in 18 L.W. 54 was cited wherein, the Division Bench had dismissed the second appeal as incompetent as the same had been presented against a dead person. The Division Bench also had declined to exercise its power to correct errors under Section 153 of C.P.C. This was not agreeable for the Full Bench. The Full Bench observed that if the appeal memorandum is not allowed to be amended, the party may apply for a refund of the spoilt stamp and may present a fresh appeal. In any case, if the appeal is out of time, against the legal representatives, the court has to excuse the delay in presentation before it and then can proceed to hear the appeal. Taking note of the said situation, in order to simplify the procedure the Full Bench has held as follows:

"Although the appeal may be incompetent owing to the wrong person being named as respondent, the Court which deals with it is acting in a proceeding in a suit and as such has full power under Sec.153 to direct an amendment of the appeal memorandum.

As observed by Ramesam and Wallace JJ. in C.M.P.No.2807 of 1923 the question resolves itself into one of Court Fees only and if the party has only made an unintentional error in inserting

the name of the wrong respondent in his appeal memorandum, there is no reason to make him pay Court-fees twice over, and it is simpler for the Court to direct an amendment of the cause title."

11. This judgment of the Full Bench of this Court was consistently followed by many High Courts, including this Court. In *Union of India and another v. K.Abborvam (Deceased) and 15 others* reported in 1995 (II) CTC 329 a Division Bench of this Court had an occasion to follow the above Full Bench Judgment. That was a case where the first respondent in the appeal died on 24.05.1990, but the appeal was presented only on 11.06.1990 against the first respondent as if he were alive. The Division Bench, taking note of the same, had held that the appeal presented against the dead man is not valid. The Division Bench was not however inclined to dismiss the appeal on such a technical ground, but, instead, it again reiterated the simple procedure to be followed in such a situation as formulated by the Full Bench of this Court in *Adusumili Gopalakrishnayya* (cited supra). The Division Bench in para 2 has held as follows:-

"2. In such a case, the procedure to be followed by the appellant has been prescribed by a Full Bench of this Court in *Alusumilli Gopala Kristnayya and Anr. v. Alivi Lakshmana Rao*, (A.I.R. 1925 Madras 1210). The remedy of the appellant is to seek amendment of the cause title of the appeal by showing the names of the legal representatives of the deceased respondent and also applying for condonation of delay in filing the appeal. Even When these applications were filed there was a delay of 851 days. No doubt, in the affidavit filed in support of the applications it is stated that the petitioners were not aware of the death of the respondent. That could have been so before the return of the notice issued by the Court in the appeal. But, the appellants cannot plead ignorance of the death of the respondent after the notice issued by this Court in the first appeal returned unserved and a notification was

published on the notice board that the respondent was dead and steps should be taken to bring the legal representatives on record. But the applications were filed only on 19.2.1993. There is no explanation for the delay after the return of the notice and the notification of the registry thereof. Hence, there is no justification for condoning the delay in filing these petitions."

12. Similar view has been taken by a learned single Judge of this Court in *Mohamed Ibrahim and others v. Chellammal* reported in 1991 - 1 - L.W. - 256. That was a case where by the time when the first appeal was filed, the defendant died i.e after the dismissal of the suit. When the appeal was presented before the first appellate Court, without knowing that the defendant was no more, he was impleaded as the respondent in the appeal. Later on, she filed an application under Order XXII of C.P.C. to bring on record the legal representatives of the deceased respondent. The explanation offered by the appellant was that she was not aware of the death of the defendant after the dismissal of the suit. The learned Subordinate Judge recorded the evidence on both sides in the said application and then allowed the application under Order XXII C.P.C. to bring on record the legal representatives. That was under challenge by way of revision before this Court. A learned Judge (Hon'ble Mr. Justice M. Srinivasan who later on became a Judge of the Hon'ble Supreme Court of India) in paragraph 1 has held as follows:-

"No doubt, the contention of learned counsel for the petitioner is correct in law, as the appeal filed by the respondent herein before the Subordinate Judge was a still born one as the defendant in the suit was dead by the time the appeal was filed. In such cases O.22, C.P.Code will not apply. There is no question of bringing on record the legal representatives as there was no valid appeal. The remedy of the appellant is to get the cause title amended, if it is within time to file the appeal against the legal representatives. If it is out of

time, the remedy is to apply for condonation of delay in filing the appeal against the legal representatives."

In para 4 of the said judgment, the learned Judge has further held as follows:-

"4. Though the contention put forward by the petitioners is correct in law, I am of the view that interests of justice require that an opportunity should be given to the respondent to prosecute the appeal as against the legal representatives of the deceased defendant after condoning the delay. It is possible to allow this revision petition and direct the respondent to file a fresh appeal with an application for condonation of delay. That would only mean further proceedings and further delay. In order to avoid multiplicity of proceedings and in the interests of justice, I am of the view that the procedure can be suitably modified and the appropriate orders can be made in this revision petition itself."

13. From these judgments, it is crystal clear that in the event the respondent against whom the appeal is preferred had died after the passing of the decree by the lower Court, but before the date of presentation of the appeal and if the appeal is presented against him without knowing that he is dead, the proper procedure is to allow the appellant to make an application to simply amend the cause title so as to include the legal representatives of the deceased respondent also as respondents in the appeal memorandum. If, on the date of such application, the limitation for presentation of the appeal itself had expired, then, an application seeking to condone the delay should also be filed. Therefore, the Court may have to condone the delay in filing the appeal and also allow the appellant to amend the cause title so as to include the legal representatives of the deceased respondent against whom the appeal was wrongly presented. If the death of the party against whom appeal is to be preferred is already known to the appellant, the appellant may present the appeal against the legal representatives of

the deceased straightaway, in which case, no petition whatsoever is required (For clarity, see para 21 of this order).

14. Now, in an another situation, where an appeal is presented by the legal representatives of the appellant after his death subsequent to the passing of the decree by the lower Court, what is the procedure to be followed ?

15. As I have already pointed out, since the right of appeal is a creation of the Statute, no permission or leave is required from the Court to file appeal by or against the legal representatives of the deceased. Therefore, without there being any necessity for filing any petition, either to accept the cause title as it is in practice in this Court or an interlocutory application to recognize the legal representatives of the deceased as it is in practice in some of the Subordinate Courts, the appeal can be straightaway filed by the legal representatives of the deceased who was a party to the decree under challenge.

16. The law on this subject was settled by this Court precisely one hundred and thirty four years before viz., in *Ramananda Sastri Vs. Minachi Ammal*, (1881) 3 Mad 236 wherein the Division Bench has held as follows:-

"The provisions of Order 22 do not apply where a party dies after a final decree has been passed. If a plaintiff sues and dies after his suit has been dismissed, his legal representative may appeal from the decree without making any application to be brought on the record in his place." (Emphasis added)

17. In a similar situation, the Lahore High Court in *Risal Singh and another Vs. Chandgi and others* reported in AIR 1939 Lahore 34 while following the judgement of the Division Bench of this Court in *Ramananda v. Minachi Ammal*, (1881) 3 Mad 236 has agreed with the same procedure. That was a case where the appeal was presented by the legal representatives of the judgment debtor without a separate application to

bring on record the legal representatives of the deceased judgment debtor. When the maintainability of the appeal was raised as preliminary objection, overruling the said objection the Lahore High Court held as follows:-

"A preliminary objection is raised on the ground that the appeal was instituted by the sons of the plaintiff, who did not make a separate application to be brought upon the record until they were asked to do so by the office of this Court. It is contended that the appeal is now barred by the provisions of O. 22, Civil P.C. The provisions of Order 22 however do not apply where a party dies after a final decree has been passed. If a plaintiff sues and dies after his suit has been dismissed, his legal representatives may appeal from the decree without making any application to be brought on the record in his place (*Ramananda Sastri Vs. Minachi Ammal*, (1881) 3 Mad 236. (Emphasis added))"

18. Later, similar issue came up before the Himachal Pradesh High Court in *Mela Ram and others Vs. Amar Nath and others* reported in AIR 1954 HP 65. In that case, the Himachal Pradesh High Court, following the Division Bench judgment of this Court in *Ramananda Vs. Minachi Ammal* reported in (1881) 3 Mad 236 as well as the judgment of the Lahore High Court in *Risal Singh and another v. Chandgi and others*, AIR 1939 Lahore 34 in paragraph 5 has held as follows:

"5. On the same analogy, I would say that" it the defendant dies after the suit has been decided his legal representatives may be impleaded in the memorandum of appeal, without a separate application to bring them on the record in place of the deceased defendant. In--'3 Mad 236 (D)', referred to above, the facts were that the plaintiff died soon after the decision of his suit by the trial Court. An appeal was preferred on behalf of a minor, claiming to be his legal representative, but no application was made to have the name of the minor entered in the record instead of the name of the plaintiff. The District Judge dismissed the appeal on the ground that sixty days had expired before the appeal was filed. It was held by the Madras High Court:

"The Judge seems to have acted upon Article 171 of Schedule II to the Limitation Act, which provides that sixty days from the date of the plaintiff's death shall be the period of limitation for an application made under Section 363 or 365 of the Civil P. C., by a person claiming to be the representative of a deceased plaintiff. This limitation, however, should be applied strictly to an application made in the circumstances to which the sections mentioned relate. The section suggested as being in point in this case is Section 365. But we think it clear from Section 366 and other parts of this chapter of the Code that Section 365 relates only to the case of the plaintiff dying before judgment; otherwise, it does not appear how the suit can abate, if it has already been disposed of. We do not think that Section 365 has any application to the case of the death of the plaintiff after decree, and of his representative wishing to appeal."

19. The Allahabad High Court also dealt with a similar situation in *Murari Lal Vs. Srimathi Gurdei and others* reported in 1971 ALL LJ 1121, wherein, in paragraphs 3 and 4 the Allahabad High Court has held as follows:

"3. The leasehold right is a heritable right and if the legal representative who succeeds to the tenancy is bound by the decree, there is no reason why he cannot challenge the decree passed against the predecessor-in-interest provided the appeal is filed within the prescribed time. Learned counsel for the appellant has place his reliance on *Ramananda Sastri Vs. Minatchi Ammal*, which lays down that an appeal can be filed by the legal representative of a deceased party who dies after the decree. Reliance has also been placed on *Risal Singh Vs. Chandgi*, which lays down that:

"The provisions of Order 22 however do not apply where a party dies after a final decree has been passed. If a plaintiff sues and dies after his suit has been dismissed, his legal representatives may appeal from the decree without making any application to be brought on the record in his place."

4. On principle also, as stated above, the view of the aforesaid cases is sound. Sec.151 C.P.C.

cannot be invoked by the trial Court for substituting the legal representatives after the judgment has been signed and the decree passed. The death of one of the parties after the passing of the decree affects the interest of legal representative and the legal representative, therefore, will be competent to file an appeal against the original decree. The lower appellate Court was, therefore, wrong in dismissing the appellants' appeal as not maintainable." (Emphasis added)

20. Thus the decision of the Division Bench of this Court in *Ramanada Sastri* case (cited supra) has been followed by many other High Courts, thereby making it clear that if an appeal has to be filed by the legal representatives of a party to the decree of the lower court, who dies after the date subsequent to the passing of the decree, the legal representatives can straightaway file an appeal without any petition either to accept the cause title or to recognize them as the legal representatives of the deceased. However, they have to make a statement in the appeal memorandum as to how they are the legal representatives of the deceased. Though that is suffice for the Court to entertain the appeal, if there is any dispute in respect of the correctness of the said claim made, it can be raised during the hearing of the appeal and the said issue may be decided after hearing both the parties later on.

21. Similarly, if a party to the decree of the lower Court dies after the passing of the decree and in the event the adverse party knows about it, he can straightaway file an appeal against the legal representatives of the deceased without there being necessity for filing any petition to accept the cause title or to recognize the legal representatives of the deceased. It is enough for the appellant to make a statement in the appeal memorandum itself and also to file an affidavit making a statement that the party against whom the

appeal is now filed are the right legal representatives of the deceased.

22. Thus, from the judgments referred to above, more particularly the Division Bench judgment of this Court in Ramanada Sastri case (cited supra), the procedure being followed in this Court to accept the cause title is not the correct procedure as the legal representatives of the deceased have a right of appeal straightaway.

23. During the course of the hearing, some of the learned counsel submitted that it is not unlikely that an appeal may be filed by or against some persons who are not the real legal representatives of the deceased, which may result in miscarriage of justice to the real legal representatives of the deceased. This apprehension, in my considered view, is misplaced because the parties who are interested may raise an objection at any stage of the proceedings in respect of the said claim and it can be adjudicated upon by the Court later as the mere fact that the appeal has been entertained shall not amount to final adjudication as to who are all the legal representatives.

24. It was also submitted by some of the learned counsel that the Registry is insisting upon the legal heirship certificate from the jurisdictional Tahsildar in order to entertain an appeal or petition at the instance of or against the legal representatives of the deceased. In my considered view, legal heirship certificate need not be insisted upon invariably in all cases, because, the legal representatives, as defined in sub-section (11) of Section 2 of C.P.C. need not necessarily be the legal heirs of the deceased party. Insisting for legal heirship certificate may cause unnecessary hardship to the party who intends to prefer an appeal because obtaining such legal heirship certificate from the Tahsildar may cause enormous delay and at times, the Tahsildar may even

decline to issue such a certificate. If such a legal heir certificate is available at the hands of the party, very well, he can produce it and if such a certificate is not readily available, as has been concluded already, he may file an affidavit that the persons concerned are the legal representatives of the deceased and by describing as to how they are the legal representatives.

25. Some of the learned counsel submitted that the procedure reiterated in this order may be made applicable to the cases where a party to the suit or appeal dies after the conclusion of the hearing and before the pronouncement of the judgment by the lower Court. In this regard, I may state that under Order 22 Rule 6 of C.P.C., notwithstanding anything contained in Order 22, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncement of the judgment, but the judgment may in such cases be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place. In view of the said provision, if a party to the proceedings dies after the conclusion of the hearing and before the pronouncement of the judgment, the appeal to be filed by the legal representatives of the deceased or against the legal representatives of the deceased shall be governed by the procedure which I have enumerated herein above in this order.

26. To sum up:-

- (i) In respect of an appeal presented against a dead person who died after the judgment of the lower Court and before the appeal is presented, Order XXII of C.P.C. is not applicable.
- (ii) (a) If an appeal is presented against a person who is dead on the date of presentation, without knowing that the said person has already died after the judgment of the lower Court, the Court

may under Section 153 of the C.P.C. permit the appellant to amend the cause title or may return the appeal memorandum for amendment and for re-presentation.

(b) On the date when such an application under Section 153 of C.P.C. is filed for amending the cause title, if the period of limitation for appeal had already expired, the appellant shall file an application under Section 5 of the Limitation Act, seeking to condone the said delay.

(c) If the delay is condoned, then the petition to amend the cause title of the appeal memorandum may be allowed.

(d) On the date when such an application under Section 153 C.P.C. is filed for amending the cause title if the period of limitation for the appeal has not expired, then the said application may be allowed and accordingly the cause title may be amended thereby including the legal representatives of the deceased as parties to the appeal.

(iii) If a party to the decree had died before the presentation of the appeal and the same is known to the appellant, he can straightaway file the appeal against the legal representatives of the deceased without any petition such as a petition to accept the cause title or a petition to recognize the legal representatives.

(iv) If a party to the decree had died after the passing of the decree and before filing of the appeal, the legal representatives of the deceased may file an appeal straightaway without any petition such as a petition to accept the cause title or a petition to recognize him as the legal representative of the deceased.

(v) The procedure herein above stated shall also be applicable to a case where a party dies after the final conclusion of the hearing and before the pronouncement of the judgment by the lower Court.

(vi) While presenting an appeal by or against the legal representatives of the deceased, the appeal memorandum shall contain a statement that the said parties are the legal representatives of the deceased and shall also file an affidavit describing as to how they are the legal representatives.

(vii) The above procedure shall be uniformly followed by all the Courts in the State of Tamil Nadu and the Union Territory of Puducherry.

27. In the instant case, Mrs.Amsavalli died after the judgment of lower Court, but before the date of presentation of appeal by the appellants. The appeal is on time. There is also no dispute that they are the legal representatives of the deceased Mrs.Amsavalli. So, the appellants have right to present the appeal straightaway and thus, M.P.No.1 of 2015 in S.A.Sr.No.41479 of 2015 is not maintainable. Hence, M.P.No.1 of 2015 in S.A.Sr.No.41479 deserves to be dismissed.

28. In the result, the Miscellaneous Petition in M.P.No.1 of 2015 in S.A.Sr.No.41479 of 2015 is dismissed as unnecessary and the Registry is directed to number the second appeal and list it for admission.

Before parting with this case, I wish to place on record my deep appreciation for the excellent assistance rendered by the learned senior counsel Mr.R.Muthukumarasamy, Amicus Curiae Mr.N.Anand Venkatesh and Mr.S.Sounthar, learned counsel appearing for the petitioner for their erudite and detailed submissions made before this Court bringing to the notice of this Court a century old judgment of this Court and the judgments from various other Courts precisely touching upon the issues involved in this case.

Note: The Registry is directed to place this Order before My Lord, the Hon'ble The Chief Justice to consider to circulate the judgment and also to issue necessary circular to all the Civil Appellate Courts so that the procedure enumerated in this order may be followed uniformly.

VCJ