

(1924) 09 MAD CK 0022
In the Madras High Court

Chunaughat Kalliam Kutti Amma

APPELLANT

Vs

Kallingal Tarvad Karunawan and Others

RESPONDENT

Date of Decision : 24-09-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 146

Citation : AIR 1925 Mad 1166 : 87 Ind. Cas. 402

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—Civil Revn. Petns. Nos. 383 & 384 of 1922 : These petitions relate to two suits : Original Suits Nos. 17 and 18" of 1919, on

the file of the Subordinate Judge, Calicut. They are suits by Stanithamma Mootha Panikkar to redeem property demised on kanom to the 1st

defendant. The plaintiff died on 24th February, 1919, and the suit would, in the ordinary course, have abated on 24th August, 1919, under the law

then in force. The plaintiff's successor Vibekerana Mootha Panikkar made no application to be brought on record to continue the suits. He

granted melcharths to the present petitioner authorizing him to take such steps as were necessary to recover the property. The petitioner, on 19th

August, 1919, filed petitions. Miscellaneous Petitions Nos. 263 and 264 of 1919, in the lower Court under Order 22, Rule 10, to be brought on

record and continue the suits. These were dismissed both in the first Court and in the appellate Court and the petitioner seeks for revision of that

order.

2. It is clear that petitioner is not claiming under the original plaintiff. She is not, therefore, his legal representative within the present definition of that

term in the present Civil P.C. She is not also a person intermeddling with the estate of the deceased, but one who derives wholly from the deceased's heir and is not qua the estate in a position of opposition to the legal heir. Now this legal heir under whom she claims is not a party to the suit. She contends that this does not prevent the operation of Rule 10, but I think this contention cannot be supported. She can only claim to be subrogated to the existing rights of her assignor, and if that right does not include the right to continue the suit, I do not see how she can be subrogated to such right which does not exist at present in her assignor. The assignor, who has as yet not been brought on in the suits, has no locus standi therein, and, a fortiori, his assignee can have none.

3. I am not referred to any authority in support of the petitioner's contention. The language used in *Lakshmi Achi v. Subbarama Aiyar* [1915] 39

Mad. 488 : ""The words "assignment" and "creation" indicate that it is the person suing that assigns and creates the interest which enables the

assignee to continue the suit"" and in *Manindra Chandra Nandi v. Ram Kumar Lal Bhagat* AIR 1922 P.C. 304 : ""The order contemplates cases of

devolution of interest from some original party to the suit, whether plaintiff or defendant, upon some one else,"" are opposed to this contention.

4. The petitioner calls in aid Section 146 of the Civil P.C., but that does not seem to me to apply. Her assignor could not have put in an application

under Order 22, Rule 10 to continue the suit, since he was clearly the legal representative of the deceased, a person who, in law represented his

estate, and, therefore, he could apply only under Rule 3. Rule 10 only applies to cases not covered by Rule 3. Section 146 will not avail to validate

an application by the petitioner, because the petitioner is not claiming under any one who might himself have put in a valid application under Rule

10. The ruling in *Sundaram Chettiar v. Viswanatha Pandarasannadhi* AIR 1922 Mad. 402 does not affect this view, since there the application was

by a person entitled to put in an application under Order 22, Rule 10. It is not necessary to consider here whether u/s 146, the petitioner might in

law have put in an application under Rule 3 to be herself brought on as legal representative since no such application was put in by her.

5. There is no suggestion in this case of collusion between the petitioner's assignor and the defendants in the suits. There is no reason, therefore,

why the assignor should not have himself applied within time to be brought on record. He did apply after the dismissal of the petitioner's

applications, but his petitions were, after he had died and his legal representative had applied to be brought on in these petitions, dismissed in an

order which held inter alia that the petitions were out of time and no valid excuse for the delay had been shown. I am, therefore, of the opinion that

the lower Court's decision in these civil revision petitions is correct.

6. Civil Revision Petitions Nos. 594 and 595 of 1920 are against the refusal of the first Court, to grant the petitions by the petitioner on 21st

August, 1919, to bring on the stranger Vikkarava Panikkar as a party defendant in the suits. They purport to have been put in under Order 22,

Rule 3. That does not say that an application of this sort cannot be put in by a stranger, but it is obvious that such applications in the present case

are futile, since even if granted they would leave the suits without a plaintiff and would not stop the running of time within which the plaintiff must be

brought on, if abatement is to be avoided. The suits have now abated and any order in revision will not have the effect of setting aside that

abatement. It is, therefore, no use considering whether there is any case for revision of these petitions.

7. Civil Revision Petitions Nos. 590 and 591 of 1923 are to revise the orders of the first Court declaring that the suits have abated. On my findings

on Civil Revision Petitions Nos. 383 and 384 of 1922 those orders are correct, and in any case the proper procedure was an application under

Order 22, Rule 9, in the first Court itself.

8. Civil Revision Petitions Nos. 592 and 593 of 1920 are to implead the legal representative of the 1st defendant in the suits. As the suits have

abated the order of the first Court, declining to bring him on record, is correct.

9. I, therefore, dismiss all these Civil Revision Petitions with costs. (One pleader's fee in all the petitions).