

**(1931) 02 MAD CK 0006**  
**In the Madras High Court**

Mahomed Kanni Rowther

APPELLANT

Vs

Naina Mahomed Rowther and Another

RESPONDENT

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**Date of Decision :** 17-02-1931

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

**Citation :** AIR 1931 Mad 590 : (1931) ILR (Mad) 770 : (1931) 33 LW 604 :  
(1931) 60 MLJ 659

**Hon'ble Judges :** Sundaram Chetty, J

**Bench :** Division Bench

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**Judgement**

Sundaram Chetty, J.—This is a revision petition filed by the defendant against the order of the District Munsif of Madura Town, directing the

addition of the respondents 1 and 2 as plaintiffs, and permitting them to continue the suit.

2. The suit was instituted by one Musafar Rowther, on behalf of himself and other members of the community of Melagar Uraimwraigars of

Ghoripalayam, and the necessary permission of the Court under Order 1, Rule 8, Civil Procedure Code, was also obtained. The suit is therefore a

representative suit. The proper cause title for such a suit is:

Musafar Rowther, on behalf of himself and

all the other members of the community .. Plaintiff

v.

Muhammad Kanni Rowther .. Defendant.

3. The aforesaid Musafar Rowther died at the end of May, 1928. His son intervened with two applications, to be added as a plaintiff, but both of

them were dismissed, the first, on the ground, that in a representative suit of

this kind, the son of the deceased who filed such a suit could not claim that the right to sue survived to him, and the second, on the ground, that he was not a member of the community on whose behalf the suit was filed. On the very day on which the Court dismissed his second petition, the District Munsif dismissed the suit itself, stating that he would not wait for another application by some other person, and that there was no plaintiff on record. This dismissal was on 20th November, 1928. The present application was filed by the respondents on 3rd January, 1929, under Order 1, Rules 8 and 10 and Section 151 of the Code. This was granted by the Lower Court, and the propriety of that order is now questioned in this revision petition.

4. It is rightly conceded, that in view of the suit being a representative suit, there could be no abatement under Order 22, Civil Procedure Code, by reason of the death of Musafar Rowther. If the Court had held that the suit abated, that order would be ultra vires. On the death of Musafar

Rowther who filed the suit on behalf of himself and others having the same interest, as members of the community, any person on whose behalf

also that suit was filed, can apply to the Court to be added as a plaintiff for continuing the suit. There is no article in the Limitation Act specifically

providing the period of time within which that application should be put in. The opinion expressed by Mr. Justice Abdur Rahim in the case reported

in *Sivagurunatha Chettiar v. Ramaswamy Aiyangar* (1911) 11 M.L.T. 257 seems to be, that there is no limit of time for an application under Order

1, Rule 8, Civil Procedure Code, to be made a party to the suit. But in the decision of a Division Bench reported in *Krishnaswami Aiyar v.*

*Seethalahshwi Ammal* (1918) 9 L.W. 166 Sadasiva Aiyar, J., is of opinion that the residuary Article 181 of the Limitation Act fixing a period of 3

years would apply to such an application. It is clear that even in a representative suit under Order 1, Rule 8, Civil Procedure Code, any person

seeking to be added as a party, on the ground that the person who filed the suit is dead, or has rendered himself unfit to be entrusted with the

conduct of the suit, must make an application to the Court for that purpose. If he is so brought on record, he will be eo nomine the plaintiff, who

can continue and conduct the suit. This being an application for which no special period is provided for, Article 181 should reasonably apply to, it,

and I prefer to follow the opinion of Sadasiva Aiyar, J. It is an elementary principle, that a suit should not be dismissed on the death of a sole

plaintiff, till the expiration of the period fixed for his legal representative to come in. (Vide also Kissen Gopal Karnani v. Suklal Karnani ILR (1926)

53 C. 844 for the application of this principle in a case where the plaintiff was adjudged an insolvent). In the present case, after the death of

Musafar Rowther, any other member of the community could apply to be added as plaintiff within three years under Article 181.

5. Before the expiration of that period, it seems to me, the Court had no jurisdiction to dismiss the suit for default. Though the suit is a

representative suit for the purpose of making the whole community bound by the decision given in the suit, it cannot be said that the other members

of that community were co nomine plaintiffs on record, so that the Court could dismiss the suit on 20th November, 1928, for default, on account of

the non-appearance of any of them. It has been held in Udmi v. Ilira ILR (1920) 1 Lah. 582 that the suit or appeal would not abate if one of such

persons should die, and there is no need to bring in his legal representative. The order of the Lower Court, dismissing the suit on 20th November,

1928, must be deemed to be one passed without jurisdiction, and there is no need to set it aside. If it is an order of dismissal for default under

Order 9, Civil Procedure Code, which is not a nullity, it has got to be set aside within 30 days. Otherwise, it is no bar to the present application

which has been filed within three years of the death of Musafar Rowther.

6. The order in question is right, and this Civil Revision Petition is dismissed with costs.