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**(1902) 04 MAD CK 0006**  
**In the Madras High Court**

Meenatchee Achi

APPELLANT

Vs

Ananthanarayana Aiyar and Another

RESPONDENT

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**Date of Decision :** 16-04-1902

**Acts Referred:**

**Citation :** (1903) ILR (Mad) 224 : (1902) 12 MLJ 380

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**Judgement**

1. Following the decision in Suhbayya v. Saminadayyar ILR 18 M. 496 we overrule the preliminary objection that S.A. No. 1132 of 1900 does not lie. As an appeal lies, C.R.P. No. 386 of 1900 which was presented in the alternative is rejected, but without costs. We also overrule the preliminary objection that C. R. P. No. 343 of 1900 which is preferred against the order of the District Judge in O.M.A. No. 9 of 1900 does not lie, by reason that the appeal did lie to the District Court, and that though the Munsif who passed the order appealed against acted in the exercise of his jurisdiction with raptorial irregularity, yet the order passed by the District Judge on appeal cannot be revised by this court u/s 622, Civil Procedure Code, though in the exercise of his appellate jurisdiction he failed to set aside the order appealed against which was erroneous in consequence of the Munsif having acted with material irregularity in the exercise of his jurisdiction. The suit was instituted by one Lakshmanan Chetty for the recovery of a debt either from the 1st defendant or from the 2nd defendant. Pending the suit the plaintiff died issueless, and within two months and a half of his death his widow, Nachiammai Achi, applied u/s 365 of the CPC as the legal representative of the deceased plaintiff to have her name entered on the record in place of the deceased plaintiff. This application was made on the 14th of April 1899, and her name was

entered on the record on the 15th idem. The suit was then adjourned from time to time, and after the trial of the suit extended over several weeks,

the 1st defendant on the 20th of September 1899 presented a petition purporting to be under Sections 365 and 367, stating that it became evident

during the trial from the deposition of plaintiff's 2nd witness, that the deceased plaintiff left an undivided brother by name Narayana Chetti, and

that, even if the widow obtains a certificate of succession, it will be of no avail for the suit, and the court must decide the question finally u/s 367,

Civil Procedure Code, as to who is the legal representative of the deceased plaintiff. The District Munsif after hearing the plaintiff's vakil held on

the 21st of September, without making any elaborate enquiry that the widow was the proper heir and that she should produce a succession

certificate before judgment in the case, and he also directed in order to prevent future disputes that Narayana Chetti be also joined as a party.

Narayana Chetti presented a petition signifying his willingness to be joined as a co-plaintiff with the widow without prejudice to the widow

recovering the amount sued for as he, the petitioner, was not entitled to the same. Against both these orders, the 1st defendant preferred C.M.A.

Nos. 12 and 13 to the District Judge who? by his orders, dated 29th November 1899, directed the District Munsif to hear all the evidence which

the parties may adduce and, after holding a proper judicial enquiry, to determine whether the widow of the deceased plaintiff is or is not entitled to

be admitted as the legal representative of the deceased plaintiff and ""he also set aside the order of the District Munsif joining Narayana Chetti as

co-plaintiff. He thereupon held an elaborate enquiry between the widow on the one hand and the 1st defendant on the other as to who the legal

representative of the deceased plaintiff was, and rightly or" wrongly came to the conclusion that she was not the legal representative and "" struck

off her name from the record,"" the name of Narayana Chetti having already been struck off. He then passed judgment (holding) that the suit abated

and passed a decree dismissing the suit with costs. The widow preferred C.M.A. No. 9 of 1900 to the District Judge against the order of the

District Munsif, dated 12th February 1900, holding that she is not the legal representative of the deceased plaintiff and striking her name off from

the record, and she also preferred to the District Judge Appeal No. 154 of 1900 against the decree of the District Munsif, dated 13th February

1900, dismissing the suit with costs. The District Judge concurring with the District Munsif that the widow did not establish her right as the legal representative of her husband, dismissed both the appeals on Kith July 1900.

2. In our opinion the original order of the District Munsif, dated 21st September 1899, rejecting the 1st defendant's application, dated 20th

September 1899, and directing in view to prevent future disputes that Narayana Chetti also be joined as a party, was perfectly right, and it ought

not to have been reversed by the District Judge on appeal. No objection was raised to the widow's name being entered on the record in the place

of the deceased plaintiff u/s 365 before her name was so entered, and neither of the defendants raised any objection to her prosecuting the suit for

several months after her name was so entered and a number of witnesses had also been examined, and it is only towards the conclusion of the trial

that the 1st defendant and ho alone presented a petition questioning the widow's right to prosecute the suit as the legal representative of the

deceased plaintiff. Assuming that the defendants had the right to raise such an objection, that right accrued to them on the death of the plaintiff and

they were bound to use all reasonable diligence in acquainting themselves with the state of the family of the deceased in view to ascertain whether

the widow was entitled to prosecute the suit as the legal representative of her deceased husband, and they were bound to take the objection at the

earnest opportunity if they meant to insist upon their alleged right to raise that objection. After having allowed the widow to proceed with the

prosecution of the suit till it almost reached its conclusion, they have precluded themselves from raising such objection at a late stage of the suit.

Assuming, as in *Oula v. Beepathee* ILR 17 M. 409 and *Subbayya v. Saminadayyar* ILR 18 M. 496 that Section 367, Civil Procedure Code, is

applicable not only to a case in which there is a dispute between rival claimants as legal representatives of a deceased plaintiff, but also to a case in

which the defendant disputes that the applicant u/s 365 is the legal representative of the deceased plaintiff, the present case is clearly

distinguishable. For in the first of the two cases above referred to, the objection was raised by the defendant before the applicant's name was

entered on the record u/s 365, and the defendant did not allow the applicant to prosecute the suit as in the present case as the legal representative

of the deceased. u/s 365 it is clear that the Court is bound to proceed with the suit after the name of the applicant is entered on the record in the place of the deceased plaintiff. In the present case if in the succession certificate which was obtained by the widow after the death of her husband the debt in question be specified as presumably it is, her right to prosecute the suit as the legal representative of the deceased and recover the debt is conclusive u/s 16 of the Succession Certificate Act (1889). If her husband died before he brought the present suit, it is obvious that the widow as the holder of the succession certificate and she alone would be entitled to bring the present suit and to recover the amount sued for. If so, it is difficult to see on what principle she, as the holder of the succession certificate, would not be entitled as of rig-it to prosecute the suit commenced by her husband. That explanation to Section 366 has no bearing whatever upon this question. It is unnecessary to refer to several other material irregularities in this case. We allow both the appeal and the revision petition, and setting aside the decrees and orders of both the lower courts, direct that the suit be restored to its original number on the file of the District Munsif and that he do proceed with the trial of the suit from the stage which it reached before his orders, dated 21st September 1899 and 25th September 1899, were erroneously set aside by the District Judge on appeal.

3. Both the respondents must pay the costs of the appellant and petitioner in this Court, and the 1st defendant must pay the costs of all the appeals to the lower appellate Court and of the proceedings in the Court of First Instance relating to the enquiry as to the question of the appellant being the legal representative of her deceased husband.