



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-08-2025

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THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A.Nos.907, 4126, 4127 & 2694 of 2025

in C.S.No.216 of 2010

A.No.907 of 2025

E.Jeevanandam

S/o.Mr.Ellappan,

No.14,Main Road,

Alapakkam, Chennai-116.

Applicant(s)

Vs

1.Mr.S.Vijayakumar

2.Mrs.Uma

Respondent(s)

Prayer: Application filed under Order XIV Rule 8 of OS rules R/W Order XXII Rule 4 (3) CPC to bring the respondents 1 and 2, legal heirs of deceased Mrs.Rajalakshmi Sunkavally as defendants 2 and 3 in the above suit in the place of Mrs.Rajalakshmi Sunkavally, the deceased sole defendant in the above suit.

For Applicant(s): Mr.S.Thanka Sivan

For Respondent(s): Mr.Srinath Sridevan, Senior Counsel
for Mr.C.Thiagarajan

A.No.4126 of 2025

E.Jeevanandam

S/o.Mr.Ellappan,



No.14, Main Road,
Alapakkam, Chennai-116.

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Applicant(s)

Vs.

Mrs.Rajalakshmi Sunkavally (Deceased)

1.Mr.S.Vijayakumar

2.Mrs.Uma

Respondent(s)

Prayer: Application filed under Order XIV Rule 8 of OS rules R/W Section 5 of the limitation Act to condone the delay of 330 days in filing the application for setting aside the abatement caused due to the death of the sole defendant Mrs.Rajalakshmi Sunkavally in the above suit.

For Applicant(s): Mr.S.Thanka Sivan

For Respondent(s): Mr.Srinath Sridevan, Senior Counsel
for Mr.C.Thiagarajan

A.No.4127 of 2025

E.Jeevanandam

S/o.Mr.Ellappan,

No.14, Main Road,

Alapakkam, Chennai-116.

Applicant(s)

Vs.

1.Mrs.Rajalakshmi Sunkavally (Deceased)

2.Mr.S.Vijayakumar

3.Mrs.Uma

Respondent(s)

Prayer: Application filed under Order XIV Rule 8 of OS rules R/W Order XXII Rule 9 (2) CPC to set aside the abatement caused in the above suit due to the death of the sole defendant Mrs.Rajalakshmi Sunkavally in the above suit.



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For Applicant(s): Mr.S.Thanka Sivan

For Respondent(s): Mr.Srinath Sridevan, Senior Counsel
for Mr.C.Thiagarajan

A.No.2694 of 2025

E.Jeevanandam

S/o.Mr.Ellappan,

No.14,Main Road,

Alapakkam, Chennai-116.

Applicant(s)

Vs.

1.Ms.Sunkavally Vindhya Vasini

2.Mr.Sunkavally Anuttam Teja

Respondent(s)

Prayer: Application filed under Order XIV Rule 8 of OS rules R/W Order XXII Rule 10 CPC to grant leave for continuing the suit against the respondents herein besides the legal heirs of the deceased defendant in the above suit C.S.No.216 of 2010 viz., Mrs.Rajalakshmi Sunkavally.

For Applicant(s): Mr.S.Thanka Sivan

For Respondent(s): Mr.S.Parthasarathy, Senior Counsel
for Mr.S.Seshadri for R1

COMMON ORDER

These applications have been filed by the plaintiffs in the suit, consequent to the death of the sole defendant Mrs.Rajalakshmi Sunkavally. Though it could be argued that A.No.907 of 2025 and the connected applications, in A.Nos. 4126 and 4127 of 2025 have been filed on a different provisions of law than under



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which A.No.2694 of 2025 had been filed and it has been very strongly contended by the respondents that the two provisions of law relied on by the applicants are mutually exclusive and that the applicants should have opted to take advantage of either one of the two provisions, since the facts overlap and the arguments also to a large such extent overlapped, it would only be appropriate if a common order is passed in all the applications.

2.The two provisions of law under which A.Nos.907 & 2094 of 2025 was filed and Order 22 Rule 4 CPC and Order 22 Rule 10 CPC. In A.No.907 of 2025, consequent to the death of the sole defendant, the applicant/plaintiff has sought permission of this Court to bring on record the legal representatives of the deceased defendant.

3.In A.No.2694 of 2025, in consequence to the death of the sole defendant, the applicant/plaintiff seeks to bring on record the assignees or transferees or settlees on whom a right had been devolved by the defendant to be a party in the suit.



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4. A.Nos.4126 of 2025 and 4127 of 2025 relates to A.No.907 of 2025 and have been filed since further provisions under Order 22 Rule 4 provides that if there is a delay in bringing on record the legal representatives and if delay is beyond the period of 90 days, then an application will have to be filed to condone the delay in filing the application to set aside the abatement and to set aside the abatement.

5. Even before proceeding further on the facts of the case, it would only be appropriate to examine both Order 22 Rule 4 CPC and Order 22 Rule 10 CPC.

6. Order 22 Rule 4 CPC comes into play when one of several defendants or the sole defendant dies. The provision provides that the legal representatives should be brought on record. That is only natural. But the five key words in the said provisions are “*the right to sue survives*”. Unless this right to sue survives, the exercise to bring on record the legal representatives will be an exercise in futility.



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7. So far as Order 22 Rule 10 CPC is concerned, it is a procedure when there is an assignment of right or interest before the final order is passed. This assignment could be by devolution of any interest which in most cases, the defendant had. The plaintiff, to continue to prosecute the reliefs sought over that interest which the defendant had, necessarily will have to bring on record the persons on whom the interest had devolved during the pendency of the suit.

8. There are also instances when the plaintiff has devolved his or her interest to a third party. The provision can also be pressed into service by that particular individual on whom the interest has so devolved to continue to prosecute the suit. To a little extent, Order 1 Rule 10 CPC could also be pressed and a determination will have to be made whether the individual sought to be impleaded is a proper and necessary party to decide the issues in the suit.

With the above narration, let me now examine the facts of the case.

9. C.S.No.216 of 2010 is not a stand alone suit. The plaintiff did not have an exclusive cause to institute the suit against the defendant. It was an



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extension of an earlier litigation which the defendant had indulged in. There was an earlier suit in C.S.No.95 of 1984, wherein one Mrs.Saradhamani Kandhappan and the defendant Mrs.Rajalakshmi Sunkavalli had entered into an agreement of sale of the suit property and adjacent properties owned by the son and daughter of the defendant. The properties as described in the schedule to the plaint were wet agricultural land measuring 4.63 acres in S.No.13, Patta No.17 at Chettiyaragharam Village, Ambattur, in Tiruvallur District and also wet agriculture land measuring 1.40 acres in S.No.14 also in Chettiyaragharam Village, Ambattur, Tiruvallur District and finally, a further parcel of wet agricultural land measuring 2.53 acres, in S.No.25 in Chettiyaragharam Village, Ambattur, Tiruvallur District. As is seen from the description given and from the Survey numbers, they are adjacent, conjoint agricultural lands. Over these lands, the defendant Mrs.Rajalakshmi Sunkavally had entered into an agreement with Mrs.Saradhamani Kandappan.

10. Seeking specific performance of that particular agreement, C.S.No.895 of 1984 had been filed before this Court. The suit was dismissed. Mrs.Saradhamani Kandappan who was the agreement holder filed O.S.A.No.12



of 1992. That was also dismissed. In that interregnum period, before a further appeal was filed before the Supreme Court and it must be pointed out that it was actually filed, the plaintiff and the defendant herein entered into, what they term as a Memorandum of Understanding. By this Memorandum of Understanding, they came to an understanding that after the completion of that particular litigation between Saradhamani Kandhappan and the defendant/Mrs.Rajalakshmi Sunkavalli and within a period of 180 days from the completion of that litigation, the plaintiff would step in and purchase the said property. This Memorandum of Understanding had been entered into on the premise that there was a possibility of Mrs.Saradhamani Kandhappan and the defendant/Mrs.Rajalakshmi Sunkavalli coming to a settlement with respect to their agreement over the suit schedule properties.

11.During the pendency of this suit, even when the defendant was alive, she had executed a settlement deed in favour of her grand daughter and grand son and that grand daughter and grand son are now sought to be impleaded as defendants 4 and 5 in A.No.2674 of 2025 which had been filed taking advantage



of Order 22 Rule 10 CPC. The applicant claimed that owing to that particular settlement deed, every interest which the defendant had over the suit schedule property had devolved to the settlees/ her grandson and grand daughter and therefore, they are required to be parties/defendants in the suit, to examine the reliefs sought, particularly, surrounding clauses 9 and 10 of the Memorandum of Understanding.

12.The present suit also came to be filed because a notice had been issued by the defendant withdrawing herself from the Memorandum of Understanding. It is further contended that this particular notice had been issued not only by the defendant, but also by her legal representatives and in that connection, since there was a commonality of the cause of action if the suit survives, A.No.907 of 2025 had been filed to bring on record the legal representatives of the defendant to answer to the relief that the notice issued should be declared as null and void and to bind them to the Memorandum of Understanding already entered on 05.07.2002.

13.When A.No.907 of 2025 had been filed on 04.02.2025, there was the issue of abatement having crept in since the defendant had died 90 days earlier

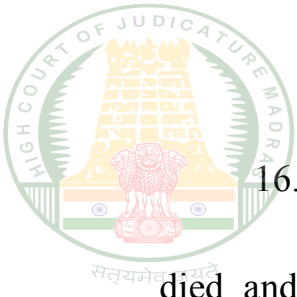


to that particular date/04.02.2025. She had died on 05.06.2024. Therefore, the applicants herein had also filed applications to condone the delay in filing the petition to set aside the abatement and to set aside the abatement. Those applications had been withdrawn by the learned counsel who made an endorsement to that effect. Let me not make that as a focal issue while examining the merits of this application.

14.It had been contended by Mr.S.Thanka Sivan, learned counsel for the applicant that a learned Single Judge of this Court had granted time to bring on record the legal representatives and had passed an order that the legal representatives of defendant should be brought on record on or before 06.02.2025 and that the application was filed on 04.02.2025 and that therefore, there could no issue of abatement. It is for that reason, the learned counsel had made an endorsement withdrawing, in the initial stage, the application seeking to condone the delay in filing the petition to set aside the abatement and to set aside the abatement.



15. But later, during the course of arguments when it had been pointed out that A.No.907 of 2025 suffers from abatement and delay, out of caution, A.Nos.4126 & 4127 of 2025 have been filed to condone the delay of 330 days in filing A.No.907 of 2025. The learned counsel for the applicant after pointing out that the Court had granted time till 06.02.2025 to file the application and that the application had been filed on 04.02.2025, insisted that the issue of delay would not arise. The learned counsel further stated that one of the reliefs sought in the plaint is to declare that notice dated 25.06.2007 and a rejoinder dated 29.08.2007 issued by the defendant cancelling the Memorandum of Understanding dated 05.07.2002 as illegal and not enforceable. It was claimed that the said notice had also been issued by the legal representatives of the defendant and therefore it was contended that viewed from that particular angle, the legal representatives are necessary and proper parties to press that relief before this Court. It was therefore, urged A.No.907 of 2025 should be considered in favour of the applicants and the legal heirs should be brought on record.



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16. Simultaneously, it was also contended that since the defendant had died and the defendant had earlier executed a settlement in favour of the respondents in A.No.2694 of 2025, they were also necessary and proper parties since they are the assignees of an interest which the defendant had over the suit schedule property. It is therefore claimed that though on a cursory glance, the provisions under Order 22 Rule 4 CPC and Order 22 Rule 10 CPC would appear to be mutually exclusive, taking into consideration the facts of this case, both the applications are required to be pressed and the learned counsel stated that he would press both of them to be considered by this Court.

17. In this connection, reliance had been placed by the learned counsel on the judgment of the Hon'ble Supreme Court in ***Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs and others***, reported in ***(2008) 8 SCC 321***, wherein it had been held as follows:-

4.5) Rule 10A of Order 22 provides that whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the court about it, and the court shall



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thereupon give notice of such death to the other party.

7.In *N.Balakrishnan v. M.Krishnamurthy* [1998 (7) SCC 123], this Court held:

"9.It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to



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condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10....The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice.....

11.Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.

12.A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice.

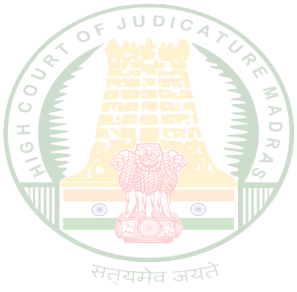


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13.It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation."

17.The second circumstance is whether the counsel for the deceased respondent or the legal representative of the deceased respondent notified the court about the death and whether the court gave notice of such death to the appellant. Rule 10A of Order 22 casts a duty on the counsel for the respondent to inform the court about the death of such respondent whenever he comes to know about it. When the death is reported and recorded in the ordersheet/proceedings and the appellant is notified, the appellant has knowledge of the death



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and there is a duty on the part of the appellant to take steps to bring the legal representative of the deceased on record, in place of the deceased. The need for diligence commences from the date of such knowledge. If the appellant pleads ignorance even after the court notifies him about the death of the respondent that may be indication of negligence or want of diligence.

18. The Hon'ble Supreme Court had examined the implication of Order 22 Rule 10 - A CPC, which placed an obligation on the counsel for the defendant or the respondent to inform about the death of the defendant or respondent and to further inform about the details of the legal representatives and if after receiving such information, the plaintiff does not bring on record the legal representatives, then, the issue of abatement would be viewed quite seriously. This obligation to comply with the stipulation under Order 22 Rule 10 A CPC was impressed upon by the Hon'ble Supreme Court. In paragraph No. 4.5, the Hon'ble Supreme Court had held as follows:

4.5) Rule 10A of Order 22 provides that whenever a pleader appearing for a party to the



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suit comes to know of the death of that party, he shall inform the court about it, and the court shall thereupon give notice of such death to the other party.

19.The learned counsel for the applicant placed further reliance on the Judgment of the Hon'ble Supreme Court in ***Chandra Bai (Dead) through legal representatives Vs.Khandalwal Vipra Vidyalaya Samiti*** reported in **(2016) 12 SCC 534**, wherein, the scope of Order 22 Rule 10 CPC had been examined by the Hon'ble Supreme Court. In Paragraph No.7, the argument of the learned counsel had been extracted, wherein, it had been argued that there would be no period of limitation, which could be insisted upon in an application under Order 22 Rule 10 CPC and that this is a continuous right and could be made at any time till the proceedings are pending. It was also stated that the issue of abatement would arise only under Order 22 Rule 3 and Rule 4 and not under Order 22 and Rule 10 CPC.

20.The Hon'ble Supreme Court had also examined a Full Bench Judgment of the Patna High Court and had held as follows in Paragraph No.8 of the judgment.



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8. We have further noticed that in *Baijnath Ram & Ors. v. Tunkowati Kuer & Ors.* (AIR 1962 PATNA 285), Full Bench of the Patna High Court has held:

“Another thing to notice in connection with this rule is that a party on whom the interest of the deceased plaintiff or defendant devolves is not entitled to continue the suit or appeal as a matter of right. It is essential to obtain the leave of the Court. The granting of leave is within the discretion of the Court. The Court, however, is to exercise its discretion judicially and according to well-established principles. Further, unlike Rules 3 and 4, no limitation is prescribed for presentation of an application under this rule and no penalty is laid down for failure to substitute the person on whom the interest of the deceased plaintiff or defendant was devolved. Therefore, the right to make an application under this rule is a right which accrues from day to day and can be made at any time during the pendency of a suit. There is no abatement under this rule.”



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21. The learned counsel for the applicant also placed reliance also on the Judgment of the Hon'ble Supreme Court in ***Amit Kumar Shaw and another Vs. Farida Khatoon and another*** reported in (2005) 11 SCC 403, wherein again

the interplay between Order 22 Rule 10 CPC and Order 1 Rule 10 CPC and section 146 of CPC relating to joinder of a transferee pendente lite in a title suit and its permissibility and the discretion of the Court in bringing the transferee pendente lite on record had been examined. The central question is not whether he has an interest in the suit property, but whether his or her right would be affected if such transferee pendente lite is not brought on record in the suit.

22. The Hon'ble Supreme Court had therefore widened the scope of such an application it in conjunction with an application under Order 22 Rule 10 CPC and the provisions of Order 1 Rule 10 CPC. It had been held as follows:

10. The power of a Court to add a party to a proceeding can not depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a



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party. Such right, however, will include necessarily an enforceable legal right.

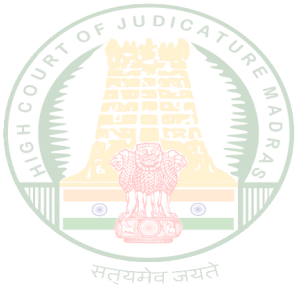
11.The application under Order XXII Rule 10 can be made to the appellate Court even though the devolution of interest occurred when the case was pending in the trial Court. In the instant case, the suit was decreed in favour of Fakir Mohammad by judgment and decree dated 03.11.1989. The suit was contested by two sets of defendants, one set of defendants was Birendra Nath Dey and Kalyani Dey and other set of defendants was Jagat Mohan Das alone. The appeals were preferred by the parties. Both the appeals were heard and by a common judgment and order dated 25.6.1992, the said appeals were allowed and the judgment and decree passed by the Munsif was set aside. By a deed of Assignment dated 15.12.1995, the said Birendra Nath Dey assigned his leasehold right in respect of 132 A Circular Garden Reach Road, presently known as 132 A, Karl Marx Sarani), Kolkata in favour of the appellants. By a deed of sale executed on 15.12.1995, duly registered with the



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Additional Registrar of Assurances, Calcutta, Kalyani Dey Sold the property being 132 B of the above address to the other appellant. The second appeals filed by the parties were pending on the file of the High Court at Calcutta. The appellants had no knowledge of the second appeals. Thereafter on verification, the appellants came to know about the pendency of the appeals which necessitated them to file the applications for substitution in the second appeals. In the meanwhile, the appellants filed the applications before the Municipal authorities for mutation of their names in respect of the property on 24.12.2002 and the Municipal authority informed the appellants that they are not in a position to mutate the names of the appellants of the property in question because of the pendency of the two second appeals before the High Court at Calcutta. Thereafter the appellants engaged an advocate to find out whether any such appeals have been filed by the parties. The advocate so engaged informed the appellants that two appeals being S.A.Nos. 631



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and 632 of 1993 were filed by Fakir Mohammad, Farida Khatoon & Ors. Respondent Nos. herein. It was also informed that the said appeals were admitted by the High Court but the impugned judgment and order was neither prayed for stay nor stayed. Therefore, it was also submitted by the appellants that since the appellants have become the absolute owners of the property, their interest will be highly prejudiced and they will be vitally affected, if any order is passed by the High Court without hearing the appellants in the matter. Therefore, they prayed that the appellants are to be substituted in place and stead of the present respondents, since they have no existing and subsisting right, title or interest in the property.

12. Under Order XXII, Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The



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question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit.

.....

16.The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though

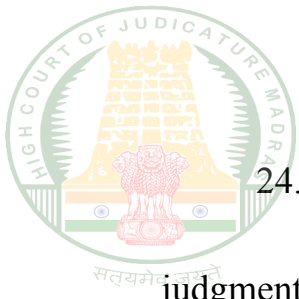


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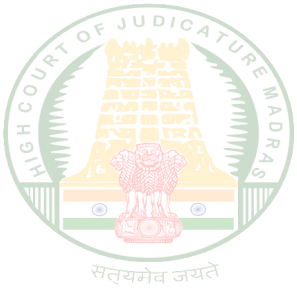
the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.

23. The Hon'ble Supreme Court had introduced the term '*representatives in interest*' to a transferee pendente lite and held that in his absence, if an issue is decided and that causes prejudice, then he would be a necessary party and should have been included as a further defendant in the suit.



24. The learned counsel for the applicant further placed reliance on the judgment of the Hon'ble Supreme Court in ***Raj Kumar Vs. Sardari Lal and Others*** reported in **(2004) 2 SCC 601**, and made a specific reference to paragraph No.5, which is as follows:

5. The doctrine of lis pendens expressed in the maxim 'ut lite pendente nihil innovetur' (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the Transfer of Property Act 1882. A defendant cannot, by alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree. The transferee pendente lite is treated in the eye of law as a representative-in-interest of the judgment-debtor and held bound by the decree passed against the judgment-debtor though neither the defendant has chosen to bring the transferee on record by apprising his opponent and the Court of the transfer made by him nor the transferee has chosen to come on record by taking recourse to Order 22 Rule 10 of the CPC. In case of an



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assignment creation or devolution of any interest during the pendency of any suit. Order 22 Rule 10 of the CPC confers a discretion on the Court hearing the suit to grant leave for the person in our upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but in the discretion of the Court. Though not brought on record the lis pendens transferee remains bound by the decree.

25.Placing reliance on the dictum held as aforesaid, the learned counsel for the applicant insisted that both the legal representatives and also the transferees pendente lite should be brought on record consequent to the death of the sole defendant in the suit.

26.With reference to the issue of abatement, and the delay, the learned counsel stated that there was a failure to comply with the requirements under Order 22 Rule 10 A CPC by the learned counsel for the defendant and therefore, there was no possibility of the plaintiff filing application to bring on record the legal representatives. It had been further pointed out that a learned Single Judge



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of this Court had granted time till 06.02.2025 to bring on record the legal representatives and the application had been filed on 04.02.2025 within the time stipulated. It was thus insisted that the respondents in A.No.907 of 2025 and respondents in A.No.2694 of 2025 should be brought on record as further defendants in the suit.

27. Mr.Srinath Sridevan, learned Senior Counsel for the respondents in A.No.907 of 2025 and A.Nos.4126 & 4127 of 2025, however disputed the contentions raised. The learned Senior Counsel brought on record the Whatsapp messages exchanged between the first respondent in the application and the applicant and also the son of the applicant. He pointed out that Mrs.Rajalakshmi Sunkavally died on 05.06.2024 and on that very same day, the first respondent had sent a Whatsapp message to the son of the applicant informing about the death, which message was also responded by the son of the applicant. He also further pointed out that the applicant himself had also responded to that particular message by putting a crying Emoji expressing regret over the death of the defendant. This response was on 06.06.2024. The



learned Senior Counsel therefore argued that the fact that the defendant had died was well known to the applicant/plaintiff and he cannot claim ignorance of that fact and cannot claim to be innocent of that fact and seek indulgence of this Court.

28. The learned Senior Counsel further pointed out that clauses 9 & 10 in the Memorandum of Understanding are clauses which are enforceable only against the defendant since the Memorandum of Understanding had been entered into by the defendant and the plaintiff alone. By clause No. 9, both parties had agreed that they would enter into a fresh agreement on mutually agreeable terms and conditions and to grant 180 days from the date the litigation ends finally for the purchaser for final payment. The learned Senior Counsel stated that the very words used, namely, *mutually agreeable terms* would indicate terms which are agreed only by the two parties to the agreement, namely, the plaintiff and the defendant alone and such agreement cannot be extended to their legal representatives who are strangers to the said Memorandum of Understanding. The learned Senior Counsel argued that the terms of the agreement which the plaintiff and the defendant would mutually



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agree would be facts known exclusively only to the plaintiff and to the defendant and therefore, insistence of agreement cannot be extended to the legal

representatives. In effect, the argument is that the Memorandum of Understanding created a right only on the parties to the said Memorandum of Understanding and cannot be extended to any other stranger since such stranger would not be aware as to what were the terms that could be mutually agreed.

The learned Senior Counsel stated that by the death of one of the parties to the Memorandum of Understanding, in this case, the defendant Mrs.Rajalakshmi Sunkavally, the Memorandum of Understanding attained a natural death and cannot be revived or thrust upon any third party even if they are legal representatives. Strong reliance had also been made to the exchanges of the Whatsapp messages and was urged that by a natural implication, the suit had abated.

29.In this connection, reference could be drawn to the judgment earlier referred, by the learned counsel for the applicant and reported in **(2008) 8 SCC 321** referred *supra*. I would now refer to Paragraph No.5 of the said judgment which is as follows:



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5. *Having regard to the wording of Rule 4, it is clear that when a respondent dies and an application to bring his legal representative on record is not made, abatement takes place on the expiry of the prescribed period of 90 days, by operation of law. Abatement is not dependant upon any judicial adjudication or declaration of such abatement by a judicial order. It occurs by operation of law. But nevertheless 'abatement' requires judicial cognizance to put an end to a case as having abated. To borrow a phrase from Administrative Law (used with reference to void orders), an appeal bears no brand on its forehead that it has 'abated', nor does it close itself automatically on abatement. At some stage, the court has to take note of the abatement and record the closure of the case as having abated (where deceased was a sole respondent) or record that the appeal had abated as against a particular respondent (if there are more than one and the cause of action survives against the others).*



30. The Hon'ble Supreme Court had very categorically stated that abatement is not dependent on any judicial adjudication or declaration. It occurs by operation of law. Once the 90 days period after death of either the plaintiff or the defendant had ended, the suit stands abated. This issue of abatement is recognized when a judicial order is passed on a later date. If an application is thereafter filed to condone the delay in filing an application to set aside the abatement, the Court can apply its discretion to examine, as stated under Order 22 Rule 4, whether the *right to sue survives*. It is not in all cases that the legal representatives should be automatically brought on record.

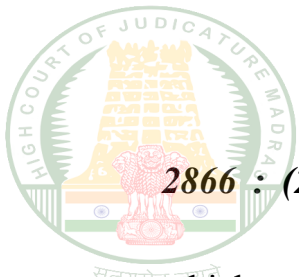
31. One instance would be a suit for injunction restraining the defendant from interfering with the peaceful possession. The legal representatives would be living elsewhere and in far away places and would not be in a position to disturb the possession of the plaintiff. If the defendant dies, then it has to be examined whether the *right to sue survives* on the legal representatives and whether they could continue to interfere with the peaceful possession of the plaintiff. Only then the legal representatives should be brought on record.



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32. Therefore, an obligation is present even in this case to examine whether the *right to sue survives* as against the legal representatives. The issue is with respect to the Memorandum of Understanding and clauses 9 & 10. Clause 9 deals with entering upon a future agreement on conclusion of litigation. That litigation was the earlier suit between the defendant Rajalakshmi Sunkavally and Saradamani Kandappan in C.S.No.95 of 1984. Clause 10 is that the vendor of the nominee should register the sale deed or sale deed in favour of the purchaser or nominee on payment of entire sale consideration within the time stipulated of 180 days. Clause 10 is dependent on the performance of clause 9. Clause 9 requires mutually agreeable terms to be determined between the two parties to the Memorandum of Understanding to further enter into a fresh agreement of sale on mutually agreeable terms. On entering into that particular agreement of sale, clause 10 comes into play.

33. The learned Senior Counsel for the respondents had placed reliance on the judgment of the Hon'ble Supreme Court in *Jaladi Suguna (Deceased)* through *Lrs.Vs. Satya Sai Central Trust and Ors.* reported in *AIR 2008 SC*



2866 : (2008) 8 SCC 521, with specific reference to Paragraph 9, 10 & 11

which are as follows:

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9. When a respondent in an appeal dies, and the right to sue survives, the legal representatives of the deceased respondent have to be brought on record before the court can proceed further in the appeal. Where the respondent-plaintiff who has succeeded in a suit, dies during the pendency of the appeal, any judgment rendered on hearing the appeal filed by the defendant, without bringing the legal representatives of the deceased respondent - plaintiff on record, will be a nullity. In the appeal before the High Court, the first respondent therein (Suguna) was the contesting respondent and the second respondent (tenant) was only a proforma respondent. When first respondent in the appeal died, the right to prosecute the appeal survived against her estate. Therefore it was necessary to bring the legal representative/s of the deceased Suguna on record to proceed with the appeal.



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10. *Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, it can be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination*



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for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject matter of the suit, vis-...-vis other rival claimants to the estate of the deceased.

11. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the Court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the



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respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record.

34. Again the Hon'ble Supreme Court had examined whether the *right to sue survives* and held that only then should the legal representatives of the deceased respondent be brought on record before the Court and if the right to sue survives only if the legal representatives are brought on record, the Court should proceed further on adjudication of the issues.

35. Therefore, the central issue is whether *the right to sue survives*. As pointed out, in this case, clause 9 is exclusive only to the defendant and plaintiff and does not flow over to anybody else, even to the legal representatives.



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36.The learned Senior Counsel also placed reliance on the judgment of the Hon'ble Supreme Court in *National Insurance CO.Ltd. Vs.Mastan and another* reported in *(2006) 2 SCC 641*, wherein there was an examination of the right which flowed under the Workmen's Compensation Act, 1923 and while examining that particular legislation, the Supreme Court had fallen back to the provisions of the Motor Vehicles Act, 1988. The Hon'ble Supreme Court had examined the *Doctrine of Election* which is a branch of the *Rule of Estoppel*. It was held that either one provision alone could be resorted to and not both.

37.The learned counsel for the applicant Mr.S.Thanka Sivan had drawn notice that this particular judgment relates to the interplay between the two enactments and claiming compensation either under the Workmen Compensation Act, 1923, and/or the Motor Vehicles Act, 1988. The Hon'ble Supreme Court had stated that there should be an election to apply for compensation under either one of the two enactments and it was under those circumstances, the said judgment was pronounced. The relevant portion of the judgment is as follows:



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23.The 'doctrine of election' is a branch of 'rule of estoppel', in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. .Although there are certain exceptions to the same rule but the same has no application in the instant case.

24.In Nagubai Ammal and Others v. B. Shama Rao and Others [AIR 1956 SC 593], it was stated:

"It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto."



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24. In *C. Beepathuma and others v. Velasari Shankaranarayana Kadambolihaya and others* [AIR 1965 SC 241], it was stated:

"The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland "That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it."

(see Maitland's lectures on Equity Lecture 18)

The same principle is stated in White and Tudor's Leading Cases in Equity Vol. 18th Edn. at p. 444 as follows:

"Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both.... That he who accepts a benefit



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under a deed or will must adopt the whole contents of the instrument."

[See also Prashant Ramachandra Deshpande v. Maruti Balaram Haibatti, 1995 Supp (2) SCC 539]

26. Thomas, J. in P.R. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] stated the law, thus:

"8. The doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

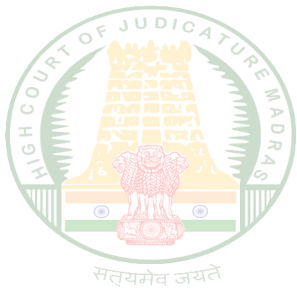
[See also Devasahayam (Dead) By LRs. v. P. Savithramma and Others, (2005) 7 SCC 653]



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38. Mr. Srinath Sridevan, learned Senior Counsel further placed reliance on the judgment of the Hon'ble Supreme Court in ***Vinayak Purshottam Dube (Deceased) through legal representatives Vs. Jayashree Padamkar Bhat and Others*** reported in **(2024) 9 SCC 398**, wherein, the contractual obligations and rights between two parties and the third party obligations and rights and personal rights and proprietary rights had been examined and distinguished. The Hon'ble Supreme Court examined the extent to which a contract entered into with the deceased promisor could be enforced against the legal heirs/estate of the deceased. Paragraph 24 of the judgment is as follows:

24. Salmond also believed that no right can exist without a corresponding duty. Every right or duty involves a bond of legal obligation by which two or more persons are bound together. Thus, there can be no duty unless there is someone to whom it is due; there can be no right unless there is someone from whom it is claimed; and there can be no wrong unless there is someone who is wronged, that is to say, someone whose right has been violated. This is also called as vinculum juris which means “a



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bond of the law". It is a tie that legally binds one person to another. [Source:PJ Fitzgerald, Salmond on Jurisprudence, Page No.220 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)].

39.In Paragraph Nos.39 & 40, the law has been crystallized and it had been held as follows:

39.Therefore, if the estate of the deceased becomes liable then the legal representatives who in law represent the estate of a deceased person or any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued is liable to the extent the estate has devolved. Hence, what is crucial is that the estate of a deceased person which becomes liable and the legal representatives must discharge their liability to a decree holder or a person who has been granted an order to recover from the estate of the deceased which they would represent and not beyond it.



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40. But in the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased.

40. It is thus got to be examined whether the estate of the deceased would become liable and if it would become liable then the legal representatives who represent the estate would necessarily have to be brought on record. But in a case where personal obligation had been imposed on a person under a contract and if he demises, then the estate does not become liable and the legal representatives would obviously also not be liable and cannot be obligated to discharge the contractual obligation. This dictum applies in all fours to the facts of this case.

41. Clause 9 of the Memorandum of Understanding is a personal obligation of the plaintiff and defendant who have to, on mutually agreeable



terms enter into a fresh further agreement on conclusion of the litigation which was pending between the defendant and Mrs.Saradamani Kandappan.

42.I hold that the legal representatives cannot be mulcted with liability to proceed further under the terms of the Memorandum of Understanding.

43.In view of those reasons, I hold that the legal representatives cannot be brought on record. In this connection, reference could also be made to Order 1 Rule 3 CPC as to who may be joined as defendants. The said provision is as follows:

3.Who may be joined as defendants: All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transaction is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

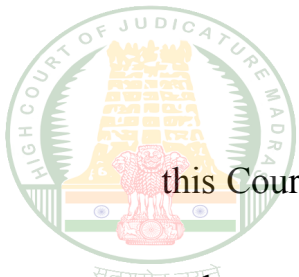


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44. It is thus seen that a person can be joined as defendant, if a right to the relief exists against such person. In the instant case, the right to relief stood extinguished had died with the death of the defendant and cannot be extended to the legal heirs.

45. Let me now take up A.No.2694 of 2025. By this application, the applicant seeks to bring on record the settlees who had benefited by way of a settlement deed executed by the defendant and claims that interest had devolved on them and therefore, they must be brought on record owing to the fact that the defendant had died.

46. This application has been filed under Order 22 Rule 10 CPC. Mr.S.Parthasarathy, learned Senior Counsel for the respondents however raised a protest and argued that the respondents could not be brought on record since an earlier application had been filed to bring them on record in A.Nos.3569 & 3570 of 2019. A learned Single Judge of this Court dismissed the said application, which order had been confirmed in appeal by the Division Bench of



this Court and later, also by the Hon'ble Supreme Court, wherein, the following order was passed.

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Delay in filing and re-filing is condoned.

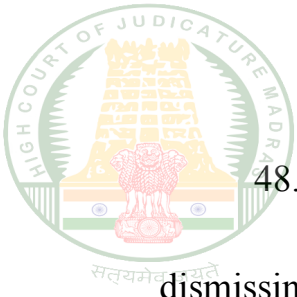
Having heard the learned counsel for the petitioner, we find no merits in the present case.

The petitions are accordingly, dismissed.

However all contentions are left open to be urged in the suit and any of the observations contained in the impugned order shall not prejudice the right of the parties in the Trial Court.

Pending application(s), if any shall stand disposed of.

47. The learned counsel for the applicant stated that though the Special Leave Petition had been dismissed, the Hon'ble Supreme Court had left open the contention and that the observations would not prejudice the rights of the parties in the Trial Court. Those applications were filed even when the defendant was alive. The application under Order 22 Rule 10 need not be filed only when the defendant dies. It could be filed even when the defendant is alive if there had been a transfer of right pendente lite to any third party.



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48.Mr.S.Parthasarathy, learned Senior Counsel argued that this order dismissing the application to bring on record the transferee pendente lite had becoming final and would act as *res judicata* and therefore, urged that the applicant is precluded from filing another application for the same relief. The only change in circumstance is that the defendant has now died. But the application has been filed on the basis of the very same instrument under which there had been a transfer of interest, namely, the settlement deed, which had been examined earlier and it had been held that the respondents are not necessary or proper parties to the suit. That application had also been filed under Order 1 Rule 10 CPC.

49.In this connection, the interplay between the Order 22 Rule 10 CPC and Order 1 Rule 10 CPC, comes into effect. In both the cases, it should be examined whether the party who is to be brought on record is a necessary and proper party and more importantly, to examine whether the right of that party would be affected if the suit is to proceed in his absence.



50. In the instant case, the suit has abated owing to the death of the defendant. Technically, there is no suit pending on the file of this Court. The fact is that the suit has abated on an operation of law and there cannot be any argument against that fact.

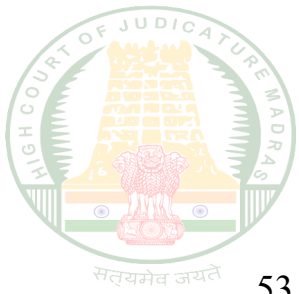
51. The learned counsel for the applicant stated that a learned Single Judge of this Court had extended the time till 06.02.2025 to bring on record the legal representatives. The Court can ever extend the time fixed or limited in a statute. Even if the issue of delay cannot be pressed in filing an application under Order 22 Rule 10 CPC, still the Court will have to examine whether the particular relief which the plaintiff seeks could be sought against those who are sought to be impleaded. Again, the very same arguments of the interpretation of clause 9 of the Memorandum of Understanding will have to be reiterated. The said clause is personal to the plaintiff and the defendant alone and cannot be extended to anybody. The transfer was with respect to a right over the property not a right over the Memorandum of Understanding. The transferee has a right to enjoy the property but not a right to enter into a fresh agreement with the



plaintiff on mutually exclusive terms. That right stood extinguished on the death of one of the party to that particular Memorandum of Understanding and cannot be extended to any other individual, be they legal representatives or transferees pendente lite.

52.Mr.S.Parthasarathy, learned Senior Counsel placed reliance on the judgment of a Division Bench of this Court in ***S.Sitaramaswami Vs. D.Lakshmi Narasimha and another*** reported in ***AIR 1919 Mad 755 (2) : (1918) 8 LW 21***, wherein while examining Order 22 Rule 10 CPC, it had been held that the said provisions would come into force only when the suit is pending. It had been observed as follows:

.....But the order of the District Judge can be supported on the ground that when the appellant applied to the District Judge, there was no suit pending. Order XXII, rule 10 only governs applications made to continue a suit. Consequently, the application presented after the termination of the suit was not within the rule.



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53. It had been very specifically held that Order 22 Rule 10 CPC governs an application made to continue a suit. But, in the instant case, there is no suit pending. On expiry of 90 days from the date of the death of the defendant the suit stood abated and there the suit is technically not pending as on date.

54. My attention had been specifically drawn to the observations of a learned Single Judge in the judgment reported in **(2023) 5 MLJ 735** in ***G.Rani and Another Vs. M.Thiagarajan and Others***, wherein, it had been observed that a decree for permanent injunction is executable against the legal representatives of the judgment debtor. There is a specific provision under Order 21 Rule 32 CPC, which provides for execution of a decree of injunction against the legal representatives. In that case, it was stated that in a suit for injunction, the cause survives against the legal representatives of the deceased. Order 21 Rule 32 CPC applies in a narrow scope of executability of a decree, not continuation of the suit against the legal representatives of the deceased defendant. The Execution of a decree is different from the survival of a suit and



the cause of action surviving against the legal representatives or against the legal representatives or against the transferee pendente lite. T

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55.In view of these reasons, I hold that the judgment would not apply to the facts of this case.

56.Taking the view above, I hold that A.No.2497 of 2025 has to suffer an order of dismissal.

57.In the result,

(i) A.No.907 of 2025 is dismissed.

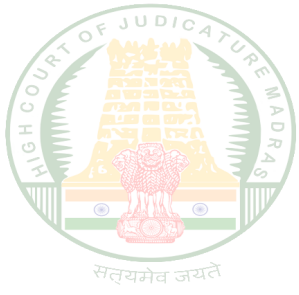
(ii) A.Nos.4126 of 2025 and 4127 of 2025 are both dismissed.

(iii) A.No.2694 of 2025 is dismissed.

(iv) No Costs.

21-08-2025

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C.V.KARTHIKEYAN J.
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**A.Nos.907, 4126, 4127 &
2694 of 2025 in
C.S.No.216 of 2010**

**21-08-2025
(1/2)**