



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2025

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

C.M.P.No.721 of 2023

in A.S.No.521 of 2021

Vijayarani(deceased)

Rep by her Next Friend and Guardian

Vasantha Kumari

1.Mohanraj

... Petitioner

Vs

1.Sekar

2.V.Selvi

3.V.Divya

4.V.Iswarya

... Respondents

PRAYER : This Miscellaneous Petition filed under Order 23 Rule 1(A) of CPC, to transpose the second respondent the appellant in the above appeal.



For Petitioner : Mr.A.Arunbabu

For Respondents : Mr.B.Jawahar for R2 to R4
R1-served (No appearance)

ORDER

Heard

2. This petition is filed invoking Order XXIII Rule 1-A CPC, seeking to transpose the second respondent in the appeal as appellant and to continue the appeal proceedings.

3. The appeal in A.S.No.521 of 2021 arises out of the Judgment and Decree dated 06.10.2021 passed by the learned District Judge, Nagapattinam, in O.S.No.3 of 2011.

4. The brief factual background necessary for disposal of this petition is as follows: The suit property originally belonged to Meenakshi Ammal, wife of Sethuraman, who died on 01.07.1999, leaving behind her husband, three sons and five daughters as her legal heirs. By a Will dated 01.03.1984, Meenakshi Ammal bequeathed the suit property exclusively to her husband Sethuraman.

5. Sethuraman, in turn, executed a Will dated 25.06.2003 (Ex. A5), bequeathing the suit property to his two daughters Vijayarani and Sarala Devi,



who were mentally ill, granting them only a life interest. Another daughter Vasantha Kumari was appointed as guardian during their lifetime, and in the event of her death, his son A. Mohan Raj was to act as guardian. The Will further recited that after the demise of both the mentally ill daughters, the property shall vest absolutely in A. Mohan Raj. Sethuraman died on 12.02.2004.

6. The daughters Vijayarani and Sarala Devi, represented by their guardian Vasantha Kumari, instituted O.S.No.3 of 2011 as indigent persons for declaration of title, eviction, and permanent injunction against their brothers Vairavel and Sekar. The vested remainder holder Mohan Raj was arrayed as a formal party (third defendant) and he was set exparte. The defendants relied upon a subsequent Will dated 27.01.2004 (Ex. B1) allegedly executed by Sethuraman.

7. During the pendency of the suit, the second plaintiff Sarala Devi died. The first plaintiff Vijayarani continued the suit. The first defendant Vairavel also died, and his legal heirs were brought on record. The Trial Court held that both Ex. A5 and Ex. B1 were proved, and since the subsequent Will was proved, the earlier Will stood revoked. However, the Court granted a decree for permanent injunction, holding that even under Ex. B1, the plaintiffs had a life interest.



8. Challenging the findings relating to Ex. B1, the surviving plaintiff preferred A.S.No.521 of 2021. During the pendency of the appeal, the sole appellant also died. Thereafter, the present petition is filed by the second respondent (third defendant), namely Mohan Raj, seeking to be transposed as appellant, claiming to be the vested remainder holder under Ex. A5.

9. The first respondent opposed the petition contending that upon the death of the sole appellant, no cause of action survives and that the suit was decreed not on the basis of Ex. A5 but on Ex. B1, and therefore the right to sue does not survive.

10. At the outset, it is to be noted that the petition is filed invoking Order XXIII Rule 1-A CPC, which deals with transposition of parties in cases where the plaintiff withdraws or abandons the suit. That provision has no application to the present facts, as admittedly the appeal abated neither by withdrawal nor abandonment, but on account of the death of the sole appellant. Hence, the petition cannot be allowed under Order XXIII Rule 1-A CPC.

11. However, the death of the sole appellant has resulted in devolution of interest in the suit property. The plaintiffs had only a life estate, and upon their death, the vested remainder under Ex. A5 ripened into possessory ownership in favour of the petitioner by operation of law. Therefore, the correct provision



governing the situation is Order XXII Rule 10 CPC, which deals with continuation of proceedings upon devolution of interest during the pendency of a suit or appeal. This provision is applicable to appellate proceedings as well in view of Section 107 CPC.

12. The trial court has categorically found that Ex. A5 was proved, and that finding has attained finality, as there is no appeal or cross-appeal challenging the proof of Ex. A5. The appeal is confined solely to the correctness of the finding regarding Ex. B1, the subsequent Will relied upon by the defendants.

13. As a beneficiary and vested remainder holder under Ex. A5, the petitioner has a subsisting and substantial interest in the subject matter of the appeal and is entitled to prosecute the appeal on the same grounds raised by the deceased appellant. The right claimed by the petitioner is not independent or new; it is a continuation of the very right which devolved upon him by operation of law.

14. The principal issue that arises in the appeal is whether Ex. B1 is true, genuine, and proved in accordance with law. If Ex. B1 is held to be valid, Ex. A5 would stand revoked; The presence of the petitioner is therefore essential for effective adjudication and finality of the dispute. Permitting the petitioner to



continue the appeal will neither enlarge the scope of the appeal nor prejudice the respondents, but will enable adjudication of the real controversy.

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15. The fact that the petitioner was earlier set ex parte as a formal party does not bar his continuation of the appeal, as his cause of action arose only upon extinction of the life estate, which occurred during the pendency of the appeal.

16. In the circumstances, this Court holds that although the petition is not maintainable under Order XXIII Rule 1-A CPC, it is sustainable under Order XXII Rule 10 CPC read with Order I Rule 10(2) and Section 107 CPC.

17. Accordingly, this CMP.No.721 of 2023 is allowed, and the second respondent is permitted to be transposed as appellant and to continue the appeal.
No costs.

10.12.2025

(2/2)

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DR. A.D. MARIA CLETE, J

dna

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in A.S.No.521 of 2021

(2/2)

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