



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.02.2026

Pronounced on: 27.02.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**Rev.Appl. No.13 of 2008
in CRP. (NPD). No.1647 of 2006**

1. Appu @ Gopalakrishnan (died)
2. Umadevi
3. Maheswari
4. Vijayalakshmi
5. Kokila
6. Rajalakshmi
7. Sriram Sundar
(Petitioners 2 to 7 are brought on record as LR's
of the deceased sole Petitioner vide order dated
08.12.2025)

Petitioners

Vs

1. Prabakaran
Ambujammal (deceased)
Pechimuthu Konar (deceased)
Sivaraj (deceased)
2. Packirisamy
3. Velmurugan

Respondent(s)

PRAYER: This Review Petition is filed under Section 114 & 154 of CPC, to review the order dated 20.06.2007 wherein above, C.R.P. NPD. No.1647 of 2006.



For Petitioner : Mr.J.Nandagopal

For Respondents : Mr.N.Manoharan for R1
Died- R2
No Appearance for R3

ORDER

This Application has been filed to review the order passed in CRP. No.1647 of 2006 on 20.06.2007.

2. I have heard Mr.J.Nandagopal learned counsel for the review Applicant and Mr.N.Manoharan, learned counsel for the first respondent.

3. Mr.J.Nandagopal, learned counsel for the petitioner would state that the first respondent filed a suit in O.S. No.182 of 1985, against three defendants viz., Ambujathammal, N.Sivaraj and Pakkiriswamy. The Trial Court dismissed the suit and the findings of the Trial Court were confirmed in the First Appeal in A.S. No.173 of 1991, by judgment and decree dated 21.07.1991. However, in S.A. No.147 of 1993, the concurrent findings of the Court below were set aside and a decree was passed granting a mandatory injunction for removal of obstructions as well as declaration of title and right of the plaintiffs/decreed holders.



4. It is the submission of Mr.J.Nandagopal, learned counsel for the petitioner that the first respondent, Ambujathammal was not served and in fact, she had died even prior to the Second Appeal being allowed on 18.03.2004 and therefore, the decree itself was a nullity, having been passed against a dead person. He would therefore state that when the said contention was taken in the Section 47 Application, in the Execution Proceedings, the Executing Court erroneously dismissed the Section 47 Application. As against the same, one of the legal representatives of the deceased first defendant, Ambujathammal filed a revision petition. The said revision was disposed of by the very same Judge who allowed the Second Appeal, by order dated 20.06.2007, stating that in the Second Appeal, the notices were taken to add the legal representatives of the deceased first defendant and despite service, they had not appeared and therefore, there was no infirmity in the judgment passed in the Second Appeal and when the very same contentions were agitated before the Executing Court, the same did not merit any consideration.

5. It is the categorical submission of Mr.J.Nandagopal, learned counsel for the petitioner that the order in the Civil Revision Petition suffers from an error apparent on the face of the record, since no application was taken out to implead the legal representatives of the deceased Ambujathammal, pending the Second Appeal and therefore, the order passed in the revision has to be



necessarily reviewed under Order 47 of CPC. The learned counsel has relied on the decisions of the Hon'ble Supreme Court in *Amba Bai Vs. Gopal*, reported in 2001 Lawsuit (SC) 840 and *Green View Tea and Industries Vs. Collector, Golaghat, Assam and Another*, reported in (2004) 4 SCC 122 also *Selvaganesan Vs. Kalaiselvi and another*, in CRP. No.3005 of 2012, dated 30.04.2019, where it has been consistently held by the Courts that, if a decree is passed against a dead person, then it is a nullity and it would be in-executable.

6. Per contra, Mr.N.Manoharan, learned counsel for the first respondent/plaintiff would state that even assuming there is an error in the order passed in the revision petition, there would be no useful purpose being served in reviewing the said order, since the Second Appeal judgment has become final and no Review Application has been filed to review the judgment in the Second Appeal. He would further state that it is only the 5th judgment debtor, who has approached this Court and insofar as the other two defendants, the decree has become final and in such circumstances, death of one of the defendant would not result in abatement as against the other defendants and right to enforce the decree would continue to remain with the decree holder and would not abate. In this regard, he has relied on the following decisions, in support of his contentions:-



(i) *M.Muthuroyappa Vs. Muniappa and two others*, reported in 2000 (III)

CTC 141;

(ii) *C.Manoharan Vs. C.V.Subramaniam and others*, reported in, 2007-1-

L.W.391;

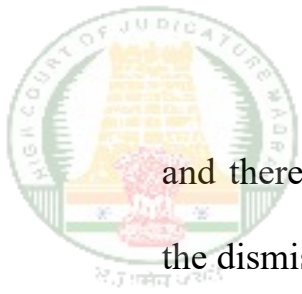
(iii) *Shri Ram Sahu (Dead) through LRs and others Vs. Vinod Kumar Rawat and others*, reported in 2021 (13) SCC 1;

(iv) *S.Madhusdhan Reddy Vs. V.Narayana Reddy and others*, reported in (2022) 17 SCC 255;

(v) *The State of Telangana and others Vs. Mohd.Abdul Quasim (died) Per LRs*, reported in (2024) 6 SCC 461; and

(vi) *Malleeswari Vs. K.Suguna and Another*, reported in 2025 INSC 1080.

7. I have carefully considered the submissions advanced by the learned counsel on either side. In fact, for the purpose of clarity to ascertain the true position, I have also called for the original records in the Second Appeal as well and on perusal of the records, I find that there was no application taken out to implead the legal representatives of the deceased first respondent. There was no appearance on the side of any of the respondents and after hearing the learned counsel for the appellant, this Court has proceeded to allow the Second Appeal



and thereby, grant the decree for the first time before this Court, setting aside the dismissal of the suit by the Trial Court and also the First Appellate Court.

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8. Admittedly, the first defendant was not alive on the date of the judgment being delivered in the Second Appeal. The said position is not disputed by the learned counsel for the first respondent as well. It is however his submission that much water has flown and the decree itself was passed way back in the year 2004 and it would be very unfair and inequitable to set aside the decree at this belated juncture, especially when the decree as against the other two defendants cannot be assailed and it has become final. The law on the point that the decree against a dead person is a nullity is fairly well settled.

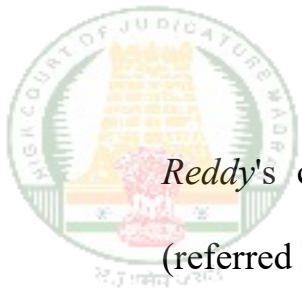
9. The Hon'ble Supreme Court in *Amba Bai's* case, (referred herein supra), in a case where pending Second Appeal, the defendant had died and the fact was not brought to the notice of the Court and legal heirs of the deceased defendant also did not take steps to have the judgment in the Second Appeal set aside, the Execution Proceedings being resisted on the ground that the decree was passed against the dead person and thereby a nullity, held that when the Second Appellate Court has passed the order without the knowledge of the death of the defendant, the order would therefore be a nullity. The same view was taken by this Court in *Selvaganesan's* case as well (referred herein supra).



After relying on the decision of the Hon'ble Supreme Court in *2011 2 CTC 340*, [Sarup Singh and another Vs. Union of India and Another], this Court held that the question of a decree being a nullity can be challenged at any stage of the proceedings, including the execution stage and even in collateral stage.

10. In *Green View Tea and Industries's* case, (referred herein supra), the Hon'ble Supreme Court held that when material evidence on record is not taken into account in the judgment sought to be reviewed, then it would constitute an error apparent on the face of the record. In *M.Muthuroyappa's* case (referred herein supra), this Court held that a suit filed for declaration of easementary rights of passage to take cattle and carts to suit property comprised in two different survey numbers, having different entry points and in such suits, pending Second Appeal when one of the defendants died and his legal representatives were not brought on record and the appeal had also abated as against the said defendant, even then the decree would still be enforceable as against the other defendants and that the appeal would not abate.

11. In *Shri Ram Sahu's* case (referred herein supra), the Hon'ble Supreme Court discussed the scope of review under Order 47 CPC and held that it is not an appeal in disguise and a similar view was also taken in *S.Madhusudhan*



Reddy's case and *State of Telangana's* case as well as *Malleeswari's* case (referred herein supra).

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12. There is no quarrel with regard to the said proposition regarding the scope of a review application. However, at the same time, law is equally settled that when the executability of the decree is questioned on the ground that it is a nullity, it can be raised at even at the stage of Execution Proceedings. It does not prevent the judgment debtor to raise the plea as an objection to the execution petition. The decision of this Court in *Selvaganesan's* case (referred herein supra) would squarely apply to the facts of the present case. When it was open to the judgment debtor to bring to the notice of the Executing Court that the decree could not be executed as the decree was passed against a dead person and thereby a nullity, the Executing Court ought to have taken note of the same and dismissed the Execution Petition. However, the Executing Court has erroneously proceeded to order the Execution Petition and the same was challenged before this Court. Even though the revision also came up before the very same Judge who heard and disposed of the Second Appeal, the learned Judge has recorded that the first respondent's legal representatives were put on notice and only thereafter, the Second Appeal was allowed in favour of the plaintiff/decreed holder. This erroneous finding, in the revision petition, is clearly an error apparent on the face of the record.



13. On perusal of the original records, I find that no such Application was filed. Even the death of the first respondent was not reported, leave alone any application being taken out to implead the legal heirs of the deceased first respondent. On the date of the judgment passed in the Second Appeal, the first respondent was admittedly not alive. Therefore, the decree passed by this Court setting aside the concurrent dismissal of the suit by the Trial Court and First Appellate Court was clearly a nullity in the eye of law and the petitioner was well within his rights to bring it to the note of the Executing Court and object to the executability of the decree. Unfortunately, even this Court on an erroneous assumption of an incorrect and untrue facts, dismissed the revision without noticing that the Second Appeal had been allowed without the legal representatives of the first respondent being brought on record, or even put on notice.

14. In the light of the above, I am inclined to entertain the Review Application. Though it is rightly contended by the learned counsel for the first respondent that the decree can be a nullity only with regard to the deceased first respondent if at all, held so and not against the other defendants, against whom the decree has become final, if it is open to the respondent/decreed holder and the decree is separable, then there can be no difficulty for the first



respondent/decreed holder to execute the decree as against the other defendants viz., defendants 2 and 3. However, in the event of the decree being inseparable, then the decree cannot be executed at all, since I have already found that the decree as against the first respondent is a nullity.

15. In *C.Manoharan's* case (referred herein supra), this Court held that death of the first plaintiff when the appeal was pending before the First Appellate Court and failure to bring on record the legal representatives before the judgment would not render the appeal as having been abated intoto and the judgment as against a dead person only would be a nullity. However, the facts before this Court in *C.Manoharan's* case (referred herein supra) was entirely on a different footing and it pertained to a gift to an unborn person and this Court found that the settlement deeds gave right to both plaintiff and held that cause of action would survive and it cannot be resulting in abatement of the appeal intoto. Therefore, I do not see how this decision would come to the aid of the first respondent to contend that the decree cannot be termed as nullity and would survive for execution.

16. In fine, I am constrained to review the order in CRP. No.1647 of 2006 and allow the revision petition, holding that the decree insofar as the first respondent, Ambujathammal is a nullity having been passed after the death of



the said Ambujathammal and in the absence of the same, not only being reported to the Court but also without impleading the legal representatives of the deceased Ambujathammal. It is however made clear that in the event of the first respondent being in a position to demonstrate that the decree is divisible and it can be executed as against the other defendants, then it shall be open to the first respondent to proceed with the execution as against the other respondents, viz., defendants 2 and 3. However, if the Executing Court finds that the decree is indivisible or it cannot be executed separately or individually against the respondents 2 and 3, then the entire decree will have to necessarily go and the Execution Petition will have to be dismissed.

17. In fine, this Review Application is allowed. No costs.

27.02.2026

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Neutral Citation Case : Yes/No

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P.B.BALAJI, J.,

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Pre-delivery order in

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