

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Middleton.

1908.
March 5.

SINNIAM CHETTY v. KUMARAPPA CHETTY.

Ex parte E. C. Jobsz, Appellant.

D.C., Kurunegala, 3,009.

Civil Procedure Code, s. 339—Judgment—Assignment—Death of one of several plaintiffs before application—“ Representative ”—“ Legal representative ”—Respondents—Attorney.

Where several plaintiffs, through an attorney, sued the defendant on a mortgage bond, and having obtained judgment assigned the same to a third party, who applied to be substituted as plaintiff on the record under section 339 of the Civil Procedure Code, and where at the date of such application one of the plaintiffs was dead,—

Held, that the legal representative of such deceased plaintiff need not be made respondent to the petition under section 339 of the Civil Procedure Code, and that the applicant was entitled to be substituted as plaintiff on the record.

HUTCHINSON C.J.—The word “ representative ” in section 339 seems to have a wider meaning than the words “ legal representative.”

Where the cause of action survives to the surviving plaintiff alone, he is the representative of the deceased plaintiff for the purposes of the action.

THE plaintiffs sued by their attorney and obtained judgment on November 2, 1906, on a mortgage bond for a sum of Rs. 16,325.25, and interest and costs, and assigned the said judgment by deed No. 1,108, dated June 1, 1907, to the petitioner, who on June 17, 1907, applied, in terms of section 339 of the Civil Procedure Code, to be substituted as a plaintiff on the record.

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One of the plaintiffs died in India on June 9, 1907, and it was contended that his legal representative must be made respondent to the petition under section 339.

The District Judge (B. Hill, Esq.) over-ruled the objection.

In appeal—

Tambayah, for the appellant.

Sampayo, K.C., for the respondent.

Cur. adv. vult.

March 6, 1908. HUTCHINSON C.J.—

The plaintiffs obtained in this action a decree for money due by the defendant on a mortgage bond. They then assigned the benefit of the decree to Sinniah Chetty, who shortly afterwards applied to the Court, by petition under section 339 of the Civil Procedure Code, to be substituted as plaintiff. But ten days before the date of the petition one of the plaintiffs had died in India; the surviving plaintiffs only, and not the legal representatives of the deceased plaintiff, were made respondents to the petition; and the defendant objected that the latter also must be made respondents. The District Judge over-ruled the objection, and made the order for which the petitioner asked. The plaintiffs had sued by an attorney; the petitioner had made the attorney a respondent, and the District Judge held that that was enough. This is an appeal against his order.

The reason given by the District Judge is not a good one, because the death of the plaintiff revoked the authority given by him to his attorney. But the order may perhaps be supported on another ground. Section 339 requires "all the parties to the action or their representatives" to be made respondents. The section immediately before speaks of "legal representatives," and gives a definition of the term for "the purposes of this chapter," and sections 341 and 344 also speak of "legal representatives;" so that it looks as though "representatives" in section 339 was intended to be a wider term than "legal representatives."

I think that where the cause of action survives to the surviving plaintiff alone, he is the representative of the deceased plaintiff for the purposes of the action; the legal representatives of the deceased need not be made respondents to an application under section 393 that the action proceed at the instance of the survivor; and they need not be made respondents to an application such as this. I would therefore dismiss the appeal with costs.

MIDDLETON J.—I agree.

Appeal dismissed.