



C.R.P.No.1075

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.07.2023

Pronounced On : 07.09.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1075 of 2020

and

C.M.P.No.5867 of 2020

1.G.Rani (died)
2.G.Neelakandan

...Petitioners/Petitioners/4th Defendant.

[Petitioner No.2, G.Neelakandan brought on record as LR's of the deceased Petitioner No.1 viz. G.Rani vide Court order dated 13.07.2023 made in C.M.P.Nos.14698, 14972, 14975 of 2023 in C.R.P.No.1075 of 2020 by VLNJ]

Vs.

1.M.Thiagarajan

...Respondent/1st Respondent/Plaintiff

2.Kanniammal

...Respondent/2nd Respondent/2nd Defendant

3.K.Mani

...Respondent/Petitioner/3rd Defendant.

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 01.02.2020 passed in I.A.No.737 of 2019 in O.S.No.63 of 2011, by the District Munsif, Madurantakam and allow the present



C.R.P.No.1075

Civil Revision Petition.

For Petitioners : Mr.S.Vasudevan
For Respondents :
(R1) : Mr.Venkatesh Mohan Raj
(R2 and R3) : -No Apperance-

ORDER

This Civil Revision Petition arises against the Fair and Decreetal Order dated 01.02.2020 passed in I.A.No.737 of 2019 in O.S.No.63 of 2011, by the District Munsif, Madurantakam.

2.The parties are referred to as their ranks in the suit. O.S.No.63 of 2011, was filed for permanent injunction. It is the case of the plaintiff that he is the owner of the schedule mentioned property. The original owner of the property was one Natarajan Aiyakar. Natarajan Aiyakar had purchased the property by way of a registered document in document No.2208 of 1986. The Vendors are the defendants. The said Natarajan Aiyakar divided the property into ten plots. He had settled plot No.6 in favour of the plaintiff by way of a registered settlement deed in document No.1124 of 2002 dated 12.07.2002. The plaintiff will allege that the document was accepted and acted upon and had come into force.

3.He would plead that the defendants, who have no manner of right, title or interest over the property, attempted to interfere with the possession of the plaintiff.



This was in and around January 2011. They had attempted to block the access of road to the suit property. As the defendants were attempting to trespass into the property, he was constrained to file the suit for permanent injunction.

4.A reading of the plaint shows that the plaintiff has not only claimed his right on the basis of possession but traces his title, by way of a settlement deed which was preceded by a sale deed. In other words, it is not a simple suit for injunction based on possession but the plaintiff claims title to the property.

5.The suit has been pending for over 12 years. In the meanwhile, the first defendant Laxmiammal died and the Civil Revision Petitioner was impleaded as the fourth defendant. It is pertinent to point out that at the time of filing an application to bring on record the legal representatives of the deceased first defendant, the 4th defendant had not objected to the same. It was only on the basis of that fact, the 4th defendant was impleaded as a party to the suit.

6.Having come on record sometime in the year 2016, the 4th defendant filed an application for rejection of plaint in I.A.No.737 of 2019. Two grounds were taken by the defendant.

7.According to the 4th defendant, since Laxmiaamal had died, there is no cause



of action against her. It is also pleaded that since the suit is for a bare injunction, the cause of action which originally arose does not continue with the defendants and therefore, the suit deserves to be rejected. The defendant would further allege that since no pleading has been made as against the 4th defendant, subsequent to the filing of the amended plaint, the plaint has to be rejected.

8.I heard Mr.S.Vasudevan, learned Counsel for the petitioner and Mr.Venkatesh Mohan Raj, learned Counsel for the 1st respondent. I have perused the case papers and have heard the arguments on the either side.

9.Taking the second argument first, I have to state that lack of pleadings can never be a ground for rejection of plaint. As understood, a rejection of plaint should fall within the four corners of Order 7 Rule 11 and if it does not fall so, the application deserves dismissal.

10.The Learned Trial Judge has rightly appreciated the point and has dismissed the application for rejection of plaint, insofar as the plea that there is lack of pleading.

11.Insofar as the first point is concerned, it is very interesting. According to

Mr.Vasudevan, the suit being one for bare injunction, on the death of the first



defendant, the cause of action vanishes. The argument is the right that is claimed is a personal right and not one in rem and on the death of the first defendant the cause of action vanishes and hence the suit has to be rejected.

12.It is literally an application of the age old principle *Actio personalis moritur cum persona*. A learned single Judge of this Court had observed in ***Rustomji Dorabji Vs. W.H. Nurse and Others (1920) SCC Online Mad 266*** as follows:-

“The maxim has been always considered as an unfair and even barbarous maxim especially when applied to a case where the injured party is denied redress because the wrong doer died. I may add that, it seems to be based upon no principle of justice, equity or good conscience and a technical common law Rules as to the forms of action and distinction between real and personal actions, might have had much to do with its survival in modern days, notwithstanding that many statutory exceptions have been grafted on it even in England.”

13.With this, as the basic premise, let us look to the issue raised by the learned Counsel for the Petitioner. This Latin maxim forced the Parliament in England to modify the law relating to succession. This was done under the provisions of the Law Reform (Miscellaneous Provisions) Act of 1934 in England. Insofar as India is concerned, the law has been incorporated under Section 306 of the Indian Succession Act, 1925 which reads as follows:-

“306. Demands and rights of action of or against deceased survive to and against executor or administrator.—All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or



administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code (45 of 1860), or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

14.A reading of Section 306 makes it clear that all demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his death, survive to and against his executors or administrators except causes of actions for defamation, assault as defined under the Indian Penal Code, 1860 or other personal injuries not causing the death of the party and except also all cases, where after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

15.The Supreme Court in ***Girija Nandini And Ors Vs. Bijendra Narain Choudhury AIR 1967 SC 1124*** had held that the application of the Latin maxim is limited to actions *ex-delicto*. By this, the Court held that it applies only to actions for damages such as suits for defamation, assault or other personal injuries not causing the death of a person. The Principle under Section 306 was also applied by the Supreme Court in ***Hazari & Ors vs Neki & Ors AIR 1968 SC 1205***. In a similar situation which arose before the High Court Of Andhra Pradesh, the Hon'ble Mr.Justice M. Jagannadha Rao held in ***M.Rama Murthy Vs. A.Chinnappa and Ors.1990 (1) APLJ 162*** as follows:-

“5.In the present case the right in question cannot be said to be personal in



nature inasmuch as it is based on a right to defend the alleged possession of the deceased on the date of suit. A right to remain in possession of the immovable property is certainly a right which devolves on the legal representatives of the person just as any other right in the property itself. A possessory right is as much as a right which the law recognizes. In any event, even treating it as a personal right, it is not one falling within the limited classes of personal rights which the law extinguishes on the death of a member as provided in Section 306 of the Indian Succession Act. Inasmuch as the right is not one of the accepted categories mentioned in that section, even assuming that the right is personal, the principle of personal actions taking away with the persons is not attracted to the facts of the case.”

16. It is pertinent to point out that a decree for injunction is also executable against the legal representatives by virtue of Order 21 Rule 32 of the CPC, 1908 read with Sections 50 and 146 of the CPC. If after suffering a decree for injunction the judgment debtor dies, it would still be enforceable against the legal representatives. It is here that the observations of recent judgment of the Supreme Court in ***Prabhakara Adiga Vs. Gowri And Ors (2017) 4 SCC 97*** becomes relevant. For ready understanding I am extracting the relevant portion hereunder:-

“26when the right litigated upon is heritable, the decree would not normally abate and can be enforced by LR's. of decree-holder and against the judgment-debtor or his legal representatives. It would be against the public policy to ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor when the cause and injunction survives. No doubt, it is true that a decree for injunction normally does not run with the land. In the absence of statutory provisions it cannot be enforced. However, in view of the specific provisions contained in section 50 CPC, such a decree can be executed against legal representatives.”

17. In another judgment, Mr. Justice Sanjiv Khanna (as he then was) held in ***Daljit Singh and Anr Vs. Yogeshwar Prasad (2006) 88 DRJ 698*** on the scope of



application of the said doctrine in suits for injunction. The judgment reads:-

“ 15. Under the Roman law, a distinction was made between claims based upon a dominion and an obligation. A claim based upon an obligation of the other side was described as "chose in action" or "a thing in action", a proprietary right in personam. Other claims based upon proprietary rights were described as "choses in possession". The origin of a "chose in possession" was a thing or a right that was accompanied by possession. However, this distinction between "chose in possession" and "chose in action" has got blurred with the complex and intricate commercial transactions. For example, originally shares and equities were classified as "choses in possession" but are now regarded as "choses in action". Similarly, land and chattels are now "choses in possession" even if the owner is not in actual physical possession of the said chattel or land. Similarly, earlier a distinction was made between real and personal property. This distinction between real and personal property was based upon "actions in rem" and "actions in personam". This distinction between real and personal property no longer finds favor and is regarded as arbitrary and based upon no scientific or logically distinction.

16. I may here refer to the judgment of the Supreme Court in the case of *M. Veerappa* (supra) wherein after examining the maxim "actio personalis cum moritur persona" it was held that in such cases where the plaintiff dies during the pendency of the suit or an appeal, the plaintiff stands relegated to his original position before the Trial Court. However, it was held that this doctrine would not apply where injury caused to the deceased person had tangibly affected his estate or had caused an accretion to the estate of the wrongdoer. In this regard the Supreme Court approved of the observations made by the Madras High Court and the Madhya Pradesh High Court in *Rustomji Devabji v. W.H. Nurse* reported in AIR 1921 Mad 1 and *Ratanlal v. Baboolal*.

17. The maxim "actio personalis cum moritur persona" has not been accepted in India as one of universal application. It operates in a limited class of actions ex delicto and not every action where on death of a party relief cannot be claimed or granting the same would be futile. There are also exceptions to the said maxim even in cases of personal injuries (See [Section 37](#) of the Contract Act, 1872, [Section 52](#) of the Transfer of Property Act, 1882 and [Section 50](#) of the Code). Care must be taken not to extend this maxim beyond what is specified in [Section 306](#) of the Indian Succession Act, 1923 to actions founded on an obligation, contract, debt, covenant or any other duty to be performed.

18. [Section 306](#) of the Indian Succession Act, 1923 provides that all rights to prosecute or defend any action in favor of or against a person shall survive in spite of death of any of the parties except where cause of action are for defamation, assault or other personal injuries not causing death of a party or cases where after the death of a party, relief cannot be enjoyed or granting it would be negatory. The term "personal injury" has been construed as adjusdem generis and therefore takes its



colour and meaning from the earlier two words : 'defamation and assault'. In *Margarida v. Neckintu*, [Section 306](#) of the Indian Succession Act, 1923 was examined and it was held that the term 'other personal injuries' must be construed with reference to the preceding words, namely, defamation and assault. However, it may be clarified that the term 'personal injury' need not refer only to physical injuries but also mental injuries as it happens in the case of defamation (See *Mahajan v. Baboolal* reported in AIR 1960 MP 666). In the case of *Margarida* (supra) the Bombay High Court that the legal representatives of a plaintiff are entitled to continue with a suit filed for compensation of damage caused to goods as it was a case of damage caused to the estate and not merely a personal right that perished and corroded with the death of the original plaintiff.

There is also difference in tort affecting land and tort caused from personal injury. In case of personal injury, the action dies with the person. The remedy ceases upon the death of the doer or the sufferer. Therefore, it is to be examined whether in a given case the claims made, pleadings and the findings of the court relate to injuries suffered by a person alone and/or whether the claims, pleadings or the decisions would have any affect on property of any kind. This aspect I need not examine in view of my findings and reasons given above.

26. It is accordingly held that the right to sue survives in the present case and accordingly the application for bringing on record the legal representatives of the respondent is allowed and the legal representatives are brought on record. Application is disposed of.”

18. Similarly if a suit for injunction is based on assertion of possession of the property, Mr. Justice K. Kannan in *Harpreet Singh Vs. Shiv Dev Pal Kaur in PLR (2013) 170 P & H 807* had held that the relief of injunction granted under the Specific Relief Act, 1963 would survive by virtue of Section 306 of the Indian Succession Act. For ready understanding, the relevant paragraphs are extracted hereunder:-

“2. When the application for impleadment was made, the contest was that the relief of injunction is a personal right and the death of the plaintiff resulted in abatement to cause of action. The defendant had relied on a judgment of this Court in *Devinder Singh Versus Hervinder Singh and others-2012(4) Civil Court Cases 197* that stated that a person who was claiming a personal right of possession, the right abated on his death. In my view, it is stating too wide a proposition to be applied in



all cases. Relief of injunction could be on several grounds. They could be with reference to immovable properties as well as with reference to non- tangible right, such as, copyright, designs, trademark etc. Every property that is inheritable leaves the cause of action to survive except certain personal rights which are excluded under the Indian [Succession Act](#) itself. [Section 306](#) of the Indian Succession Act lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators. The exceptions are brought out in the said Section itself which specifically exclude causes of action for defamation, assault as defined under [Indian Penal Code](#) or other personal injuries not causing death of the party. The Section declares that it shall also except cases where after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory. This situation could be a situation of a suit for divorce where cause of action would die with the person. In every other situation, the right will survive.

3. In this case, the suit has been filed by the husband of the applicants for injunction on his assertion of possession in the property. This claim is denied by the defendant, who is the brother, who claims that he had purchased the property from his mother and he is actually in possession. A possessory right in relation to immovable property is a tangible right that always survives. If the husband was therefore claiming that he was in actual physical possession of the property and he was seeking to fend off obstructions and disturbances from the defendant, the same right could be pursued by the widow also. It is not very clear from the judgment in *Devinder Singh (supra)*, the nature of suit and whether any tangible right to immovable property was asserted or not. I am not able to therefore refer to the judgment as laying down any general proposition that a suit for injunction cannot survive to a legal representatives.

4. The relief of injunction is in the nature of a specific relief and set out through elaborate provisions in Chapter-VII, Part- III of the Specific Relief Act. The said part comprises of the principles of injunction to be granted generally, the nature of injunction as temporary, perpetual and also the types of injunction that include mandatory injunction. It also provides specific instances when damages could be claimed in lieu of or in addition to injunction. A provision for damages is certainly a right that could survive if it is not in the nature of the excepted provisions under [Section 306](#) of the Indian Succession Act, referred to above.

5. The order passed already allowing the impleadment was, therefore, justified and there is no scope for interference in revision. The revision petition is dismissed.”

19. When these judgments were put before the learned Counsel for the

petitioner, he brought to my notice a judgment of the High Court of Karnataka in



Smt. Venkubai Vs. The Assistant Commissioner, Sedam reported in (1998) 5 Kant

LJ 171. A reading of the judgment shows that the attention of the learned Judge was not drawn to the provisions under Sections 50, 146 Order 21 Rule 32 of the Code of Civil Procedure as well as Section 306 of the Indian Succession Act. The Learned Judge had held that a decree for injunction would become infructuous on the death of the party against whom the injunction was granted. This view of the Learned Judge in my opinion is contrary to the view of the Supreme Court in ***Prabhakara Adiga*** case referred *supra*. Hence, I am not inclined to follow the same.

20. Mr.S.Vasudevan, learned Counsel for the petitioner would bring to my attention a judgment of this Court in ***Ambuja Narasimhan and Ors. Vs. Maxworth Home Ltd. (2016) 2 LW 653*** to argue that this Court had held that in a suit for injunction the cause of action for injunction is personal and does not survive the death of the defendant. A careful reading of the judgment shows that the suit had been filed against one Ambuja Narasimhan. On the date on which the suit has been presented, the said Ambuja Narasimhan was no more. In other words, the suit had been filed against a dead person. A suit presented against a dead person is nullity. On the date of the presentation of the plaint, since the defendant was dead, there can be no cause of action as against the deceased. The Learned Judge had also held in para 9 that if the suit had been filed for specific enforcement of right or title then the cause of action would arise. As seen from the above, in the present case the suit is not only



based on simplicitor possession but also based on the sale deed executed by the defendants in favour of Natarajan Aiyakar, who had in turn executed a settlement deed in favour of the plaintiff. Therefore, a careful reading of the judgment shows that it is in favour of the respondent and not in favour of the petitioner.

21.He would further state that the Division Bench of this court in *M/s.Asian Paints (India) Ltd. Vs. M/s.Macneil and Magor Ltd. And Ors. (2008) 3 LW 707* has held that if there is no pleading, the plaint must be rejected. I have gone through the said judgment. The Court has held that when party is impleaded, necessary averments should be made against the newly impleaded parties. In this case, the newly impleaded party/the 4th defendant steps into the shoes of the deceased 1st defendant. The 4th defendant merely represents the estate of the deceased and is not impleaded in her personal capacity. A legal representative cannot get a better defense in a suit than the person on whose behalf the legal representative has been brought on record. The other judgments which have been cited by the learned Counsel for the Petitioner also do not refer to Section 306 of the Indian Succession Act. I am persuaded to follow the judgment by Mr.Justice Jagannadha Rao and Mr.Justice K.Kannan and would hold that in a suit for injunction the cause of action against the deceased 1st defendant, survives since the right that is claimed in the suit is heritable and also since the decree is executable against not only the original judgment debtor



but also the legal representatives as per Section 50 r.w. Section 146 and Order 21

Rule 32 of the CPC, 1908.

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22. Learned Counsel for the petitioner would also draw my attention to a judgment of this Court in *A. Ganesan Vs Javeed Hussain and Ors. in 2022 (3) MLJ 550*. A careful reading of this judgment shows that it was the case of a license granted by the Municipality in favour of the first defendant. A License comes to an end on the death of the allottee and it is not heritable right. That is to say, a licensee's children cannot claim a right of possession on the basis of license granted to their predecessors. It is in those circumstances this Court had held that the question of impleading legal representatives of a licensee does not arise. The case we are not dealing with is not a case of license but a case of title and possession of property. In a suit for injunction a court can incidentally go into question of title. The case as seen from the plaint is premised on the basis of title and possession. Therefore, the said judgment is not applicable in the facts and circumstances of the present case.

23. In the light of the above I would answer both the questions against the petitioners. Consequently, the Civil Revision Petition stands dismissed. No Costs. Connected Civil Miscellaneous Petitions are closed.

07.09.2023



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nsl

Index

: Yes/No

Speaking Order

: Yes/No

Neutral Citation Case

: Yes/No

To:

The District Munsif,
Madurantakam.

V. LAKSHMINARAYANAN, J,

nsl

Pre-Delivery Order in



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