
(1988) 02 KL CK 0021
In the High Court Of Kerala
Case No : C.R.P. No. 2157 of 1987-H

Kathiyammakutty Umma

APPELLANT

Vs

Thalakkadath Kattil Karappan and Others

RESPONDENT

Date of Decision : 15-02-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 146, 47, 50

Citation : AIR 1989 Ker 133 : (1988) 2 ILR (Ker) 95 : (1988) 1 KLJ 411

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : Johnson Manayani, for the Appellant; V.P. Mohan Kumar and K.P. Sreekumar, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—The judgment-debtor died during execution proceedings of a decree for injunction. When his legal representatives were sought to be brought on record, they resisted contending, inter alia, that the decree for injunction is not binding on them since it is only a personal decree as against the original judgment-debtor. The objections were overruled by the execution court. This revision is in challenge of the order.

2. Facts : The first respondent obtained a decree the will be referred to as the plaintiff, for convenience restraining the sole defendant from obstructing the plaintiff "in erecting a fence on the western boundary of the plaint schedule property and from interfering with plaintiffs peaceful possession and enjoyment of the suit property". The appellate court confirmed the decree. Decree-holder was obliged to resort to execution proceedings since the defendant was not inclined to keep away when the decree-holder tried to put up the fence. The defendant, at the same time, filed a second appeal, and during its pendency he passed away. The second appeal was dismissed as the legal representatives of the defendant did not get impleaded in the appeal. But the decree holder filed an application in the execution court to implead the legal representatives as

additional respondents in execution proceedings. That is now objected on the ground aforementioned. As the objections were overruled, one of the legal representatives filed the present revision petition.

3. Learned counsel for the petitioner contended that a decree for injunction is a personal decree and no person other than the parties to the decree is bound by the same and hence it cannot be executed as against the legal representatives. In support thereof, learned counsel referred me to the decision of a Division Bench of the Bombay High Court reported in *Jamsetji Manekji Kotval v. Hari Dayal* ILR (1908) Bom 181. A plaintiff had obtained a decree for injunction restraining the defendant from causing obstruction to the plaintiff in passing over to his land through the adjoining land. The defendant was the owner of the adjoining land, but he subsequently sold the property to a stranger. The plaintiff thereupon instituted a new suit against the stranger purchaser. The suit was resisted mainly on the ground that the remedy is not a second suit but only execution of the decree of the earlier suit. The Division Bench held that since an injunction does not run with the land, there is no bar in filing a fresh suit. The said decision cannot be taken as authority for the position that the only remedy is a fresh suit.

4. Section 50 of the CPC (for short "the Code") enables the holder of a decree to execute the same against legal representatives of the deceased judgment-debtor. In Such execution, the decree holder is subject to a restriction in Sub-section (2) that the execution shall only be to the extent of the property of the deceased which has come to the hands of the legal representative. The limitation imposed by Sub-section (2) applies generally in cases of money decrees. In the case of a decree of injunction, the modes of execution are prescribed in Order 21, Rule 32 of the Code. Sub-rule (1) enables the decree holder to enforce the decree by detention of the judgment-debtor in the civil prison or by attachment of his properties or by both. Sub-rule (5) is an additional mode to be followed in execution of the decree for injunction. There is no inhibition in Rule 32 that the modes of execution prescribed therein cannot be exercised against the legal representatives of the judgment-debtor. In other words, what is permitted in Section 50 of the Code is not denied or even curtailed in Order 21, Rule 32. Section 146 of the Code enables taking of proceedings or making of applications against any one who claims under the person against whom such proceedings or applications could have been taken or made. The right conferred in Section 146 is not in any way restricted by Order 21, Rule 32. Hence it is not open to the legal representative of the judgment-debtor in a decree for injunction to contend that he is not liable under the decree. There is no dispute in this case that the judgment-debtors had right over the property which lies near the property in respect of which the decree for injunction was granted. The suit was filed in view of the boundary dispute over the respective properties. The boundary claimed by the plaintiff was upheld in the suit and hence the decree was passed by the trial court. In such a case, law does not impose any inhibition on the decree holder in executing the decree for injunction, after the death of the original judgment

debtor against the legal representatives claiming under the said judgment-debtor.

5. The decision in Jamsetji Manekji Kotval's case ILR (1908) Bom 181) has not been followed by the Bombay High Court in later decisions. AIR 1931 Bom volume contains three decisions on this subject which are helpful in deciding the point of dispute in this revision. In Amritlal" v. Kantilal, AIR 1931 Bom 230 a Division Bench held that though a decree for injunction cannot be enforced against the surviving members of a joint family or against a purchaser from a judgment-debtor, such a decree can nevertheless be executed where the sons of the judgment-debtor were brought on record as his legal representatives by virtue of Section 50 of the Code. In Manilal Lallubhai Patel Vs. Kikabhai Lallubhai, a single Judge of the Bombay High Court following the aforesaid decision had held that, where a decree for injunction had been obtained against the father, the son not being joined as a party, and if the father died during the pendency of execution proceedings, the decree could be enforced u/s 50 of the Code against the son as his legal representative. In Ganesh Sakharam Saraf Vs. Narayan Shriram Mulaye, another Division Bench of the same High Court followed the decision in Amritlal's case (cited supra).

The decisions cited above lend support to the view which I have taken that the decree holder is entitled to execute the decree even as against the legal representatives of the original judgment-debtor, although the decree is one for injunction only.

C.R.P. is hence dismissed. No costs.