

(1999) 03 KAR CK 0013

In the Karnataka High Court

Case No : Regular Second Appeal No. 80 of 1999

Shivappa Basavantappa Devaravar (Deceased) by L.R.

APPELLANT

Vs

Babajan

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Citation : (1999) 4 CivCC 98 : (1999) 4 KarLJ 293

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Sri S.N. Rajendra, for the Appellant;

Judgement

1. Permission is sought for filing the appeal saying that the original appellant died and he was not aware of the decree being passed against him. His sons having come to know about the non-filing of the second appeal they have come forward with the present appeal along with an application to condone the delay in filing.

2. The suit was filed against one Shivappa Basavantappa Devaravar for injunction restraining the said Shivappa or anybody claiming under him or on his behalf from interfering or obstructing with peaceful possession and enjoyment of the suit property. Injunction was granted by the Trial Court and injunction came to be confirmed by the First Appellate Court. In this appeal the deceased man through his L.R. want to prosecute the suit.

3. Applying the principles of "action personalis moritur cum persona", injunction is a personal remedy against a person, in particular, the defendant. Therefore, the very prayer itself makes it clear that it is a restriction against that person (defendant) or his agents or his men or anybody claiming under him or through him.

This is the usual format in an injunction suit. Once a man dies, the cause of action dies with him and does not pass on to the legal representatives. Therefore, the injunction decree now becomes extinct because of the death of

the father.

4. In this view, holding that the decree has become extinct so far as defendant is concerned, I find there is no necessity to entertain the appeal and the appeal itself is not maintainable.

5. Of course, the position will be different if injunction was obtained by the plaintiff against the defendant and if the plaintiff dies his legal representatives will be entitled to the benefit of injunction. In this view the appeal is dismissed and permission is not granted.

6. It is also made clear in an injunction suit, going into title is only an incidental affair and even if title is found against the defendant, it is always open to the defendant to establish the title independent of any finding rendered in such a suit for injunction. Therefore, liberty is granted to the defendant who is the L.R., to establish the title if any over the suit property in a properly instituted suit.

Subject to the above liberty, the appeal as well as I.A. is dismissed.