

(1998) 01 KAR CK 0019

In the Karnataka High Court

Case No : Regular Second Appeal No. 132 of 1993

Smt. Venkubai (Deceased) by L.Rs

APPELLANT

Vs

The Assistant Commissioner, Sedam, Gulbarga District and
Another

RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Citation : (1999) 1 CivCC 119 : (1998) 5 KarLJ 171

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

Bench : Single Bench

Advocate : Smt. Shobha Patil and M.B. Prabhakar, for the Appellant;

Judgement

1. The plaintiffs L.Rs are aggrieved by the judgment of the First Appellate Court which has dismissed the appeal filed by the defendants as infructuous, inasmuch as, the injunction prayed for and granted by the Trial Court is personal in character and after the death of the plaintiff the injunction has become infructuous.

2. Raising a question of law as to whether the right to sue in an injunction suit survives to the L.Rs of the plaintiff, this second appeal is preferred.

3. The lands of an area of 26 acres 14 guntas in Sy. No. 66 and 28 acres 17 guntas in Sy. No. 67 were claimed to be in possession and ownership of the plaintiff. Form 11 was filed before the Tribunal and by the order dated 26-5-1984, the Tribunal held that 32 acres 35 guntas out of the holding was in excess and the same should be surrendered. A notice to this effect was issued by the Special Tahsildar, Land Reforms on 7-6-1984. The plaintiff responded by submitting a proposal dated 11-6-1984 proposing to surrender 15 acres in Sy. No. 80/1, 15 acres in Sy. No. 80/2 and 4 acres 13 guntas in Sy. No. 212 all situated at village Bomadepalli, Taluk Sedam. The Tahsildar replied saying that those lands are not identified and wanted some other area to be surrendered. But according to the plaintiff, the aforesaid lands are acceptable and the proposal

was not rejected by the Land Tribunal. In spite of that the Tahsildar appears to have given direction to the Revenue Inspector on 15-7-1987 to mutate an area of 32 acres 35 guntas. Failing which, consequently the plaintiff would be dispossessed of 32 acres 35 guntas; the suit for injunction thus came to be filed, restraining the defendants, namely, the Assistant Commissioner and the Tahsildar, Sedam, from interfering with the plaintiffs possession.

4. In the written statement it is contended that the land offered were in occupation of some Lambada persons, therefore the Government wanted the lands free from encumbrances. The plaintiffs are not in actual possession of those lands. Consequently, the suit is not maintainable, even under the provisions of the Karnataka Land Reforms Act.

5. The Trial Court holding that the land offered in Sy. Nos. 80/1 and 80/2 are available and there is no encumbrance shown in the encumbrance certificate produced, granted the decree for injunction. The Appellate Court on appeal by the defendants, finds that there is nothing on record to show that the Lambadas are in possession of the lands offered. Therefore, the stand taken by the defendants simply relying upon the report of the Revenue Inspector and the Village Accountant, without any verification, was rejected by the Appellate Court and the judgment and decree of the Trial Court was confirmed.

6. But as the plaintiff died during the pendency, the Appellate Court felt that injunction is a personal remedy and it comes to an end by the death of the original plaintiff. The reliance was placed in *Somnath Honnappa Bennalkar v Bhimrao Subrao Patil*, wherein this Court held that injunction being personal does not run with the land and the assignee was not competent to execute the decree. On that ground the Appellate Court, despite concurring with the findings of the Trial Court, dismissed the appeal as well as the suit as infructuous.

7. Therefore, the question in this second appeal is whether the injunction obtained by the plaintiff against the defendants would be rendered nugatory on the death of the plaintiff.

8. There is a distinction between the death of the plaintiff and the death of the defendant. The injunction is operative against the defendants. In fact, the model form of prayers in many suits for injunction would be "restraining the defendants or his men or servants or agents or anybody claiming under or through him". Therefore, on the death of the defendant, all these persons would vanish. Consequently, the question of binding the L.Rs of the defendant by such injunction would not arise. But this will not be the case, if the plaintiff who seeks injunction dies, A decree for injunction obtained by the plaintiff can be succeeded to by his L.Rs and such a right of injunction does not die with the plaintiff. I am fortified in my view by the dictum rendered by the High Court of Allahabad in *Krishna Behari Goel Vs. Raj Mangal Persad and Others*, , which is in the following passage:

"(5) The suit was not of a personal nature at all. Sukhu did not claim any

personal right. The injunction sought was that the applicant should not interfere with his possession over the property in dispute. A suit claiming injunction of this nature did not abate on the death of the plaintiff. The cause of action survived to his legal representative who came in possession of the property in dispute".

This position stands further clarified by the leading case of *Penn v Lord Baltimore*, wherein Lord Chancellor Hardwicke stated in effect as follows:

"The strict primary decree in this Court, as a Court of Equity, is in personam,until the defendant do comply with the order of judgment of the Court, which is against himself the defendant personally to do or cause to be done or to abstain from doing some act".

The italicized portion indicates that it is a personal against the defendant against whom injunction is sought for. Therefore, the decree of injunction would become infructuous on the death of the defendant or the party against whom injunction is granted. The person who gets an injunction were to die, certainly his L.Rs will be entitled to the benefit of the decree. Making such a distinction, I hold that the view of the Appellate Court is not correct. Inasmuch as, the Appellate Court has already confirmed the decree of the Trial Court, but has dismissed the suit on a technical ground, I set aside the decree of the Appellate Court and allow the second appeal, restoring the decree of the Trial Court.