

S. P. MISRA & ORS.

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v.

MOHD. LAIUDDIN KHAN & ANR.

(Civil Appeal No. 3311 of 2015)

OCTOBER 18, 2019

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**[INDU MALHOTRA AND R. SUBHASH REDDY, JJ.]**

*Indian Partnership Act, 1932 – s.42(c) – Predecessor-in-interest of the appellants and that of the respondents entered into partnership for carrying on business in real estate, by developing the land which formed part of Paigah Compound – Predecessor-in-interest of the respondents is the owner of open land with structures situated in Paigah Compound bearing no.156-159 ad-measuring 22,253 sq. mtrs. approx. – Predecessor of the appellants filed suit – Major portion of the land was developed– Dispute to an extent of 3381 sq. mtrs., claimed by the plaintiff, forming part of Property No.156-159 of Paigah Compound – Suit decreed – Predecessor of the appellants and the respondents died – Appellants filed Execution Petition before the Trial Court – In the Execution Petition, respondents filed application u/s.47, CPC, 1908 – Allowed – Challenged by the respondents – Allowed by the High Court – On appeal, held: Reliefs sought in execution petition are going beyond the scope of the decree – Executing Court cannot travel beyond the decree – In the present case, there were only two partners, the partnership itself stand dissolved, in view of death of a partner – Once the partnership comes to an end, by virtue of death of one of the partners, there will not be any partnership existing in which legal representatives of late respondents could be taken in – Decree obtained by late predecessor of the appellants against late predecessor of the respondents, in pursuance of the partnership deed, cannot bind the legal representatives of late respondents, as such, the decree is not executable against them – When such legal representatives are not parties to the contract, such contract cannot confer rights or impose obligations arising under it on any third party, except parties to it – Executable decree depend on the rights litigated by the parties – Original decree was obtained against the predecessor of the respondents, who was party to partnership deed–*

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A *Thus, when the partnership stands dissolved statutorily, by operation of law, in view of provision u/s. 42(c) of the 1932 Act, the question of execution in pursuance of the decree does not arise – No error committed by the High Court by dismissing the Civil Revision Petition filed by the appellants – Code of Civil Procedure, 1908 – s.47.*

B **Dismissing the appeal, the Court**

**HELD : 1.1 In the case on hand, as much as there were only two partners, the partnership itself stand dissolved, in view of death of a partner. It is true that as per the deed of partnership, the partners have agreed, in the event of death of either party, their respective legal representatives shall automatically become partners in the partnership firm and they shall continue to act as partners of the firm, till the venture envisaged under said partnership is completed and such legal representatives who become partners shall have the same rights and shall be subject to same liabilities and responsibilities, as the deceased partner.**

C **Once the partnership comes to an end, by virtue of death of one of the partners, there will not be any partnership existing in which legal representatives of late predecessor-in-interest of the respondents could be taken in. The judgment and decree obtained by late predecessor-in-interest of the appellants against late predecessor-in-interest of the respondents, in pursuance of partnership deed dated 14.04.82, cannot bind the legal representatives of late predecessor-in-interest of the respondents, as such, decree is not executable against them. The legal representatives of late predecessor-in-interest of the respondents are not the partners of the original partnership deed**

D **dated 14.04.82. When such legal representative are not parties to the contract, such contract cannot confer rights or impose obligations arising under it on any third party, except parties to it. No one but the parties to the contract can be entitled under it or born by it. Such principle is known as ‘Privity of Contract’.**

E **When the partnership stands dissolved by operation of law under Section 42(c) of the Indian Partnership Act, 1932, the question of execution in pursuance of the decree does not arise. There cannot be any contract unilaterally without acceptance and agreement by the legal heirs of the deceased partner. If there are any clauses in the agreement, entered into between the original partners,**

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against the third parties, such clauses will not bind them, such of A  
the clauses in the partnership deed, which run contrary to  
provisions of Indian Partnership Act, 1932, are void and  
unenforceable. Such clauses are also opposed to public policy.  
[Paras 16-18] [505-A-G]

1.2 The executable decree depend on the rights litigated B  
by the parties. In the case on hand, the original decree was  
obtained against the predecessor of the respondents, who was  
party to partnership deed. In view of death of one of the partners,  
the partnership itself stands dissolved statutorily, by operation  
of law, in view of provision under Section 42(c) of the Indian C  
Partnership Act, 1932. When the respondents are not parties to  
the partnership firm, they are not bound by the decree obtained  
by the predecessor of the appellant. More so, when it is a case of  
the respondents that they have not derived any assets and  
liabilities arising out of the partnership firm, decree obtained by  
the original plaintiff is not executable against the respondents. D  
During the life time of late predecessor-in-interest of the  
respondents, she also filed Suit in O.S. No. 1061 of 1990 on the  
file of VII Senior Civil Judge, City Civil Court, Hyderabad, for  
dissolution of partnership firm constituted under deed of  
partnership dated 26.06.1977 and also for rendition of accounts.  
It is true that same is a different partnership but, parties are E  
same. In such suit filed by late predecessor-in-interest of the  
respondents, predecessor of the appellants, filed IA No. 1649 of  
1997, to dismiss the said suit, claiming that in view of death of  
one of the partners, during the pendency of the suit, there is no  
room for third party to be introduced. It was the case of late F  
predecessor-in-interest of the appellants that partnership stood  
dissolved. However, in a similar situation arising out of  
partnership deed dated 14.04.1982, the appellants claim the  
decree is executable against the respondents, who are the legal  
heirs of the judgment-debtor. The respondents were not parties G  
to the partnership deed and the partnership stands dissolved, in  
view of death of one of the partners, the respondents have not  
derived the benefit of assets of the partnership firm, the decree  
obtained by the predecessor of the appellants, is not executable  
against the respondents. The Trial Court rightly allowed the

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A application filed by the respondents under Section 47 of C.P.C. and there is no error committed by the High Court, in confirming such order by dismissing the Civil Revision Petition filed by the appellants herein. [Paras 21-23] [507-C-H; 508-A]

*Prabhakara Adiga v. Gowri and Others* (2017) 4 SCC

B 97 : [2017] 1 SCR 724 – referred to.

**Case Law Reference**

[2017] 1 SCR 724                      referred to                      Para 19

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3311 of 2015.

From the Judgment and Order 09.04.2009 of the High Court of Andhra Pradesh at Hyderabad in Civil Revision Petition No. 4894 of 2006.

A. Subba Rao, Adv. for the Appellants.

D B. Adi Narayana Rao, Sr. Adv., Venkateswara Rao Anumolu, Chandra Mohan Anisetty, Advs. for the Respondents.

The Judgment of the Court was delivered by

**R. SUBHASH REDDY, J.**

E 1. This civil appeal is filed by the appellants, in Civil Revision  
F Petition No. 4894 of 2006, dated 09.04.2009, passed by the High Court of Judicature, Andhra Pradesh at Hyderabad, whereby the High Court has confirmed the order dated 01.02.2006, in E.A. No. 6 of 2005 in E.P. No. 122 of 2003 in O.S. No. 580 of 1980, passed by the II Senior Civil Judge, City Civil Court, Hyderabad.

2. By the aforesaid order, learned II Senior Civil Judge, City Civil Court, Hyderabad, allowed the application filed by the respondents, under Section 47 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.').

G 3. All the appellants herein are legal heirs of late Sri Jai Narayan Misra and all the respondents herein are legal heirs of late Smt. Hashmatunnisa Begum. During the life time of late Sri Jai Narayan Misra and late Smt. Hashmatunnisa Begum, they entered into a partnership deed dated 14.04.1982. As stated in the partnership deed, late Smt. Hashmatunnisa Begum is the owner of open land with

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structures, situated in Paigah Compound bearing No. 156-159 ad- A  
measuring 22,253 square meters approximately. After obtaining exemption  
from Government of India, Ministry of Defence, New Delhi, under Clause  
20(1)(b) of the Urban Land (Ceiling and Regulation) Act, 1976, both the  
partners have entered into partnership, for carrying on business in real  
estate, by developing the land which forms the part of Paigah Compound. B  
It appears that a major portion of the land is already developed, but  
dispute is to an extent of 3381 square meters, which is claimed by the  
original plaintiff, forming part of property No.156-159 of Paigah  
Compound. There were only two partners, as per the partnership deed.

4. The plaintiff in Original Suit No. 580 of 1988, filed by late Sri C  
Jai Narayan Misra, died on 04.01.2001, whereas the predecessor of the  
respondents, late Smt. Hashmatunnisa Begum, died on 17.05.1996. During  
the life time, the predecessor of the appellants late Sri Jai Narayan Misra,  
has filed a Suit in O.S No. 580 of 1988, on the file of II Additional Judge,  
City Civil Court, Hyderabad, claiming the following reliefs:

“1. to grant permanent injunction against the defendant restraining D  
the defendant and all the persons claiming through the defendant  
from preventing the plaintiff from carrying out the work of  
preparing layout plan, developing the property and sale thereof, in  
an extent of 3,381 square meters;

2. to grant mandatory injunction directing the defendant to sign E  
the layout and other documents submitting to the Cantonment  
Board for sanction in respect of the land admeasuring 3,381 square  
meteres forming part of Paigah Colony situated at S.P. Road,  
Secunderabad, and for costs.”

5. The said Suit was decreed on 14.07.1993, by the Trial Court, F  
granting the following reliefs:

“1. the defendant and all the persons claiming through the  
defendant be and that are hereby permanently restrained from  
carrying the work of developing the property and sale thereof in  
respect of the suit schedule property; G

2. the defendant is hereby directed to sign the layout plan and  
other documents for submitting to the Cantonment Board,  
Secunderabad for sanction in respect of the suit schedule property;

3. Each party shall bear their own costs.” H

A           6. After death of the original plaintiff, the legal heirs of the plaintiffs have filed Execution Petition before the Trial Court, by claiming the following reliefs:

- B           “1. to direct the J.Dr. No.2 to 4 to sign the layout plan for submitting to the Cantonment Board, Secunderabad for sanction in respect of the suit schedule property;
2. to sign new/revised layout drawing, earmarking the additional land for development;
- C           3. to break the existing boundary wall at the appropriate place to enable to have access into the additional land for which layout plan is being submitted;
4. to sign a letter to Cantonment Board, undertaking not to claim any water connection for the next 10 years;
5. to sign all other documents that may be required now or in future in connection with the development of the additional land;
- D           6. to join in executing sale deeds and present the memo for registration, in favour of purchasers of the suit land, all under Order XXI Rules 32 and 34 and Section 151 C.P.C.”

E           7. In the following Execution Petition, respondents have filed an application under Section 47 of C.P.C., in E.A. No. 6 of 2005, before the Court of II Senior Civil Judge, City Civil Court, Hyderabad, claiming the relief, to dismiss the Execution petition, as the decree is void and un-executable. By a well reasoned Order, dated 01.02.2006, passed by the II Senior Civil Judge, City Civil Court, Hyderabad, allowed the application filed under Section 47 of C.P.C. The said Order is challenged by the respondents, by way of Civil Revision Petition No. 4894 of 2006, before the High Court of Judicature, Andhra Pradesh at Hyderabad. The High Court, vide impugned order, confirmed the Order passed by the Trial Court, holding that the decree obtained against the predecessors of the respondents, namely, late Smt. Hashmatunnisa Begum, is not executable against the legal representatives.

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              8. We have heard Sri. A.Subba Rao, learned counsel appearing for the appellants and Sri. B. Adi Narayana Rao, learned senior counsel appearing for the respondents, assisted by Sri. Venkateswara Rao Anumolu, Advocate on-record.

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9. It is contended by Sri. A.Subba Rao, learned counsel appearing for the appellants that as per the terms of the partnership deed, in the event of death of either of the party, their legal representatives shall automatically become partners in the partnership firm and they shall continue to act as partners of the firm till the venture envisaged under partnership is completed and such legal representatives, who become partners, shall have same rights and shall be subject to same liabilities and responsibilities, as the deceased partner. The relevant clauses of the partnership deed dated 14.04.1982, read as under:

“This partnership shall not be dissolved till the completion of the venture except by mutual agreement reduced in writing.

The parties hereby expressly and specifically agree that in the event of death of either party their respective legal representatives shall automatically become partners in the partnership firm and they shall continue to act as partners of the firm till the venture envisaged under this partnership is completed and such legal representatives who become partners shall have the same rights and shall be subject to the same liabilities and responsibilities as the deceased partner.”

10. By referring to the contents of the partnership deed, it is contended by Sri. A. Subba Rao, learned counsel appearing for the appellants that the decree obtained by the predecessor of the appellants is executable and against the respondents, who are the legal representatives of the original partner. The Trial Court as well as the High Court have erroneously held that the decree which has become final, is not executable against the respondents.

11. Learned counsel has placed strong reliance on a judgment of this Court, in the case of *Prabhakara Adiga v. Gowri and Others*<sup>1</sup>.

12. On the other hand, it is the contention of Sri. B. Adi Narayana Rao, learned senior counsel appearing for the respondents that as there were only two partners and on death of one of the partners, partnership stands dissolved, in view of the provision under Section 42(c) of the Partnership Act, 1932. It is submitted that when the right litigated upon is readable, only in such event, decree can be executed. It is submitted that respondents were not the partners in the partnership deed and if, any clause in the partnership deed which runs contrary to statutory

<sup>1</sup> (2017) 4 SCC 97

A provisions are void, such clauses are against the public policy. It is submitted that when the partnership itself stands dissolved on death of one of the partners, the appellants claiming right under a decree obtained by the original partner, cannot be executed against the respondents.

B 13. In this case, it is not in dispute that as per the original partnership deed there were only two partners, namely, late Smt. Hashmatunnisa Begum, who is the owner of the land/predecessor of the respondents and late Sri Jai Narayan Misra, who is the predecessor of the appellants herein.

C 14. From the Suit filed in O.S. No. 580 of 1988, the original plaintiff has obtained a decree on 14.07.1993 from the Trial Court, which granted the reliefs as under:

D “1. the defendant and all the persons claiming through the defendant be and that are hereby permanently restrained from carrying the work of developing the property and sale thereof in respect of the suit schedule property;

2. the defendant is hereby directed to sign the layout plan and other documents for submitting to the Cantonment Board, Secunderabad for sanction in respect of the suit schedule property;

E 3. Each party shall bear their own costs.”

F 15. From a perusal of the relief sought for in the Execution Petition, by the legal heirs of the original plaintiff, itself makes it clear that reliefs sought in Execution Petition are going beyond the scope of the decree. It is fairly well-settled that, the Executing Court cannot travel beyond the decree. The only question which fell for consideration before the Trial Court in E.A. No. 6 of 2005, was whether the decree obtained by the predecessor of the appellants, can be executed against the appellants or not. Section 42 of the Partnership Act, 1932, deals with the situations of dissolution of partnership, on happening of certain contingencies. As per the said provision, subject to contract between the partners, a firm is dissolved when:

G (a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

H (c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent. A

16. In the case on hand, as much as there were only two partners, the partnership itself stand dissolved, in view of death of a partner.

17. It is true that as per the deed of partnership, the partners have agreed, in the event of death of either party, their respective legal representatives shall automatically become partners in the partnership firm and they shall continue to act as partners of the firm, till the venture envisaged under said partnership is completed and such legal representatives who become partners shall have the same rights and shall be subject to same liabilities and responsibilities, as the deceased partner. B  
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18. At this stage, it is to be noticed that once the partnership comes to an end, by virtue of death of one of the partners, there will not be any partnership existing in which legal representatives of late Smt. Hashmatunnisa Begum could be taken in. The judgment and decree obtained by late Sri Jai Narayan Misra against late Smt. Hashmatunnisa Begum, in pursuance of partnership deed dated 14.04.1982, cannot bind the legal representatives of late Smt. Hashmatunnisa Begum, as such, decree is not executable against them. The legal representatives of late Smt. Hashmatunnisa Begum are not the partners of the original partnership deed dated 14.04.1982. When such legal representative are not parties to the contract, such contract cannot confer rights or impose obligations arising under it on any third party, except parties to it. No one but the parties to the contract can be entitled under it or born by it. Such principle is known as 'Privity of Contract'. When the partnership stands dissolved by operation of law under Section 42(c) of the Indian Partnership Act, 1932, the question of execution in pursuance of the decree does not arise. There cannot be any contract unilaterally without acceptance and agreement by the legal heirs of the deceased partner. If there are any clauses in the agreement, entered into between the original partners, against the third parties, such clauses will not bind them, such of the clauses in the partnership deed, which run contrary to provisions of Indian Partnership Act, 1932, are void and unenforceable. Such clauses are also opposed to public policy. D  
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19. In the case of *Prabhakara Adiga v. Gowri and Others*<sup>1</sup>, on which strong reliance is placed by Sri. A.Subba Rao, learned counsel appearing for the appellants, would not render any assistance to support H

- A his case, having regard to facts of the case on hand and the rights litigated in the Suit in O.S. No. 580 of 1988, before the II Senior Civil Judge, City Civil Court, Hyderabad. In the case of **Prabhakara Adiga**<sup>1</sup>, plaintiff was allotted suit scheduled property in a registered partnership deed and he was in possession thereof. The defendant, on partition in the family, had been allotted a portion of the land. When there was interference on the suit scheduled property, which fell to the share of plaintiff, as per the registered partnership deed, a suit for permanent injunction was filed.

20. In the aforesaid case, after suffering decree for permanent injunction, judgment-debtor died. When the heirs of the judgment-debtor in violation of the decree for permanent injunction tried to forcibly dispossess the decree-holder, decree-holder filed the Execution Petition. The Executing Court held that heirs of the judgment-debtor were not bound by the decree. When such order is questioned before the High Court, the Writ Petition is allowed. The High Court held that decree of permanent injunction cannot be enforced against the legal heirs of judgment-debtor, as an injunction does not travel with the land. This Court, by referring to provision under Section 50 of C.P.C. read with Order 21 Rule 32 of C.P.C, has held that such a decree can be executed against the legal representatives. But, at the same time, the paragraph 25 of the judgment, which is relied on by Sri. B. Adi Narayana Rao, learned senior counsel appearing for the respondents, reads as under:

- “25. In our considered opinion the right which had been adjudicated in the suit in the present matter and the findings which have been recorded as basis for grant of injunction as to the disputed property which is heritable and partible would enure not only to the benefit of the legal heir of decree-holders but also would bind the legal representatives of the judgment-debtor. It is apparent from Section 50 CPC that when a judgment-debtor dies before the decree has been satisfied, it can be executed against legal representatives. Section 50 is not confined to a particular kind of decree. Decree for injunction can also be executed against legal representatives of the deceased judgment-debtor. The maxim “*actio personalis moritur cum persona*” is limited to certain class of cases as indicated by this Court in *Girijanandini Devi v. Bijendra Narain Choudhary* [*Girijanandini Devi v. Bijendra Narain Choudhary*, AIR 1967 SC 1124] and when the right litigated upon is heritable, the

decree would not normally abate and can be enforced by legal representatives 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.”

21. From a reading of the aforesaid judgment, it is clear that the executable decree depend on the rights litigated by the parties. In the case on hand, the original decree was obtained against the predecessor of the respondents, who was party to partnership deed. In view of death of one of the partners, the partnership itself stands dissolved statutorily, by operation of law, in view of provision under Section 42(c) of the Indian Partnership Act, 1932. When the respondents are not parties to the partnership firm, they are not bound by the decree obtained by the predecessor of the appellant. More so, when it is a case of the respondents that they have not derived any assets and liabilities arising out of the partnership firm, decree obtained by the original plaintiff is not executable against the respondents.

22. It is also to be noticed that during the life time of late Smt. Hashmatunnisa Begum, she also filed Suit in O.S. No. 1061 of 1990 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad, for dissolution of partnership firm constituted under deed of partnership dated 26.06.1977 and also for rendition of accounts. It is true that same is a different partnership but, parties are same. In such suit filed by late Smt.Hashmatunnisa Begum, predecessor of the appellants Late Sri Jai Narayan Misra, filed IA No. 1649 of 1997, to dismiss the said suit, claiming that in view of death of one of the partners, during the pendency of the suit, there is no room for third party to be introduced. It was the case of late Sri Jai Narayan Misra that partnership stood dissolved. However, in a similar situation arising out of partnership deed dated 14.04.1982, the appellants claim the decree is executable against the respondents, who are the legal heirs of the judgment-debtor. As much as, we are of the view that the respondents were not parties to the partnership deed and that the partnership stands dissolved, in view of

- A death of one of the partners, the respondents have not derived the benefit of assets of the partnership firm, the decree obtained by the predecessor of the appellants, is not executable against the respondents herein.

23. In view of the same, we are of the view that the Trial Court has rightly allowed the application filed by the respondents under Section 47 of C.P.C. and there is no error committed by the High Court, in confirming such order by dismissing the Civil Revision Petition filed by the appellants herein.
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24. We do not find any merit in this appeal so as to interfere in the impugned well reasoned order.

- C 25. This civil appeal is, accordingly, dismissed, with no order as to costs.

Divya Pandey

Appeal dismissed.