

Prabhakara Adiga vs Gowri And Ors on 20 February, 2017

Equivalent citations: AIR 2017 SUPREME COURT 1061, 2017 (4) SCC 97, (2017) 2 CIVILCOURTC 284, (2017) 4 MAH LJ 792, (2017) 2 ANDHLD 46, (2017) 1 CURCC 124, (2017) 2 JLJR 74, (2017) 1 KER LJ 15, (2017) 1 WLC(SC)CVL 465, (2017) 2 ALLMR 878 (SC), (2017) 3 KCCR 2289, (2017) 123 ALL LR 223, (2017) 2 PAT LJR 202, (2017) 2 CIVLJ 240, (2017) 136 REVDEC 707, (2017) 2 ALL WC 1777, (2017) 3 KANT LJ 545, (2017) 2 JCR 208 (SC), (2017) 3 MPLJ 470, (2017) 2 ICC 660, (2017) 1 ALL RENTCAS 721, (2017) 2 RECCIVR 65, (2017) 4 MAD LW 66, (2017) 172 ALLINDCAS 36 (SC), (2017) 1 CLR 658 (SC), (2017) 1 CAL HN 184, (2018) 1 CLR 1120 (SC)

Author: Arun Mishra

Bench: Amitava Roy, Arun Mishra

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3007-3008 OF 2017
[Arising out of SLP [C] Nos. 1483-1484 of 2015]

Prabhakara Adiga

... Appellant

Vs.

Gowri & Ors.

... Respondents

J U D G M E N T

ARUN MISHRA, J.

1. Leave granted.

2. Singular question involved in the matter is executability of decree for permanent injunction against the legal representatives of judgment- debtor.

3. A suit was filed by the appellant registered as Original Suit No.83/2007 in the Court of II Additional Civil Judge, Kundapura, with respect to immovable property described in Schedule 'A' of the plaint. The plaintiff got converted the land for non-agricultural/residential purposes. The

plaintiff was in possession and enjoyment of the property and defendant had no concern with the same. However, he tried to remove and destroy the wooden fence and made an effort to forcibly dispossess the plaintiff. Hence the suit was filed. The defendant had denied the averments and contended that there was no division of the land and had asserted his ownership and possession. The conversion order of land was also illegal.

4. It was found on the basis of the registered partition deed that the suit schedule property was allotted to the plaintiff and he was in possession thereof. The defendant on partition in his own family had been allotted 1.58 acres and defendant has sold 1.68 acres of land, though the land allotted to him was only 1.58 acres in Survey No.32/5. Plaintiff was found to be in possession of Schedule 'A' property on the date of the suit. It was held that the defendant had no right, title or interest in the disputed land. Accordingly, the suit of the plaintiff for permanent injunction was decreed vide judgment and decree dated 13.9.2012.

5. After suffering decree for permanent injunction on 13.9.2012, the judgment-debtor Divira Bolu died on 10.12.2012. The heirs of the judgment-debtor in violation of the decree for permanent injunction tried to forcibly dispossess the decree-holder from Schedule 'A' property. Thus, the decree-holder filed execution petition within two years of the passing of the decree. It was resisted by the heirs of judgment-debtor on the ground that they were not bound by the decree for permanent injunction. The force of decree lapsed with the death of judgment-debtor. The decree was incapable of enforcement against them as the judgment debtor had died. Reliance was placed on the legal maxim "actio personalis moritur cum persona". The executing court held that the heirs of judgment-debtor were bound by the decree and directed them to furnish an undertaking to the effect that they would not disobey the decree of the court. Aggrieved thereby, the respondents preferred a writ petition in the High Court of Karnataka at Bangalore which has been allowed by the impugned order. The High Court has held that the decree for permanent injunction cannot be enforced against the legal heirs of judgment-debtor as injunction does not travel with land.

6. It was submitted by learned counsel representing the appellant that the High Court has erred in law in holding the decree for permanent injunction to be inexecutable as against the respondents/heirs of judgment-debtor. He has relied upon section 50, section 146, Order 21 Rule 16, Order 21 Rule 32 and section 47 CPC in order to take home the point. On the other hand, learned counsel appearing on behalf of the respondents has also referred to few decisions to contend that the decree for permanent injunction does not go with the land. Thus, the same is inexecutable against the legal heirs of the judgment-debtor.

7. It is apparent in the instant case that on the basis of the title of the plaintiff over the disputed land, decree for permanent injunction had been granted. It was found that the defendant had sold the property which had fallen to his share in the partition of his own family. It was held in the suit that the defendant was not the owner of the disputed property and it belonged to the plaintiff. In execution proceedings filed within 24 months of decree, a question arose whether after the death of judgment debtor, his heirs could start interference in the property and plaintiff was obliged to file another suit for injunctioning them or could execute the decree for permanent injunction which was granted in his favour as against the heirs of judgment-debtor.

8. Section 50 of the CPC has been referred to and the same is extracted hereunder :

“50. Legal representative— (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of;

and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree- holder, compel such legal representative to produce such accounts as it thinks fit.”

9. Section 146 CPC has also been referred to and the same is extracted hereinbelow :

“146. Proceedings by or against representatives— Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made by or against any person claiming under him.”

10 The provisions of Order XXI Rule 16 and Order XXI Rule 32 of CPC have also been referred to and they are also extracted below :

“16. Application for execution by transferee of decree— Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

[Explanation.—Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.]” “32. Decree for specific performance for restitution of conjugal rights or

for an injunction.— (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunctions been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for [six months] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application. (4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [six months] from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.”

11. Section 50 CPC deals with execution of decrees of all kinds including that of permanent injunction. Section 146 CPC provides that where any application which can be made by or against any person, it may be made by or against any person claiming under him except as otherwise provided in the Code. Order 21 Rule 16 deals with execution of decree by a transferee with which we are not concerned in this case. Order 21 Rule 32 provides the mode for execution of decree for injunction, restitution of conjugal rights and specific performance. Section 50 CPC which is a specific provision with respect to execution of decree against legal representatives, would be attracted read with Order 21 Rule 32 CPC.

12. It is crystal clear from a perusal of section 50(2) CPC that a decree for permanent injunction can be executed against the judgment debtor or his legal representatives. In *Muthukaruppa Pillai & Anr.*

v. Ganesan (1995) Supp 3 SCC 69, a question arose with respect to executability of the decree for injunction in the backdrop of facts that the plaintiff had filed a suit for restraining the defendant-appellant from interfering with her rights as Hakdar and Pujari. The suit was decreed and it was held that the said rights were heritable and partible. On aforesaid foundation, decree was passed. The successor-in-interest of the plaintiff decree-holder had put the decree for execution. It was contended that the decree for injunction was personal in nature and could have been enforced by the decree-holder only. This Court held that there was nothing in the decree for permanent injunction to hold that it lapsed with the death of the plaintiff and it could be executed by heirs of decree holder. This Court has laid down thus :

“1. This judgment-debtor’s appeal is directed against judgment and order of the High Court of Madras. The appellant was a defendant in a suit filed by the predecessor-in-interest of the respondent for permanent injunction restraining the appellant from interfering with her right as Hakdar and Pujari of two temples in Kottarakurichi village. The suit even though decreed by the trial court was dismissed by the first appellate court. But the decree of the trial court was restored by the High Court, which was to the following effect:

“[T]he defendants, their workmen, their agent, etc. be and are hereby restrained by an order of permanent injunction from interfering with the plaintiff’s enjoyment of the plaint schedule property (described hereunder) till the end of 1965 Margali 30th (i.e., till January 13, 1965) and in every alternative years in future....” The judgment of the High Court was delivered in 1969. The decree-holder died in June 1981. The respondent who claims to be adopted son of the plaintiff in the original suit and also her legatee filed an application for execution in 1981 under Section 146 and Order XXI Rule 16 of the Civil Procedure Code. It was resisted by the appellant on various grounds. The application was allowed against which the appellant filed revision. During pendency of the execution proceedings, the respondent filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowments, Tirunelveli, Tamil Nadu, claiming the rights to do puja and enjoy the share of income from the two temples. The application was allowed by the Deputy Commissioner, but the order was set aside by the Commissioner, Hindu Religious and Charitable Endowments, Madras in revision filed by the appellant. It was held that the respondent could not claim better and more rights than what were granted in favour of his predecessor-in-interest by the civil court. Against this order of the Commissioner, the respondent filed a writ petition. Both, the revision filed by the appellant and writ petition filed by the respondent were decided by a common order. The High Court maintained the order of the trial court in execution, except to certain extent. The writ petition filed by the respondent was dismissed.

2. The principal challenge to the order passed by the High Court is on the nature of the decree. It is claimed that the decree being personal, it could not have been executed by the respondent who claimed to be successor-

in-interest of the plaintiff in the suit. The submission appears to be devoid of any merit. In the main suit, out of which these execution proceedings have arisen, it was clearly held by the High Court that the rights were heritable and partible. In view of this finding, it is not clear as to how can the appellant raise the argument of decree being personal in nature. Apart from that, the decree passed by the trial court, copy of which has been produced by the learned counsel for the respondent, the authenticity of which is not disputed by the appellant, and which has been extracted earlier, clearly indicates that the injunction granted did not impose any such restriction expressly nor could it be impliedly held that it lapsed with the death of the plaintiff.” This Court has laid down that legal representatives of decree holder can execute decree for permanent injunction relating to property or right which is heritable and partible. When such is the situation, in our opinion, it would be open to decree holder to execute decree against successor of interest of judgment-debtor also.

13. In *Ramachandra Deshpande v. Laxmana Rao Kulkarni* AIR 2000 Karnataka 298, a question arose with respect to executability of the decree for permanent injunction restraining the defendant from obstructing plaintiff’s use and enjoyment of their right of way through the backyard of the defendant’s house, and subsequently, the house was sold by judgment-debtor- defendant. It was held that the decree could have been executed against the transferee judgment-debtor. The rule that a decree for injunction cannot be enforced against a purchaser from a judgment-debtor since injunction does not run with the land for it is a remedy in personam is not applicable considering the nature of rights adjudicated upon. The Court held that enforcement of the decree against legal heirs of the deceased was saved by section 50 CPC and as against the purchaser of the suit property pendente lite was saved by section 52 of the Transfer of Property Act. The High Court has relied upon the decisions of this Court in *Muthukaruppa Pillai & Anr. v. Ganesan* (supra) and in *Kanhaiya Lal v. Babu Ram (dead) by LRs. & Anr.* (1999) 8 SCC 529. The High Court has observed that if the remedy of injunction granted by a decree is in respect of any heritable and partible right, it does not get extinguished with the death of a party thereto, but enures to the benefit of the legal heirs of the decree-holder, as such a decree could be executed against the successor-in-interest of the deceased judgment-debtor as well. Similar is the decision in *G.M. Venkatappa v. Anjanappa & Anr.* ILR 2006 Karnataka 4456, wherein also the question of executability of the decree for permanent injunction arose.

14. Normally personal action dies with person but this principle has application to limited kinds of causes of actions. In *Girijanandini Devi v. Bijendra Narain Choudhary* AIR 1967 SC 1124, this Court while considering the question whether the decree for account can be passed against the estates, also considered the maxim “*actio personalis moritur cum persona*” and observed that the postulation that personal action dies with the person, has a limited application. It operates in a limited class of actions, such as actions for damages, assault or other personal injuries not causing the death of the party and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. Death of the person liable to render the account for property received by him does not therefore affect the liability of his estate. This Court has observed thus:

“(14) Finally, it was urged that since defendants Mode Narain and Rajballav Narain had died during the pendency of the proceedings, the High Court was incompetent to

pass a decree for account against their estates. Rajballav who was defendant No.6 died during the pendency of the suit for the Trial Court and Mode Narain who was defendant No.1 in the suit died during the pendency of the appeal in the High Court. But a claim for rendition of account is not a personal claim. It is not extinguished because the party who claims an account, the party who is called upon to account dies. The maxim “action personalis moritur cum persona” a personal action dies with the person, has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an account for property received by him does not therefore affect the liability of his estate. It may be noticed that this question was not raised in the Trial Court and in the High Court. It was merely contended that because the plaintiff Bijendra Narain was receiving income of the lands of his share no decree for accounts could be made. The High Court rejected the contention that no account would be directed in favour of the plaintiff on that account. They pointed out that the mere fact that the plaintiff was in possession of some portion of properties of the joint family since 1941 cannot possibly absolve the defendants, who were in charge of their dealings with the management of the properties, from rendering accounts of the joint family estate. The plaintiff was since September 1941 severed from the joint family in estate and also in mess and residence, and he was entitled to claim an account from the defendants from September 1941, but not for past dealings. The fact that the plaintiff is in possession of some of the properties will, of course, have to be taken into account in finally adjusting the account.”

15. The views of the High Courts which are relied upon are by and large in favour of executability of decree. Of course it would depend on the right litigated, findings recorded and the nature of decree granted. In D'souza J. v. Mr. A. Joseph AIR 1993 Karnataka 68, a Single Bench of the Karnataka High Court held that when a decree for injunction against a person can be enforced even against his son, it is obvious that a similar logic should hold good even in the case of the death of the plaintiff who has obtained a decree. There should not be any legal impediment for a heir of a decree-holder to enforce the decree for injunction against the judgment-debtor. There is no such legal impediment on the principle that injunction does not run with the land. Yet another Division Bench of the Kerala High Court in Rajappan and Ors. v. Sankaran Sudhakaran AIR 1997 Kerala 315, also considered the question of violation of decree by the legal representatives of judgment-debtor and has laid down that a decree for permanent injunction can be executed against them. It was observed that if a decree for injunction compels personal obedience, it in appropriate cases would not be enforced against the legal representatives. However, if subject matter of the suit and the act complained of was on the basis of ownership of an adjacent property of the other side, then such a decree for injunction would be binding not only against the judgment- debtor personally but all those who claim through him. A decree for perpetual injunction was passed restraining the judgment-debtors

from trespassing into the decree schedule property destroying the boundaries thereof and from interfering with the rights of the decree-holder. The legal representatives of the judgment-debtor violated the injunction. The Court, in our opinion, rightly held that the executing court could execute the decree of perpetual injunction against the legal representatives of the judgment-debtor.

16. In *Krishnabai Pandurang Salagare v. Savlaram Gangaram Kumtekar* AIR 1927 Bombay 93 it was held that when a decree is passed against a judgment-debtor, it can on his death be enforced not only against the legal representatives, but also against the transferee from those representatives who take under an alienation pending the execution proceedings.

17. In *Amritlal Vadilal v. Kantilal Lalbhai* AIR 1931 Bombay 280 it has been observed that a decree for injunction does not run with the land and cannot be enforced in absence of the statutory provision against surviving member of joint family or against purchaser from judgment-debtor but can be enforced against legal representatives joined under Section 50 CPC and so also against transferees from original judgment-debtor as per Section 52 of the Transfer of Property Act. In *Ganesh Sakharam Saraf v. Narayan Shriram Mulaye* AIR 1931 Bombay 484 it was held that though an injunction is a personal remedy and does not run with the land, ordinarily a decree for an injunction can be executed only against the persons against whom the injunction is issued and cannot be executed against any other person in the absence of a statutory provision. If an injunction decree is capable of being enforced against a person other than the judgment-debtor by virtue of a statutory provision contained in Section 50 CPC, it can be executed equally against the son who inherits the estate of his father as well as against one who was joint with the father and brought on the record as his legal representative. It was also observed that where a decree had been passed against the father as a manager and representative of the joint family, it could be executed against his son who represented the joint family.

18. In *Manilal Lallubhai Patel v. Kikabhai Lallubhai* AIR 1932 Bombay 482 a Single Bench has held that where a decree for an injunction has been passed against the father, the son not being joined as a party, and the father dies during the pendency of the execution proceedings, the decree can be enforced under Section 50 CPC against the son as his legal representative by proceeding under Order 21, Rule 32.

19. In *Somnath Honnappa Bennalkar v. Bhimrao Subrao Patil* 1974 ILR Karnataka 1506, a compromise decree was passed in favour of the plaintiff for permanent injunction restraining the judgment-debtor from interfering with the plaintiffs possession and enjoyment of the suit property. Subsequently, the plaintiff sold his suit property to the assignee and also assigned compromise decree in his favour. The assignee took out execution against the judgment debtor. It was held that the assignee of a compromise decree was not competent to execute the decree. It was further held that the compromise decree for injunction was personal and did not run with the land. However, it was a case of assignment and not covered by section 52 of the Transfer of Property Act.

20. The High Court of Karnataka in *Hajaresab v. Udachappa* 1984 ILR Karnataka 900 has also held that under the provisions of Section 50 CPC the legal representatives of the deceased defendant against whom the decree for injunction is passed would be liable for violation of that decree. It was

also observed that Section 50 CPC does not make any distinction between a decree for permanent injunction and a decree of any other nature. The High Court has referred to the 'Execution Proceedings' by Shri Soonavala, 1958 Edition thus:

"In Execution Proceedings by Shri Soonavala, 1958 Edition, on page 386 it is said: -

"A decree for injunction does not run with the land and cannot be enforced against a purchaser of the property from the defendant. But it can be enforced against a legal representative of the deceased j.d. Plaintiff obtained a decree against the defendant, restraining the latter from obstructing the access to light and air to her windows. The plaintiff applied for execution praying that the portion of the defendant's house which obstructed her windows should be pulled down. While this application was pending the defendant died and his son and heir was brought on the record. The lower Courts directed that the decree should be executed as prayed for and directed the appellant (the son and heir of the deceased defendant) to pull down the obstructing portion of the house in question within a given time. It was contended for the appellant that the original defendant having died, the injunction could not be enforced against his son (the appellant) as an injunction does not run with the land. It was held that having regard to the provisions of Section 50, the injunction ordered against the deceased defendant might be enforced against his son and his legal representative.

The author has further said on the same page -

"But a decree for injunction cannot be enforced against a purchaser of the property from the defendant or against a person who is not his legal representative. The plaintiff obtained a decree restraining the defendant in his user of certain land and applied for execution. Mean while the land had been sold in execution of another decree against the defendant and the purchaser at the Court sale obtained possession. The plaintiff thereupon applied that the purchaser should be made a party to the execution proceedings and that execution should go against him as well as against the defendant, It was held that no order for execution could be made. It could not go on against the defendant as all his interest in the land had been sold in execution of a decree, and it could not go on against the purchaser as an injunction does not run with the land."

The author has further said -

"A decree for injunction does not run with the land and in the absence of any statutory provision, such a decree cannot be enforced against the surviving members of a joint family or against a purchaser from j.d. But where the sons of the j.d. are brought on the record as his legal representatives under Section 50, the decree can be executed against them and so also against the transferees from the legal representatives, under Section 52, Transfer of Property Act. On the same principle,

viz., that they are bound by the result of the execution proceedings under Section 52, T.P. Act, the transferees from the original j.d. during the pendency of the execution proceedings against him, can be held to be similarly bound and are liable to be proceeded against in execution".

The author has further said on page 387 as -

"A decree awarding certain reliefs by way of injunction was passed in favour of the plaintiff. Before execution was applied for, the defendant died and the darkhast proceeded against two widows of the deceased j.d. as his legal representatives. During the pendency of the appeal in execution the legal representatives transferred their property to a stranger. A question was raised that execution could not proceed against the legal representatives and their transferee, as the relief granted by way of injunction was purely personal and the original j.d. having died, the injunction has ceased to be operative, it was held that the darkhast originally filed against the legal representatives was in order under Section 50, C.P.C., and was also good against the transferee as the transfer was not made under the authority of the Court and, being effected during the pendency of a contentions proceeding in execution of the decree, could not be allowed to affect the right of the plaintiff under Section 52, T.P. Act. (Krishnabai - v. - Sawlaram, I.L.R. 51 Bom. 37; 100 LC. 582 :

A.I.R. (1927) Bom. 93; also see, 9 Bom. L.R. 1173; I.L.R. 26 Bom. 140,

283.) An injunction is a personal remedy and does not run with the land. A decree for an injunction therefore can be executed only against the persons against whom the injunction is issued and cannot be executed against any other person in the absence of a statutory provision. If an injunction decree is capable of being enforced against a person other than the j.d. by virtue of a statutory provision, e.g. Section 50, C.P.C, it can be executed equally against the son who inherits the estate of his father as well as against one who was joint with the father and is brought on the record as his legal representative. A d.h. sought to execute a decree for permanent injunction obtained against the father in a joint Hindu family against his sons. It was held that the decree being passed against the father as a manager and representative of the joint family could be executed against his son who represented the joint family; that the son taking the joint family estate by survivorship was to be regarded as a 'person' who in law represented the estate of a deceased person within the meaning of the first part of the definition in Section (2) (11), C.P.C"

(emphasis supplied)

21. In Basavant Dundappa v. Shidalingappa Sidaraddi ILR (1986) Karnataka 1959 relied on by the respondents, it was held that when an application had been filed by the decree-holder for execution and similar application was dismissed on the ground that it was not maintainable, another application for the same relief stands barred.

22. In *Shivappa Basavantappa Devaravar v. Babajan* 1999 (4) Kar. L.J. 293, relied on by respondents, where in a suit for permanent injunction, injunction was granted and was upheld by the first Appellate Court and second appeal was filed and the legal representatives of judgment-debtor wanted to prosecute the same, a single Bench applied the principle of the maxim “*actio personalis maritur cum persona*” and held that the legal representatives had no right to pursue the appeal. In our opinion, it cannot be said that single Bench has correctly appreciated the legal position as suit was based on title in the aforesaid decision. At the same time, the Single Judge has also observed that if the injunction had been obtained by plaintiff against the defendant and if plaintiff died, legal representatives would have been entitled to the benefit of injunction. In our opinion, the High Court has erred in dismissing the appeal. The said maxim had no application, thus the decision cannot be said to be laying down the correct proposition of law and is overruled.

23. Another decision which has been referred to is *Abdul Kardar Haji Hiroli v. Mrs. Judaih Jacob Cohen* 1969 BLR 749 in which the question arose about the executability of the decree containing covenants running with the land and the same was passed with the consent of the parties, the Court held that it was not executable against the third party and the purchaser of the land. The question does not arise for consideration as the present case is not the case of transfer or execution by or against the purchasers of the land.

24. Learned author Mulla in his *Commentary on the Code of Civil Procedure* (18th Edition) Vol I, while analyzing the provisions of Section 50 CPC has referred to various decisions of the High Courts (*Sakarlal v. Parvatibai* (1902) 26 Bom 283, *Amritlal v. Kantilal* AIR 1931 Bom 280, *Ganesh v. Narayan* AIR 1931 Bom 484, *Dayasbhai v. Bapalal* (1902) 26 Bom 140, *Vithal v. Sakharam* (1899) 1 Bom LR 854, *Jamsetji v. Hari Dayal* (1908) 2 Bom 181, *Chothy Theyyathan v. John Thomas* AIR 1997 Ker 249, *Krishnabai v. Savlaram* AIR 1927 Bom 93, *Kalpuri Ellamma v. Nellutla Venkata Lakshmi* 2008 (72) All Ind Cas 669) with respect to the executability of decree for injunction and observed at pages 687-688 thus:

“12. Decree for injunction.- An injunction obtained against a defendant, restraining him from obstructing plaintiff’s ancient rights, may, on the death of the defendant, be enforced under this section, against his son as his legal representative, by procedure under O 21, r 32 (*Sakarlal v. Parvatibai*, (1902) 26 Bom 283; *Amritlal v. Kantilal*, AIR 1931 Bom 280 : (1931) 33 Bom LR 266. *Code of Civil Procedure* 1882, s 260). Similarly, a decree for an injunction against a manager and representative of a joint Hindu family can be enforced after his death against a son who represents the joint family (*Ganesh v. Narayan*, AIR 1931 Bom 484 : (1931) 55 Bom 709). But such an injunction cannot be enforced under this section against a purchaser of the property from the defendant, for an injunction does not run with the land. The remedy of the decree-holder is to bring a fresh suit for an injunction against the purchaser (*Dayasbhai v. Bapalal*, (1902) 26 Bom 140; *Vithal v. Sakharam*, (1899) 1 Bom LR 854; *Jamsetji v.*

Hari Dayal, (1908) 32 Bom 181), when the decree is one restraining the owner of the property from blasting rocks in his property on a finding that such blasting would injuriously affect the adjacent

property of the decree- holder. When once a decree is passed, it is obvious that the defendant in the suit, judgment-debtor, would be precluded from carrying on blasting operation in his property. To say that when he is succeeded by the others, they would not be bound by the restrain relating to the enjoyment of the particular property is to derogate from the principle of the public policy that there shall be no second litigation in respect of the same right and the same property. It cannot be the policy of law that every time an assignment of the decree schedule property take place, the decree-holder should institute a fresh suit against the assignee, so as to prevent them from disobeying the decree obtained by the decree-holder against the original owner of the property (*Chothy Theyyathan v. John Thomas*, AIR 1997 Ker 249. See notes to s 47, 'Representatives No. (6)-Purchaser of Property'). The Bombay High Court has held that an injunction can be enforced against a person who has purchased while execution proceedings are pending, by virtue of the doctrine of *lis pendens* (*Krishnabai v. Savlaram*, AIR 1927 Bom 93 : (1927) 51 Bom 37).

In execution of a decree for perpetual injunction, the liability of the legal representatives of the judgment-debtors is limited to the extent of interference which was restrained through such decree. It is only such legal representatives who defy the decree that can be proceeded against (*Kalpuri Ellamma v. Nellutla Venkata Lakshmi*, 2008 (72) All Ind Cas 669)."

25. In *K. Umma v. T.K. Karappan* AIR 1989 Ker 133 the High Court of Kerala has observed that where a decree for injunction is obtained against a sole judgment-debtor, restraining him from obstructing the plaintiff in erecting a fence on the boundary of his property, the decree can be executed against the legal representatives of the judgment-debtor, if he dies.

26. 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* (supra) and when the right litigated upon is heritable, the decree would not normally abate and can be enforced by LRs. 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.

27. Resultantly, we allow the appeals, set aside the impugned order passed by the High Court and hold that the direction issued by the executing court that an undertaking be furnished by the legal representatives to abide by the decree is proper, failing which the executing court would proceed in a permissible mode in accordance with law to enforce the decree under the provisions of Order XXI

Rule 32 CPC. No costs.

New Delhi;
February 20, 2017.

.....J.
(Arun Mishra)

.....J.
(Amitava Roy)