

Before K. Kannan, J

HARPREET SINGH—*Petitioner*

versus

SHIV DEV PAL KAUR—*Respondent*

CR No. 1881 of 2013

March 20, 2013

Constitution of India, 1950 - Art. 227 - Code of Civil Procedure Code, 1908 - O.22 RL3, O.39 Rls. 1 & 2 - Indian Succession Act, 1925 - S.306 - Specific Relief Act, 1963, Part-III, Chap. VII - Plaintiff had filed suit for injunction - During pendency of suit, plaintiff died and his wife was impleaded as legal representative - Defendant challenged impleadment before High Court, pleading that relief of

injunction is personal in nature - Plea rejected for the reason that every property that is heritable leaves a cause of action to survivors, except in relation to right excluded under S.306, Indian Succession Act - Further held that possessory right in an immovable property is a tangible right and always survives - Revision petition dismissed.

Held, that when the application for impleadment was made, the contest was that the relief of injunction is a personal right and the death of the plaintiff resulted in abatement to cause of action. The defendant had relied on a judgment of this Court in *Devinder Singh Versus Hervinder Singh and others-2012(4) Civil Court Cases 197* that stated that a person who was claiming a personal right of possession, the right abated on his death. In my view, it is stating too wide a proposition to be applied in all cases. Relief of injunction could be on several grounds. They could be with reference to immovable properties as well as with reference to non-tangible right, such as, copyright, designs, trademark etc. Every property that is inheritable leaves the cause of action to survive except certain personal rights which are excluded under the Indian Succession Act itself. Section 306 of the Indian Succession Act lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators. The exceptions are brought out in the said Section itself which specifically exclude causes of action for defamation, assault as defined under Indian Penal Code or other personal injuries not causing death of the party. The Section declares that it shall also except cases where after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory. This situation could be a situation of a suit for divorce where cause of action would die with the person. In every other situation, the right will survive.

(Para 2)

Further held, that in this case, the suit has been filed by the husband of the applicants for injunction on his assertion of possession in the property. This claim is denied by the defendant, who is the brother, who claims that he had purchased the property from his mother and he is actually in possession. A possessory right in relation to immovable property is a tangible right that always survives. If the husband was therefore claiming that he was in actual physical possession of the property and he was seeking

to fend off obstructions and disturbances from the defendant, the same right could be pursued by the widow also. It is not very clear from the judgment in *Devinder Singh* (supra), the nature of suit and whether any tangible right to immovable property was asserted or not. I am not able to therefore refer to the judgment as laying down any general proposition that a suit for injunction cannot survive to a legal representatives.

(Para 3)

Vikas Singh, Advocate, *for the petitioner.*

K.KANNAN, J. (ORAL)

(1) The revision is against the order directing impleadment of the legal representatives of the deceased-plaintiff. The suit had been filed for injunction by one Amaritpal Singh in relation to some agricultural lands measuring 9 bighas 17 biswas in Village Rouni, Tehsil and District Patiala. The plaintiff had filed the suit on a plea that he was cultivating the land peacefully for the last 8 to 9 years and his name figures in khasra girdawari. The suit was filed on a cause of action declared that the defendant was trying to forcibly dispossess the plaintiff. Written statement had been filed denying that the plaintiff was in possession of property and that the defendant was the owner in possession of the suit land. Significantly, the plaintiff and the defendant were themselves brothers and the contention was that the defendant was residing in Canada and he, being an NRI, is absentee landlord, but was still cultivating the land and takes care of his agricultural land. He would contend that he had purchased the land from his mother in the year 2002 and the plaintiff is making his claim for injunction on the basis of fraudulent entries in khasra girdawari.

(2) When the application for impleadment was made, the contest was that the relief of injunction is a personal right and the death of the plaintiff resulted in abatement to cause of action. The defendant had relied on a judgment of this Court in *Devinder Singh Versus Hervinder Singh and others (1)*, that stated that a person who was claiming a personal right of possession, the right abated on his death. In my view, it is stating too wide a proposition to be applied in all cases. Relief of injunction could be on several grounds. They could be with reference to immovable properties as well as with reference to nontangible right, such as, copyright, designs, trademark etc. Every property that is inheritable leaves the cause of action to survive except certain personal rights which are excluded under the Indian

Succession Act itself. Section 306 of the Indian Succession Act lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators. The exceptions are brought out in the said Section itself which specifically exclude causes of action for defamation, assault as defined under Indian Penal Code or other personal injuries not causing death of the party. The Section declares that it shall also except cases where after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory. This situation could be a situation of a suit for divorce where cause of action would die with the person. In every other situation, the right will survive.

(3) In this case, the suit has been filed by the husband of the applicants for injunction on his assertion of possession in the property. This claim is denied by the defendant, who is the brother, who claims that he had purchased the property from his mother and he is actually in possession. A possessory right in relation to immovable property is a tangible right that always survives. If the husband was therefore claiming that he was in actual physical possession of the property and he was seeking to fend off obstructions and disturbances from the defendant, the same right could be pursued by the widow also. It is not very clear from the judgment in *Devinder Singh (supra)*, the nature of suit and whether any tangible right to immovable property was asserted or not. I am not able to therefore refer to the judgment as laying down any general proposition that a suit for injunction cannot survive to a legal representatives.

(4) The relief of injunction is in the nature of a specific relief and set out through elaborate provisions in Chapter-VII, Part-III of the Specific Relief Act. The said part comprises of the principles of injunction to be granted generally, the nature of injunction as temporary, perpetual and also the types of injunction that include mandatory injunction. It also provides specific instances when damages could be claimed in lieu of or in addition to injunction. A provision for damages is certainly a right that could survive if it is not in the nature of the excepted provisions under Section 306 of the Indian Succession Act, referred to above.

(5) The order passed already allowing the impleadment was, therefore, justified and there is no scope for interference in revision. The revision petition is dismissed.