

the principles evolved therein are valid to the statutory law existing in that country and can be of no assistance towards the interpretation of the provisions of the Code of Criminal Procedure, relating to the maintenance of wives and children, which are mainly directed towards prevention of vagrancy and for providing some succour to the destitute wives and children, and now parents, unable to maintain themselves.

(10) In view of the aforesaid discussion, I hold that the arrears of maintenance due up to the date of the death of the husband are recoverable from his estate in whichever hands it is found to be. Thus, this petition fails and is hereby dismissed.

N.K.S.

Before S. P. Goyal and G. C. Mital, JJ.

JUJHAR SINGH,—Appellant.

versus

TALOK SINGH,—Respondent.

Second Appeal Order No. 20 of 1985.

December 20, 1985.

Specific Relief Act (XLVII of 1963)—Sections 38 and 41—Suit for permanent injunction filed by coparcener against Karta to restrain him from alienating coparcenary property—Such suit whether maintainable.

Held, that the provisions of Section 38 of the Specific Relief Act, 1963 are circumscribed by the provisions of Section 41 which provide that an injunction cannot be granted in the cases enumerated in clauses (a) to (j). Clause (h) provides that an injunction cannot be granted when equally efficacious relief can be obtained by any other usual mode or proceedings except in case of breach of trust. Apparently the suit for permanent injunction does not fall under any of the clauses of sub section (3) of Section 38. The grant of injunction would further be barred by clause (h) of Section 41 because the aggrieved co-parcener has equally efficacious remedy to get the alienation set aside and recover possession of the property. Furthermore, the suit can at best be to restrain the proposed alienation because the manager or the karta cannot be restrained from making alienation of the coparcenary property for all times

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in future as he has legal right to do so if he is of the opinion that there is a genuine need or that it would be for the benefit of the estate. As such it has to be held that a coparcener has no right to maintain a suit for permanent injunction restraining the *karta* from alienating the coparcenary property.

(Paras 3 and 6).

Shiv Kumar Mool Chand Arora vs. Mool Chand Jaswant Ram Arora.
A.I.R. 1972, Punjab and Haryana, 147.

OVER RULED.

(Case admitted to Division Bench by Hon'ble Mr. Justice S. P. Goyal, on 8th May, 1985) Petition under section 43(a) of the Civil Procedure Code against the order of Shri K. S. Kauldher Additional District Judge Faridkot, dated 25th February, 1985, dismissing the application of Jujhar Singh for issuance of temporary injunction restraining the respondent-defendant from alienating the house in dispute. Shri G. S. Bhatti, Additional Senior Sub Judge, Faridkot, dismissed the suit on 31st October, 1984 filed by Jujhar Singh for permanent injunction restraining the defendant's from alienating in any manner i.e. sale, mortgage, gift or will etc. property in dispute.

G. S. Bhatia Advocate, for the Appellant.

Nemo, for the respondent.

JUDGMENT

S. P. Goyal, J.

(1) The appellant instituted a suit for permanent injunction restraining the respondent from alienating the house in dispute in any manner alleging that the latter had no right to alienate the same. The suit was dismissed by the trial Court and against its judgment, he went in appeal before the learned Additional District Judge. Along with the appeal, he also moved an application under Order 39, rules 1 and 2, Civil Procedure Code, for a temporary injunction restraining the respondent from alienating the house in dispute pending appeal which was rejected,—*vide* order dated February 25, 1985. This second appeal has been filed to challenge that order.

(2) When the appeal come up for hearing before me in Single Bench at the motion stage reliance was placed on a decision of Harbans Singh C.J. in *Shiv Kumar Mool Chand Arora v. Mool Chand Jaswant Ram Arora and others* (1) for the proposition that *ad interim* injunction can be granted to prevent the proposed alienation which

(1) A.I.R. 1972 Punjab and Haryana 147.

is not for the benefit of the family or for any legal necessity. As I doubted the correctness of this decision, the appeal was admitted to a Division Bench. This is how we are seized of this matter.

(3) It was not disputed by the learned counsel for the appellant that unless a suit for permanent injunction restraining the respondent from alienating coparcenary property was competent it would not be permissible to grant an *ad interim* injunction as well. Section 38 of the Specific Relief Act governs the grant of perpetual injunctions and the suit like the present one would fall under its sub-section (3) which reads as under:—

“(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused or likely to be caused, by the invasion;
- (c) where the invasion is such that compensation in money would not afford adequate relief;
- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

The provisions of section 38 are further circumscribed by the provisions of section 41 which lay down that an injunction cannot be granted in the cases enumerated in clauses (a) to (j). Clause (h) provides that an injunction cannot be granted when equally efficacious relief can be obtained by any other usual mode of proceeding except in case of breach of trust. Apparently the present suit does not fall under any of the clauses of sub-section (3) of section 38. Not only that even if for argument sake it may be accepted that it can be maintained under one of those clauses, the grant of injunction would be barred by the said clause (h) of section 41 because the aggrieved co-parcener has equally efficacious remedy to get the alienation set aside and recover possession of the property.

(4) In *Shiv Kumar Mool Chand Arora's case* (supra) the learned Chief Justice for the view that a suit for permanent injunction to restrain the *karta* from alienating the property would be competent,

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relied on the following passage of paragraph 269 of the book on Hindu Law by N. R. Ragavacharia;

“A coparcener who does any act which is either illegal or improper and prejudicial to the joint interests or enjoyment can be restrained from such act by an injunction at the instance of the other coparceners. In suit for an injunction as between members of a coparcenary with reference to joint family property, the exercise of the Court's jurisdiction is limited to acts of waste, illegitimate use of the family property or acts amounting to ouster.....”

For the statement of the law mentioned in the said paragraph, the learned author relied on *Ravji v. Gingadhar*, (2) *Vithoba v. Hariba* (3) *Sheopersad v. Leela* (4) *Gopee Kishan v. Memchunder* (5) *Ganpat v. Annaji* (6) and *Gagernath v. Jainathi* (7). A perusal of these decisions would show that they all related to such acts whereby property was under threat of waste or one of the coparceners was excluded from its joint enjoyment. None of these cases related to the intended alienation nor any permanent injunction prohibiting the same was claimed or granted. So on the basis of the passage quoted above, it is difficult to sustain the view that a suit for permanent injunction to restrain the intended alienation by the manager would be maintainable.

(5) Apart from that passage, the learned Judge relied on the decision in *Anant Ramrav v. Gopal Balvant*, (8). This case related to the exclusion of a coparcener from the joint enjoyment of the property and the injunction sought for was that the defendant be restrained from closing the door which was the only means of ingress to the portion of the house in possession of the plaintiff. Obviously this judgment as well could not provide any basis for sustaining the view that a suit for permanent injunction restraining the proposed alienation would be competent. In whole of the legal annals only in one case, namely, *Boganatham Aruchalam Chetty and another v. Boganatham Krishnaveni Ammal and another*, (9) an

(2) 4 Bom. 29.

(3) 6 Bom. H.C.R. 54.

(4) 12 Beng. L.R. 188.

(5) 12 W.R. 312.

(6) 23 Bom. 144.

(7) 27 All. 88.

(8) 19 Bom. 269.

(9) A.I.R. 1941 Mad. 724.

injunction was granted restraining the female heir from wasting the property which she held as limited owner. But there the property involved was money deposits in the bank and the injunction sought for was that the widow be restrained from withdrawing the securities and spending them as there was no legal necessity for doing so. The injunction was granted because in the case of movable property if it is not done, the coparcener would lose all remedy and it would not be possible for him to recover it back once it is allowed to be wasted.

(6) Apart from the fact that there is no precedent for supporting the proposition that the suit like the present one would be maintainable, it is also difficult to conceive the nature of the injunction to be granted in such a suit. At best, the suit can be to restrain the proposed alienation because the manager or the *karta* cannot be restrained from making alienation of the coparcenary property for all times in future as he has legal right to do so if he is of the opinion that there is a genuine need or that it would be for the benefit of the estate. If it is held that such a suit would be competent the result would be that each time the manager or the *karta* wants to sell the property, the coparcener would file a suit which may take number of years for its disposal. The legal necessity or the purpose of the proposed sale which may be of pressing and urgent nature, would in most cases be frustrated by the time the suit is disposed of. Legally speaking unless the alienation in fact is completed there would be no cause of action for any coparcener to maintain a suit because the right is only to challenge the alienation made and there is no right recognised in law to maintain a suit to prevent the proposed sale. The principle that an injunction can be granted for preventing waste by a manager or *karta* obviously would not be applicable to such a suit because the proposed alienation for an alleged need or the benefit of the estate cannot be said to be an act of waste by any stretch of reasoning. We are, therefore, of the considered view that a coparcener has no right to maintain a suit for permanent injunction restraining the manager or the *karta* from alienating the coparcenary property and his right is only to challenge the same and to recover the property after it has come into being. The decision in *Shiv Kumar Mool Chand Arora's case* is accordingly over-ruled and this appeal is dismissed. No costs.

G. C. Mital, J—I agree.

H.S.B.