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back on the original order of maintenance dated 15th December, 1981 which had become final between the parties. These facts have been mentioned to highlight the hardship being suffered by the applicant. Apart from the above the petitioner is a poor illiterate woman and I find it an eminently suitable case to condone the delay to advance the cause of justice.

(15) For the reasons mentioned above, the petition is allowed and the order of the learned Magistrate, Annexure P.4, dated 21st January, 1987, to the extent that the application of Mst. Hazran was dismissed is set aside. The learned Magistrate Ist Class, Malerkotla, is directed to revive the petitioner and take further action for the realisation of the maintenance allowance in favour of Mst. Hazran according to law. The respondent shall be liable to pay costs of the proceedings. Counsel's fee Rs. 500.

R.N.R.

Before : D. V. Sehgal, J.

SHANTI DEVI,—Petitioner.

versus

KARTA RAM AND OTHERS,—Respondents.

Civil Revision No. 1099 of 1987

October 11, 1988.

Code of Civil Procedure (V of 1908)—Order 22, Rule 2—Suit for Permanent injunction against trespasser by four co-owners—One co-owner dying during pendency of suit—Factum of death not brought to the notice of Court—Court passed decree—Validity of such decree—Right to sue survived to remaining co-owners—Decree upheld.

Held, that since the suit was filed by four co-owners of the suit property, on the death of one of them, the right to sue survived to the remaining plaintiffs and they could continue with the same. It is a different matter that the suit was continued without the knowledge of the death of Smt. Parkash Devi and the decree was also

passed without her death having been brought to the notice of the Court but that in no way detracts from the validity of the decree. Where during the pendency of a suit by co-owners for an injunction against tres-passers one of the co-owners dies the suit does not abate for non substitution of the legal heirs of the deceased plaintiff. As is well known one of the co-owners can maintain the suit. I am, therefore, of the considered view that the Ld. Addl. District Judge rightly held that the suit as decreed was maintainable on behalf of the surviving plaintiff and it does not suffer from any legal infirmity.

Petition under section 44 of Punjab Courts Act read with section 115 C.P.C. from the order of the court of Mrs. Nirmal Yadav, Addl. District Judge, Ambala, dated 10th March, 1987, modifying that of the order of the court of Shri R. C. Gupta, Sub Judge 1st class, Ambala City, dated 28th February, 1986, directing the respondents No. 1 to 3 to bring the legal representatives of deceased plaintiff on record within ten days, which will not effect the rights of the appellant in any way.

S. K. Goyal, Advocate, for the Petitioner.

Sardara Singh, Advocate, for the Respondent.

JUDGMENT

D. V. Sehgal, J. (Oral)

(1) This revision petition is directed against the order dated 10th March, 1987, passed by the learned Additional District Judge, Ambala.

(2) The facts giving rise to this revision-petition need be briefly mentioned. Karta Ram and Mansa Sons of Nihala, Lajja Ram son of Bishna and Smt. Parkash Devi daughter of Bishna claimed that they had 1/3rd share in the land in dispute and they were the co-owners to that extent. They further alleged that Panni, Kishori and Dhani Ram sons of Rulia jointly owned another 1/3rd share therein while Smt. Shanti wife of Nand who is the petitioner herein also owned 1/3rd share. They filed a suit for permanent injunction restraining the petitioner from interfering with the possession of the land stating that the land was earlier mortgaged with a third party and they had redeemed the mortgage and were thus in possession of the same to the exclusion of the defendant, including the petitioner herein. The suit was decreed by the learned trial Court on 28th February, 1986 qua the petitioner alone while the

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claim as against the remaining defendants was given up by the aforesaid plaintiffs. The petitioner challenged the said decree by filing an appeal which is pending before the learned Additional District Judge. When Smt. Parkash Devi was sought to be served in the appeal it came to light that she had died way back in the year 1982.

(3) The petitioner thereon raised the plea before the learned Additional District Judge that the decree under appeal had been passed in favour of a dead person namely Smt. Parkash Devi. Since her legal representatives had not been brought on record within the period of limitation the suit could not proceed and the decree is a nullity. The learned Additional District Judge after examining the matter from different aspects has held that on the death of Smt. Parkash Devi the right to sue survived to the remaining plaintiff and they could proceed with the same. Therefore, the decree was not a nullity. It further made a direction that the legal representatives of Smt. Parkash Devi should be brought on record by respondent Nos. 1 to 3.

(4) Learned counsel for the petitioner contends that the decree being in favour of a dead person the only course open to the learned Additional District Judge was to set-aside the same and remand the matter to the learned trial Court where respondent Nos. 1 to 3 could avail of the opportunity to implead legal representatives of Smt. Parkash Devi. Their application to that effect was to be decided besides the question whether the legal representatives of the deceased could be brought on the record long after expiry of the period of limitation. The view taken by the learned Additional District Judge that the right to sue survived to the remaining plaintiffs is erroneous. He sought support from *Satya Narain and others v. Jagar and others* (1) and *Asa Ram etc. v. Mehar Singh etc.* (2).

(5) Learned counsel for the respondent on the other hand, submitted that in case the cause of action survives to the remaining plaintiffs, where they were more than one, the suit can proceed. He relied on the provision of Order 22, Rule 2 of the Code of Civil Procedure. He submits that even one of the co-owners who were

(1) 1976 P.L.R. 748

(2) 1972 Curr. L.J. 829.

the plaintiffs in the suit could maintain the same against the appellant alleging that she could not interfere with the possession of the suit land. Therefore, the decree cannot be treated as nullity. He relied on *Murti Hanuman Brajman Hanuman Mandir, Hissar v. Punjab Wakf Board and others* (3) and *Sahdeo Singh and others v. Ramchhabila Singh and others* (4).

(6) Having considered the submissions of the learned counsel for the parties, I am clearly of the view that since the suit was filed by four co-owners of the suit property, on the death of one of them, the right to sue survived to the remaining plaintiffs and they could continue with the same. It is a different matter that the suit was continued without the knowledge of the death of Smt. Parkash Devi and the decree was also passed without her death having been brought to the notice of the Court but that in no way detracts from the validity of the decree. Where during the pendency of a suit by co-owners for an injunction against trespassers one of the co-owners dies the suit does not abate for non-substitution of the legal heirs of the deceased plaintiff. As is well-known one of the co-owners can maintain the suit. I am, therefore, of the considered view that the learned Additional District Judge rightly held that the suit as decreed was maintainable on behalf of the surviving plaintiffs and it does not suffer from any legal infirmity. It was, however, not necessary for the learned Additional District Judge to direct that the legal representatives of Smt. Parkash Devi should be brought on record as the stage of the appeal.

(7) The appeal as instituted should be decided. The name of Smt. Parkash Devi from the array of respondents should be deleted.

(8) With the above observations, finding no merit in the revision-petition the same is dismissed, leaving the parties to bear their own costs. The parties through their counsel are directed to appear before the learned Appellate Court, on 7th November, 1988, when further proceedings in the appeal shall be taken.

S.C.K.

(3) 1984 R.L.R. 127.

(4) AIR 1978 Pat. 258.