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S.A.No.1383 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Second Appeal No.1383 of 2013
and M.P.No.1 of 2013

A.Ganesan

... Appellant

-Vs-

1.Javeed Hussain (died)
2.The Commissioner
Vellore Municipality
Officers Line, Vellore-1.
3.Sharifunnisa
4.Showkathullah
5.Najmunissa
(R3 to R5 impleaded vide order
in CMP Nos.9157, 9158 and 9160
of 2021 dated 12.01.2022 by TKRJ)

... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 22.11.2013 made in A.S.No.14 of 2012 on the file of Subordinate Judge, Vellore confirming the judgment and decree dated 22.12.2011 made in O.S.No.763 of 2000 on the file of Principal District Munsif, Vellore.

For Appellant : Mr.C.P.Sivamohan
For Respondents : Mr.D.Gopal for R2
Mr.Jaseem Mudassar Ali – for RR 3 to 5



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JUDGMENT

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The plaintiff is the appellant in this Second Appeal.

The case of the plaintiff is that the first defendant was given the licence by the second defendant Municipality to run a flower shop. The plaintiff seems to have entered into an agreement with the second defendant on 17.02.1996, marked as Ex.A.1. As per this agreement, the plaintiff claims to have been put in possession of the shop and he had paid the consideration of nearly Rs.1,00,000/-. The further case of the plaintiff is that the defendant agreed to effect the change of name for the shop by making an application to the second defendant Municipality, in the name of the plaintiff. Till this process is completed, the plaintiff had agreed to pay the monthly rent to the second defendant Municipality in the name of the first defendant.

2. The grievance of the plaintiff is that the first defendant acted against the agreement and attempted to interfere with the possession and enjoyment of the suit property. Left with no other alternative, the suit came to be filed seeking for the relief of permanent injunction against the first defendant.

3. The first defendant filed a written statement and took a stand that the suit property belongs to the second defendant Municipality and the so called agreement marked as Ex.A.1 was a created document. The first defendant virtually questioned the



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very right of the plaintiff to seek for the relief of permanent injunction and accordingly he sought for the dismissal of the suit.

4. Both the Courts below, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed this Second Appeal before this Court.

5. One important development that had taken place during the pendency of this Second Appeal is that the first defendant who was the first respondent in the Second Appeal died and in his place his legal representatives have been impleaded as respondents 3 to 5.

6. Heard Mr.C.P.Sivamohan, learned counsel for the appellant, Mr.D.Gopal, learned counsel for the second respondent and Mr.Jaseem Mudassar Ali, learned counsel for the respondents 3 to 5. This Court also carefully perused the materials available on record and the findings of both the Courts below.

7. Both the Courts below concurrently held that the shop was allotted in favour of the first defendant by the second defendant Municipality and whatever documents were filed and relied upon by the plaintiff stood in the name of the first defendant. Both the

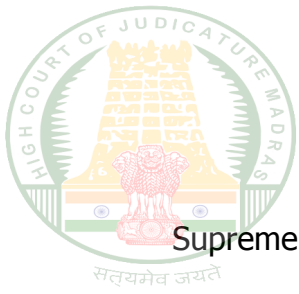


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Courts also found that Ex.A.1 agreement cannot be acted upon and there was absolutely no proof to show that the plaintiff is in possession and enjoyment of the suit property.

The Courts below also took into consideration the evidence of P.W.1 and questioned the manner in which the possession was taken over by the plaintiff. On a cumulative consideration of the oral and documentary evidence, both the Courts held that the plaintiff did not establish legal possession in the suit property and that he will not be entitled for possession when the shop was allotted in the name of the first defendant by the second defendant Municipality. The Courts below also found that the plaintiff was claiming for possession in a property which admittedly belongs to the second respondent Municipality.

8. The demise of the first respondent / first defendant in the Second Appeal has a lot of significance in the present case. A careful reading of the pleadings shows that the entire allegation about the attempt being made to interfere with the possession and enjoyment of the suit property has been made against the first defendant in his individual capacity. The relief of permanent injunction sought for with a specific allegation made against a particular person who is shown as the defendant in the suit, must confine to that person. It is under these circumstances, the legal maxim ***Actio personalis moritur cum persona*** comes into play. The Hon'ble Supreme Court had an occasion to deal with this issue in **Prabhakara Adiga vs Gowri And Others** reported in **(2017) 2 CTC Page 208**. While dealing with this issue, the Hon'ble



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Supreme Court held that the ***Actio personalis moritur cum persona*** principle will apply when the decree relates to a class of action which is individual centric and the relief is focussed upon the wrong committed by that person. This principle will not apply where the decree relates to a property or a right which is heritable by the legal representatives and which is partible and it would bind the legal representatives also. The relevant portions in the judgment are extracted hereunder.

“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.

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26. In our considered opinion the right which had been adjudicated in the suit in the present matter and the findings which have been



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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."

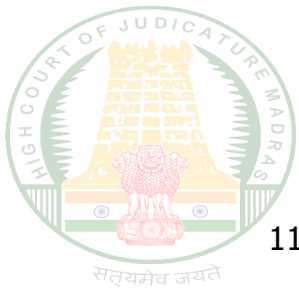
9. In the present case, the licence was granted by the second respondent Municipality specifically in the name of the first defendant to run the flower business in a shop. Such a licence comes to an end on the death of the allottee and it is not a heritable right for the legal representatives to inherit such a right of licence immediately



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on the death of the first defendant. In such circumstances, the allegation that was made by the plaintiff should confine itself to the first defendant and on the death of the first defendant, the cause of action also automatically dies and thereafter there is nothing much that could be decided in the case. This will apply mostly in cases where relief of permanent injunction is involved and it is relatable to the individual acts of a person, which gave rise to the filing of the suit.

10. In view of the above discussion, this Court finds that the cause of action that was pleaded in the suit as against the first defendant came to an end on the death of the first defendant applying of the *Actio personalis moritur cum persona* principle. Thereafter, it will depend upon the action taken by the second defendant Municipality for allotment of the shop. If during this process, relief is granted in favour of the plaintiff, it will virtually amount to injuncting the Municipality to proceed further with the allotment of the shop. This is more so since the legal representatives of the first defendant do not have any automatic right of being granted licence by the second defendant Municipality. In such peculiar circumstances, this Court does not want to deal with the findings of both the Courts below. This Second Appeal can be disposed of merely on the ground that the cause of action no longer survives. In any event, this Court does not find any substantial substantial question of law involved in this Second Appeal.



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11. In the result, the Second Appeal is disposed of in the above terms. However,

considering the facts and circumstances of the case, there shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes
Internet : Yes
KST

To

1. The Subordinate Judge, Vellore.
2. The Principal District Munsif, Vellore.



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N.ANAND VENKATESH, J.

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