

PETITIONER:
HA MALBARI (DEAD) BY L.RS

Vs.

RESPONDENT:
NASIRUDDIN PIRMOHMAD & ORS.

DATE OF JUDGMENT: 30/09/1997

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Having heard learned counsel for the petitioners we are inclined to agree with the reasoning adopted by the High Court in the impugned order. Mr. Adhyaru, learned counsel for the petitioners has vehemently contended that on the death of the alleged licensee pending proceedings before the Trial Court the proceedings abated. For that purpose he strongly relied upon a Division Bench judgment of the Madras High Court in Chinnan v. Ranjithammal (AIR 1931 Madras 216). In the said decision the Division Bench of the High Court has taken the view that a licence granted under Section 59 of the Easements Act is not annexed to property, it is not transferable or heritable and once the licensor parts with the property or the licensee dies, the licence comes to an end. Strictly speaking this decision can be of no avail on the facts of the present case as the alleged licensee has died pending the proceedings under Section 41 of the Presidency Small Cause Courts Act, 1882 (hereinafter referred to as 'the Act'). However, he sought better sustenance from a latter decision of the Madras High Court rendered by a learned Single Judge in the case of M. Ranganatham Pillai v. T. Govindarajulu Naidu [1950 (2) M.L.J. 28]. The said decision, of course, is rendered with reference to the proceedings under Section 41 of the Act. In the said decision the learned Judge of the High Court of Madras has taken the view that once summary proceedings are initiated against the alleged licensee by the licensor under Section 41 of the Act and if the licensee dies pending the proceedings, his heirs cannot be proceeded against and the proceedings abate. The learned Judge for coming to the said conclusion has disagreed with the contrary view of the Calcutta High Court in Hirendra Bhushan v. Purnachandra [(1948) 52 C.W.N. 843]. In our view, the said decision of the learned Judge, with respect, runs counter to the provision of Section 306 of the Indian Succession Act which deals with only limited causes of action of a personal nature which die with the person. When a licensor seeks possession from the alleged.

Licensee though in a summary manner, he seeks restoration of the estate of immovable property which was

permitted to be utilised by the licensee i put to an end, the right of reversion obviously survives for the licensor and whoever intermeddles with the property after the death of the licensee would obviously be liable to answer the claim of the licensor and in these proceedings it cannot be said that such a cause of action is personal against the licensee and dies with him.

In our view, therefore, the decision of learned Single Judge of Madras High Court cannot be sustained on the scheme of the Act and on the contrary, the view propounded by the Calcutta High Court in the aforesaid decision in the correct view. This very question was examined by a Division Bench of the Bombay High Court in its decision in the case of Mrs. Sakinbai. v. Salebhai Hasanali [AIR 1967 Bombay 9]. K.K. Desai, J., speaking for the Division Bench held:

"Ejection proceedings under Section 41 of the Presidency Small Cause Courts Act are for enforcing property rights and for recovery of properties. These are not proceedings relating to personal causes of action and they do not die with the death of a party to the proceedings whether he be an applicant or opponent."

The High Court also in this connection placed strong reliance on the express language of Section 306 of the Indian Succession Act. In our view, the aforesaid decision of the Bombay High Court correctly analyses the scope and ambit of Section 41. Consequently, no fault can be found with the decision rendered by the learned Single Judge of the Gujarat High Court, impugned before us, when he took the view similar to the one that the High Court of Bombay has taken in this connection.

Consequently, this Special Leave Petition is devoid of any merit and has to be rejected. However, before we do so, one request of learned counsel for the petitioners has to be noted. He submitted that the petitioners are very poor persons, they are staying in the premises since their breadwinner had died since long and he was also getting a very small amount for maintenance. Hence, according to him, if the respondents are inclined to enter into some agreeable settlement with the petitioners, it would reduce the sufferings of the petitioners. On this request, therefore, notice is directed to be issued to the respondents with a view to exploring the possibility of an amicable settlement.

Notice is made returnable after six weeks. There will be an interim stay of the order of dispossession till further orders.