

Ramachandra Vs. Laxmana Rao

Ramachandra Vs. Laxmana Rao

SooperKanoon Citation : sooperkanoon.com/383243

Court : Karnataka

Decided On : May-25-2000

Reported in : AIR2000Kant298; ILR2000KAR2341; 2000(5)KarLJ477

Judge : G.C. Bharuka and;Mohamed Anwar, JJ.

Acts : [Easements Act, 1882](#) - Sections 4; [Transfer of Property Act, 1882](#) - Sections 8, 11 and 19; [Specific Relief Act, 1963](#) - Sections 38(3); Civil ProProcedure Code, 1908 - Sections 11, 47, 50, 53, 146 and 244 - Order 21, Rules 11 and 32 - Order 22;

Appeal No. : Civil Revision Petition No. 1956 of 1994

Appellant : Ramachandra

Respondent : Laxmana Rao

Advocate for Def. : Sri S.B. Pavin, Adv.

Advocate for Pet/Ap. : Sri Ashok B. Hinchigeri, Adv.

Judgement :

ORDER

Mohamed Anwar, J.

By this reference, we are called upon to decide the following questions:

'(1) Whether a transferee of a property purchasing the property by registered sale deed from the judgment debtor can be said to be a person claiming under judgment debtor and be held to be subject to all those liabilities and encumbrances to which the original transferor and judgment debtor had been for the purpose of Section 146?

(2) Whether the decree passed by the Court directing the original owner of the property i.e., judgment debtor not to cause interference or obstruction in the plaintiff's user of that land (which has been later transferred to the respondent) and putting a rider on the right of the judgment debtor to the user of that land by him as well is binding on the subsequent transferee i.e., Purchaser thereof?

(3) Whether the decree-holder was entitled to seek execution of that decree, in the above suit which was passed and granted permanent injunction with reference to the land against the judgment debtor of that property, as being against him? If yes, did the Court below illegally refused to exercise the jurisdiction vested by dismissing execution application?

(4) Whether the decisions in the cases of Basavant Dundappa v Shidalingappa Sidaraddi and D'Souza v A. Joseph, do lay the correct law on this subject particularly in view of Section 146 of the CPC and the principle laid down in the case of Muthukaruppa Pillai and Another v Ganesan?

(4-A) Whether in such cases the remedy of the decree-holder is only to file a fresh suit against the transferee and not to apply for execution of the original decree passed against original owner (i.e., Transferor-judgment-debtor) against subsequent purchaser?'

2. The relevant undisputed facts leading to this reference may be stated as under:

The petitioner herein was the plaintiff in Civil Suit No. 307 of 1906 which was filed by him in the Trial Court, viz., the then Court of Sub-Judge at Haven, against one Subbannacharya and his son Sheshacharya for the relief of declaration that he acquired by prescription the easementary right of way passing through the backyard of adjoining defendants' house from his (plaintiff's) house; and for

permanent injunction restraining them from obstructing the plaintiff's use and enjoyment of that right of way, and also to restrain them from discharging the water from their bathroom into front yard of plaintiff's house. On contest, that suit was decreed as prayed, by the Trial Court by its judgment dated 21-12-1907. The said decree was taken in appeal by defendants in Appeal No. 48 of 1908. That appeal was dismissed by the Appellate Court. Though the certified copy of the said decree is not produced on the record of this revision proceeding, yet, the aforestated position of the litigation between the parties in Civil Suit No. 307 of 1906 is not in dispute and the same is sufficiently borne out by the photocopies of the certified copy of the Trial Court's judgment dated 21-12-1907 and of Appellate Court's judgment dated 21-1-1908, which are produced along with a memo by the learned Counsel for petitioner. The petitioner is hereinafter referred to as the decree-holder (D.Hr.)'.

Long after the said decree for declaration and permanent injunction dated 21-12-1907 was obtained by the D.Hr., the said judgment-debtors sold their said house premises to the respondent herein, together with its vacant space including its backyard, by a registered sale deed dated 27-4-1955. Therefore, respondent is hereinafter referred to as 'the transferee-judgment-debtor'.

Subsequently, on 4-9-1981, the execution application under Order 21, Rule 11 of the CPC was filed by the decree-holder in the Court below against respondent-purchaser seeking execution of the said decree by his arrest and detention in civil prison to compel him to keep the said suit passage free for plaintiff's enjoyment, by removing the obstacles put up by him thereon, in obedience to the said decree. Notice to him was then ordered by the Court below on the D.Hr.'s said application. On its service, the former put in his appearance and filed his statement of objections through his Counsel opposing the execution application on the ground that it was not maintainable in law as against him. His objection against non-maintainability of the application was that the decree in question being a decree for permanent injunction, it cannot be enforced as against him as he was a purchaser of the property from the judgment-debtors and since, in law, a decree for permanent injunction does not run with the land. That contention was accepted by the Court below in view of the Single Bench decision of this Court in Basavant

Dun-dappa's case, *supra*, which was referred in a later decision of another Single Bench in the case of D'Souza, *supra*. Accordingly, the impugned order dismissing the said execution application of D.Hr. has been passed by it.

3. When the revision came up for hearing before his Lordship Justice H.N. Tilhari, it was argued before him on behalf of the decree-holder that the law laid down in the case of Basavant Dundappa, *supra*, that a decree for injunction cannot be enforced against the purchaser-judgment debtor since injunction does not run with the land, is not the correct statement of law when examined in the light of Section 146 of the CPC, and that this material provision was not looked into and considered by the learned Judge who decided the case of Basavant, *supra*. In other words, his contention was that, by force of Section 146 of the CPC, the decree in question was enforceable against the transferee-judgment-debtor also, since he acquired ownership of the land in question through the original judgment-debtors, who were the rightful owners thereof. Apparently, this plea of D.Hr.'s Counsel was found by Tilhari, J., as carrying sufficient force. Therefore, his Lordship reached his opinion that the law stated in the case of Basavant Dundappa, *supra*, and reiterated in the subsequent Single Bench decision of this Court in the case of D'Souza, *supra*, required reconsideration by a Larger Bench in view of Section 146 of the CPC and also in the light of the principle laid down by the Supreme Court in the case of Muthukaruppa Pillai, *supra*. So, the aforementioned questions for decision by a Larger Bench were framed and reference order dated 27-8-1998 was passed by him pursuant to which this matter has been placed before our Bench for resolution of the controversy.

4. Keeping in view the material facts of the case in hand, we are of the considered opinion that the aforesaid five questions under reference could be recast suitably and condensed into the following two questions for effective disposal of this revision:

1. Whether a purchaser-transferee of an immovable property from the judgment-debtor, which is the subject of a decree, is a person claiming through him within the meaning of Section 146 of the CPC and an application for execution of the decree against such a transferee could be maintained by the decree-holder?

2. Whether or not, in law, the respondent-purchaser of the said house premises -- together with its backyard in question, from the original judgment-debtor, is bound by the terms and directions of the decree for permanent injunction passed in Civil Suit No. 307 of 1906, in view of the law laid down by this Court in the case of Basavant Dundappa, supra, and in the light of the decision of the Supreme Court in Muthukaruppa Pillai's case, supra?

5. Before dealing with these questions, it seems proper to advert to the facts of Basavant Dundappa's case, supra, and keep ourselves informed of the context in which the said statement of law was spelt out - that the decree for permanent injunction cannot be enforced against a purchaser of the land from the judgment-debtor, for an injunction does not run with the land. In Basavant's case, supra, the revision before this Court was filed by the judgment debtor against the order of the execution Court passed in Ex. Case No. 45 of 1984 allowing an interim application of the decree-holder, which was filed requesting to auction the tamarind fruits from three trees in the land in dispute or to call upon the judgment debtor to deposit Rs. 400/- as security. That order of the executing Court was challenged by the judgment debtor on the ground that an earlier interim application of decree-holder filed in the said Execution Case No. 45 of 1984 for the same relief was already rejected by it observing that the execution petition itself was not maintainable. Admittedly, the decree-holder therein was a transferee from the heir of the original decree-holder, and the judgment debtor was also a transferee from the heirs of the original judgment-debtors. The contention canvassed for judgment debtor in the said revision that when decree-holder's earlier interim application for the same relief was rejected by the execution Court, its order impugned passed allowing the latter's subsequent interim application for the same relief was per se illegal and unsustainable, was accepted by the learned Judge. That apart, the learned Judge, in that case of Basavant, supra, further proceeded to consider the point of enforceability or otherwise of the said decree as against the petitioner therein who was a transferee from the heirs of the original judgment-debtor. A passage appearing at page 359 in Mulla's Code of Civil Procedure, 14th Edition, Volume I (occurring in page 441 of 15th Edition), under the caption 'Decree for Injunction'; and another passage under the same caption from AIR Commentaries on the Code of Civil Procedure, 9th Edition, Volume I, page 559

(occurring at Item 18 in page 671 of 10th Edition), were quoted by the learned Judge, wherein the aforementioned statement of law was contained. Following the same, the revision in Basavant Dundappa's case, *supra*, was allowed and the executing Court's said order impugned therein was set aside. From the body of the order pronounced in that case, the nature of the decree for permanent injunction and the terms thereof were not discernible except that the prayer made in the said interim application was to auction the tamarind fruits of the said three trees or to direct the petitioner-judgment debtor to deposit Rs. 400/- as security.

6. However, in the case of D'Souza, *supra*, the facts of the dispute between the parties were materially different from those obtainable in Basavant's case, *supra*. In D'Souza's case, *supra*, the appellant before this Court was defendant, and the respondent therein was the plaintiff in O.S. No. 2243 of 1980. That suit was filed for the relief of permanent injunction against defendant. It was decreed restraining him from interfering with the plaintiff's peaceful possession of the suit schedule property. The Trial Court's said decree was challenged by defendant D'Souza in appeal before this Court. During pendency of that appeal, respondent (plaintiff) therein died. Instead of bringing his legal representatives on record in time, learned Counsel for appellant passed a memo praying to dispose of the appeal as not surviving for consideration as the decree for permanent injunction impugned therein ceased to be enforceable, and the relief of permanent injunction granted by it to the plaintiff stood extinguished along with his death. That memo was filed relying on this Court's ruling in Basavant's case, *supra*. The contention canvassed by appellant's Counsel in support of the prayer in the said memo was that, with the death of the plaintiff, the decree for injunction in his favour lost its force in the eye of law since it was a personal decree in plaintiffs favour and the injunction does not run with the land. On facts, the learned Judge found, that the point for consideration in the appeal was: whether on the death of respondent-plaintiff, the appeal abated or the said suit itself abated. This question, when differently worded, as indicated in the decision was: 'the question for consideration is, as to what should happen to the decree obtained by the plaintiff after plaintiffs death?'

7. In the case of D'Souza, *supra*, at paragraphs 5 and 6 of his order, the learned Judge has culled out the said passages in Mulla's Code of Civil Procedure and

AIR Commentaries on the Code of Civil Procedure, which were quoted in the case of Basavant, supra. The said passage from Mulla's CPC is reproduced below, which serves our purpose:

' An injunction obtained against a defendant restraining him from obstructing plaintiff's ancient rights may on the death of the defendant, be enforced under this section against his son as his legal representative by Procedure under Order 21, Rule 32 (Code of 1882, Section 260). Similarly, a decree for an injunction against a manager and representative of a joint Hindu family can be enforced after his death against a son who represents the joint family. But such an injunction cannot be enforced under this section against a purchaser of the property from the defendant, for an injunction does not run with the land.....'.

Elucidating the legal position, the learned Judge in the case of D'Souza,supra, held:

'4. However in a case of heirship, the question of transfer of property does not arise. The question of injunction running with the land would not arise in a case where the heirs of the deceased steps into the shoes of the person who has obtained the decree. .. .As pointed out earlier, the observation made in Mulla's Civil Pro-cedure Code on the basis of which the judgment has been delivered by this Court in Basavant Dundappa's case, supra, mutatis mutandis holds good here also and in that context, I am of the view that there should not be any difficulty for the legal heirs of the deceased plaintiff to enforce the decree for injunction against the judgment-debtor'.

So holding, the appeal in D'Souza's case, supra, was dismissed as having abated.

Re. Question No. 1

8. As indicated above, the present reference has been made by H.N. Tilhari, J., observing that the aforesaid statement of the law was made in the case of Basavant Dundappa, supra, simply on the basis of the said passages from Mulla's Code of Civil Procedure and AIR Commentaries on Code of Civil Procedure, but without taking notice of and considering the effect of the relevant provision in

Section 146 of the CPC. This provision reads:

'146. Proceedings by or against representatives.--Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him'.

9. On an analytical reading of Section 146, one legal position which clearly emerges is that where any legal proceeding may be taken or an application for a legal proceeding may be made by or against any person, then, that proceeding may also be taken or application for the same may be made by or against any persons claiming under him. This provision deals with legal proceedings by or against representatives of the parties to a dispute or to a decree or final order of any competent Court. Its operation is general in nature, except that it is circumscribed by the beginning saving clause 'save as otherwise provided by this Code or any law for the time being in force'. The Supreme Court in the case of *Jugalkishore Saraf v Raw Cotton Company Limited*, has, in regard to the curtailing effect of this saving clause on the scope of Section 146, said:

'The effect of the expression 'save as otherwise provided in this Code' contained in Section 146 is that a person cannot make an application under Section 146 if other provisions of the Code are applicable to it'.

In interpretation of Section 146, the moot point for our consideration is whether the transferee of the property of judgment debtor by a private sale could be stated as the judgment-debtor's 'representative' within the meaning of Section 146 of the CPC as well. The words 'by or against any person claiming under him' occurring at the end of the text of Section 146 makes it clear that any person who has lawfully acquired any right or interest in the property which was the subject of legal proceeding and was belonging to any party thereto, would be the person claiming under that party and is thus his representative. The same is the import of the word 'representative' occurring in first part of Section 47 of the CPC which runs:

'47. Questions to be determined by the Court executing decree.--(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives,.....'.

The sweep of this term 'representative' was the subject of consideration by a Full Bench of Calcutta High Court in the case of Kailash Chandra Tarafdar v Gopal Chandra Paddar, at page 808, where it has held:

'The Legislature in Section 47 has placed the representatives of the parties in the same position as the parties themselves, and the term 'representatives' in Section 47 must, in my opinion, be held to include persons who by assignment from a party or by operation of law have succeeded to the interest of that party in decree, and quoad that interest are bound by the decree'.

A Full Bench of Lahore High Court, in the case of Bhiku Mal v Firm Ram Chandar Babu Lal and Another, on a reference made by the learned Single Judge, was also seized of the import of the term 'representative' in Section 47 where the decision of Calcutta High Court in the case of Kailash, supra, was also referred. Harries, C.J., speaking for the Bench, proceeded to further elucidate the meaning of the term 'representative' in the context of Section 47 and said:

'..... The meaning to be given to the word 'representative' in Section 47 of the Civil Procedure Code has been the subject of a number of cases in the various High Courts in India. The leading case is a Full Bench decision of five Judges of the Calcutta High Court in 24 Cal. 62. In that case it was held that the term 'representative' as used in Section 244 (now Section 47) of the Civil Procedure Code, when taken with reference to the judgment debtor does not mean only his legal representative, that is, his heir, executor or administrator, but it means his representative-in-interest, and includes a purchaser of his interest, who so far as such interest is concerned, is bound by the decree.....'.

(emphasis supplied)

10. Dealing with the similar question, a Single Bench of Orissa High Court in Radheshyam Modi v Jadunath Mohapatra, at paragraph 11 of its order has said:

'11. In the event of the death of a judgment-debtor, the question that may arise for consideration as to against whom the execution proceeding shall be continued if the provisions of Order 22 of the Code are not applicable to an execution proceeding. The provision contained in Section 146 of the Code is a complete answer to the aforesaid question. It provides that where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him. In a case where the sole judgment debtor dies, the proceeding may be continued against such person who claims under the deceased judgment-debtor..... '.

11. For the purpose of this case, suffice it to state that admittedly, the transferee-judgment debtor claims his right of ownership and interest in and over the land of servient tenement in question under the original judgment-debtors, on having acquired the same by the said sale deed dated 27-4-1955. Therefore, he squarely falls within the term 'representative' as the one claiming under the said judgment-debtors, as envisaged in Section 146. In that view of the legal position vis-a-vis, the said decree passed with respect to the land in question, it becomes clear that the decree-holder herein is entitled under Section 146 of the CPC to make the application for execution of the said decree against the transferee-judgment debtor (see Muthukaruppa Pillai's case, supra); although the question of its enforceability or otherwise against the transferee is a question which falls within the domain of Section 47 of the CPC for decision by the execution Court. Hence, we hold that the transferee-judgment debtor is a person claiming under the original judgment-debtors as their successor-in-interest within the meaning of Section 146 of the CPC and, as such, the decree-holder can maintain an application for execution of the decree in question against him, there being no other specific provision in CPC or in any law for the time being in force enabling him to proceed against the former in execution of the decree. The negative finding on this point of the Court below is, therefore, unsustainable in law. Accordingly we answer Question No. 1 in the affirmative.

Re. Question No. 2

12. This question relates to the material point of the enforceability or otherwise of the said decree of permanent injunction against the respondent-transferee-judgment-debtor. Following the decision of the Single Bench of this Court in the case of Basavant, supra, the petitioner-decree-holder's application for execution of the decree against him has been dismissed by the executing Court by its impugned order on the ground that injunction does not run with the land. Respondent being the purchaser of the property from the original judgment debtor has stepped into their shoes as their representative-in-interest. The general principle of law is that the assignee or transferee of the judgment-debtor's property would also be bound by the rights and liabilities declared by a decree passed against the judgment-debtor. This principle is succinctly enunciated by Division Bench of Lahore High Court in Ishar Das v Parma Nand, which exposition of law is quoted, with approval by its subsequent Full Bench decision in Bhiku Mal's case, supra. The same is reproduced below:

'Now, it has been repeatedly held that the expression 'representative' in Section 47 has a more extended meaning than a 'legal representative' and includes also a representative-in-interest. An assignee from a judgment debtor of property belonging to him and affected by the decree is a representative of the judgment debtor within the meaning of the section. Such an assignee stands in the shoes of the judgment debtor and is bound by the decree so far as the property assigned to him is concerned. He is subject to the same liabilities and is entitled to exercise the same rights as his assignor, the judgment-debtor.....

There can be no doubt that a purchaser from the judgment debtor of his property which is neither under attachment nor otherwise affected by the terms of the decree, cannot be held to be a representative of the judgment-debtor,..... '.

(emphasis supplied)

To this general principle, the precedent that a decree for injunction cannot be executed against the purchaser of property from the judgment debtor as injunction does not run with the land would be an exception. It is here which we are precisely concerned with the nature, width and scope of this precedent which lays down in bald terms the said exception to the general principle.

13. As noticed above, the decision of this Court in Basavant's case, *supra*, was pronounced on the basis of the statement of law that an injunction does not run with land, as contained in the passages to be found under the caption 'Decree for Injunction' in Mulla's Code of Civil Procedure and in the AIR Commentaries on the Code of Civil Procedure. These passages occur therein in the synopsis of Section 50 of the CPC. The said statement of law that an injunction does not run with the land and, therefore, it cannot be enforced against a purchaser of the property from defendant judgment-debtor, is shown to have been digested in those passages from the decisions of Bombay High Court in the cases of (1) *Dayabai v Bapalal*; (2) *Vithal v Sakharam*; (3) *Jamshetji Manekji Kotval v Hari Dayal*; (4) *Amritlal Vadilal v Kantilal Lalbhai*; and (5) *Chunilal Harilal v Bai Mani*. It has to be noted here at once that the case of *Chunilal Harilal*, *supra*, is of no relevance to this case, since in that case, their Lordships of Bombay High Court, while dealing with the scope of Section 53 of the CPC held that a decree for injunction obtained by the plaintiff against two brothers who, together with their sons of one of them, formed a joint Hindu family, cannot be executed against the sons of said brother inasmuch as they were neither parties to the suit nor were they the legal representatives of judgment-debtors, in any sense of this term.

14. In its latter decision in *Amritlal's case*, *supra*, a Division Bench of Bombay High Court, reviewing the case law on the point as was laid down in its above stated earlier decisions, has pointed out the restrictive nature of the statement of law that 'injunction does not run with the land and cannot be enforced under Section 50 against a purchaser of the property from the defendant' by further expounding the proposition as follows:

'It would therefore follow from the decided cases that the decree for injunction does not run with the land, and in the absence of any statutory provision, such a decree cannot be executed against the surviving members of the joint family or against the purchaser from the judgment-debtor'.

(emphasis supplied)

Elucidating this legal position, the Court further said:

'The principle that an injunction does not run with the land has been deviated from in the case of legal representatives on the death of the judgment debtor on the ground of the express provision made by Section 50 of the CPC and in the case of transferees in virtue of Section 52 of the Transfer of Property Act.'.

(emphasis supplied)

Thus, the operation of the case law that a decree for injunction cannot be enforced against a purchaser judgment debtor since injunction does not run with the land for it is a remedy in personam is saddled with a rider that it could be done so if saved by any statutory provision. Therefore, the law reiterated by this Court in Basavant's case, *supra*, is not and cannot be the absolute statement of law. It is a qualified one. Its validity and the limit of operation depends upon the nature and character of the injunctive relief granted under a decree for injunction. No doubt, injunction is a remedy in personam. Yet, the enforcement of the decree for injunction against a legal representative of the deceased or against the purchaser of the suit property pendente lite is saved by Section 50 of the CPC and Section 52 of the Transfer of Property Act respectively.

15. Likewise, in the instant case, the decision whether the decree for permanent injunction in question is binding on the transferee-judgment debtor and whether it could be enforced against him by the decree-holder is dependent on the nature of the injunctive relief and the right in protection of which the same is granted thereunder. It is an undisputed fact that the said decree obtained by the decree-holder was a decree granting him the reliefs of declaration and permanent injunction against the original judgment-debtors. The declaratory relief was to the effect that the decree-holder being the owner of the dominant heritage he acquired by prescription the easementary right of way through and over the backyard of the judgment-debtors' said premises i.e., servient heritage, from the front yard of his house; and the injunctive relief granted to him under the decree was by restraining the judgment-debtors from preventing or disturbing him from the use and enjoyment of the said right of way over the land of judgment-debtors by any manner whatsoever. We, therefore, proceed with our further discussion on the footing of this undisputed premise as regards the decree in question.

16. The said easementary right of the decree-holder is a right created by Section 4 of the Indian [Easements Act, 1882](#) ('the Act of 1882' for short). Thus, it is a statutory right. It is a right in rem vesting with the plaintiff. Under the decree, the decree- holder was entitled to utilize the said servient tenement of the judgment debtor as a means of access to or egress from his dominant tenement. Once that right was created by a decree of the Court, a corresponding burden or encumbrance gets automatically imposed on or annexed to the servient tenement of the judgment-debtors thereby creating a legal obligation against them to keep the said passage through their land in question i.e., servient heritage, always open and free for the use of the decree-holder for the beneficial enjoyment of his dominant tenement. Easement is an incorporeal right of the dominant owner over the corporeal property of the servient owner, and, it is a valuable property as far as dominant heritage is concerned. Therefore, an easementary right runs, in law, with the dominant heritage for its beneficial enjoyment by its owner. This rule is enacted by Section 19 of the Act of 1882, which reads:

'19. Transfer of dominant heritage passes easement.--Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place'.

So, in law, an easement is a transferable and heritable right along with the dominant heritage to which it is appurtenant. As a fortiori, therefore, unless modified, altered or extinguished by operation of law or by agreement of parties or by reason of change in material circumstances, it logically follows that when a servient heritage is also transferred by act of parties or by operation of law, corresponding burden of easementary right annexed to it also passes with it with its transfer to every subsequent owner or occupier thereof, since easementary right in favour of dominant heritage does not exist without there being a servient heritage. So, coming to any easementary right of way, normally every servient owner, including the transferee from judgment debtor of a servient tenement or its occupier is under a legal obligation to protect or preserve it in its original condition for its beneficial enjoyment by the dominant owner. Nonetheless in breach of this

obligation if the former creates any disturbance of such easementary right appurtenant to the dominant tenement he is liable to be prevented from so acting by a decree of permanent or perpetual injunction. It is exactly to meet such a situation which the legal remedy of perpetual injunction is provided by sub-clauses (c) and (d) of Section 38(3) of the [Specific Relief Act, 1963](#), which run:

'38. Perpetual injunction when granted.-

(1) XXX XXX XXX.

(2) xxx xxx xxx.

(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) xxx xxx xxx;

(b) xxx xxx xxx;

(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'.

17. Therefore, having due regard to the nature of easementary right of way declared by the decree in favour of plaintiff-decree-holder and the injunctive relief with respect thereto, we are of the considered opinion that the decree-holder's right being the statutory right of way passing through the backyard of the judgment-debtors' servient premises, the latter cannot pass or transfer any right or interest therein in favour of any other person better than what themselves had. As a result, any transferee of the property from them would acquire the same right or interest therein and the liability or the burden with which it was encumbered which the judgment-debtors had at the time of the transfer and, as such, the transferee would be under an obligation to subject the servient tenement to the said easementary right of the decree-holder in terms and directions of the decree in

question- In other words, the transferee-judgment debtor is also bound by the decree respecting the decree-holder's easementary right of way and is liable thereunder in relation to the said servient tenement to the same extent as his predecessors in title were bound by that decree. In that view of the legal position, we find without any hesitation that the said decree for permanent injunction respecting the said right of way is executable against the respondent-transferee judgment-debtor. Thus, this is a case of one more instance of an exception to the precedent that the decree for permanent injunction is not enforceable against the purchaser of property from the judgment debtor since injunction does not run with land.

18. Moreover we find our above conclusion in complete accord with the legal effect of the 'transfer' of property spelt out by Section 8 of the [Transfer of Property Act, 1882](#). The material portion thereof is reproduced below:

'8. Operation of Transfer.--Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferred is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto.....;

and,

and, where the property is a house, the easements annexed thereto,.....'.

This provision of the Transfer of Property Act makes it clear that any easementary obligation or burden annexed to the servient heritage will also pass therewith to the transferee thereof on its valid transfer by its vendor, as a legal incident of the transfer. This legal position finds ample support from the proposition enunciated by the Supreme Court in its recent decision in Muthukaruppa Pillai's case, *supra*. In that case, the contention of defendant-appellant before Supreme Court was that the decree for permanent injunction obtained against him by the deceased plaintiff with respect to his heritable and partible rights, cannot be executed by a legal

representative of the plaintiff on his death. Repelling this contention, the Supreme Court held:

'2..... It is claimed that the decree being personal, it could not have been executed by the respondent who claimed to be successor-in-interest of the plaintiff in the suit. The submission appears to be devoid of any merit. In the main suit, out of which these execution proceedings have arisen, it was clearly held by the High Court that the rights were heritable and partible. In view of this finding, it is not clear as to how can the appellant raise the argument of decree being personal in nature. Apart from that, the decree passed by the Trial Court, copy of which has been produced by the learned Counsel for the respondent, the authenticity of which is not disputed by the appellant, and which has been extracted earlier, clearly indicates that the injunction granted did not impose any such restriction expressly nor could it be impliedly held that it lapsed with the death of the plaintiff'.

What follows from this ruling of Supreme Court is that if the remedy of injunction granted by a decree is in respect of any heritable and partible right, it does not get extinguished with the death of a party thereto, but it enures to the benefit of the legal heirs of the decree-holder, as also such a decree could be executed against the successor-in-interest of the deceased judgment debtor as well. The law so laid down is fortified by another recent decision of the Supreme Court in *Kanhaiyalal v Babu Ram*. For these reasons the said decree for permanent injunction cannot be said a decree in personam since the easementary right of way in respect of which the remedy of injunction is granted under it runs with both the dominant heritage and the servient heritage as well.

19. Besides the above, another pertinent fact which is pleaded by decree-holder (petitioner) in Court below and not disputed by respondent-transferee either before it or before us is that a covenant was also incorporated in the sale deed dated 27-4-1955 as a term of the conveyance of their property by the judgment-debtors to respondent, clearly mentioning the existence of the decree in question against the vendors. Respondent thus purchased the property from them with the full knowledge of its being the servient tenement on account of petitioner's easements right of way through and over it under the decree. In this regard it is noteworthy

that any restriction on the enjoyment by the transferee of the property transferred absolutely is declared void by first part of Section 11 of Transfer of Property Act. But second part of Section 11 thereof provides an exception to this general rule. It permits creation of such restriction on the enjoyment of the property transferred if it is for the purpose of the beneficial enjoyment of another adjoining property of the transferor. Keeping in view the peculiar facts of this case, on the analogy of this exception embodied in second paragraph of Section 11 of Transfer of Property Act it can be stated that respondent-transferee is bound by the said covenant of the sale deed in the enjoyment of the property purchased by him thereunder.

20. Therefore, on consideration of the aforementioned decisions and the legal effect of a transfer of servient heritage by the original judgment-debtors (to the transferee-judgment-debtor), flowing from the above stated and discussed relevant provisions of the law, we find that the statement of law stated in the case of Basavant Dundappa, supra, by a Single Bench of this Court does not lay down an absolute legal principle of universal application, but the same is a qualified one and restrictive in its application. It operates subject to various relevant statutory provisions as also the nature of the relief of injunction granted by a decree to plaintiff. In the case in hand, the decree for permanent injunction being the one granted for protection of the decree-holder's statutory easementary right of way appurtenant to his dominant heritage and annexed with the servient tenement of the judgment-debtors, it is enforceable in law against the transferee-judgment-debtor, he being the successor-in-interest of the original judgment-debtors. In other words, the transferee-judgment debtor is bound by the terms and directions of the decree in question and, therefore, the decree is executable against him. In this view of the matter, the contrary finding of the execution Court is legally not correct. Hence, Question No. 2 stands answered by us accordingly.

21. In view of our affirmative findings on Question Nos. 1 and 2, the revision is entitled to succeed.

22. Hence, the revision is allowed and the impugned order is set aside. The parties to bear their own costs.

