

**IN THE HIGH COURT OF MADHYA
PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 17th OF MARCH, 2023

WRIT PETITION No. 4569 of 2016

BETWEEN:-

1. ALWAN SINGH YADAV S/O LATE SHRI LAXMAN SINGH YADAV, AGED ABOUT 38 YEARS, OCCUPATION: LABOUR R/O AHIR MOHALLA PURANI SHIVPURI NEAR DEHAT P.S. SHIVPURI (MADHYA PRADESH)
2. SMT.AILADI WD/O LATE LAXMAN SINGH YADAV SHIVPURI (MADHYA PRADESH)
3. ASHARFI YADAV D/O LATE LAXMAN SINGH YADAV R/O VILLAGE RAMSHRI TEHSIL SHIVPURI (MADHYA PRADESH)
4. ANITA YADAV D/O LATE LAXMAN SINGH YADAV R/O VILLAGE BARODI TEHSIL SHIVPURI (MADHYA PRADESH)
5. GHANSHYAM S/O LATE LAXMAN SINGH YADAV VILLAGE AHIR MOHLLA PURANI SHIVPURI NEAR DEHAT P.S. SHIVPURI (MADHYA PRADESH)

.....PETITIONERS

**(BY SHRI N. K. GUPTA – SENIOR ADVOCATE WITH SHRI S. J. SINGH -
ADVOCATE)**

AND

1. SMT. HRIDESI YADAV D/O LATE SHRI SHRILAL YADAV, AGED ABOUT 45 YEARS, R/O VILL. AHIR MOHALLA PURANI SHIVPURI NEAR DAHAT. P.S. SHIVPURI (MADHYA PRADESH)

2. SMT. SANTOSHI D/O LATE SHRILAL YADAV,
AGED ABOUT 43 YEARS, VILLAGE AHIR
MOHLLA PURANI SHIVPURI NEAR DEHAT
P.S. SHIVPURI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI YOGESH CHATURVEDI – ADVOCATE FOR RESPONDENTS /
JUDGMENT DEBTORS)

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*This petition coming on for admission this day, the court passed
the following:*

ORDER

With consent, heard finally.

The present petition has been preferred by the petitioners under Article 227 of Constitution of India being crestfallen by order dated 29.03.2016 passed by Vth Additional Judge to the Court of Ist Civil Judge, Class-II, Shivpuri, whereby objection raised by the respondents/judgment debtors has been upheld and execution proceedings initiated by the petitioners against the respondents were dropped.

2. Precisely stated facts of the case are that Late Laxman Singh Yadav filed a civil suit (Civil Suit No.218-A/1988) against Shrilal and Smt. Rajkunwar for permanent injunction and vide judgment dated 10.12.1992 suit was decreed in favour of petitioners (then plaintiffs). As per the judgment and decree, petitioner Late Laxman Singh was found to be entitled to take water connection from the disputed land and the then defendants were enjoined permanently not to interfere in the movement of plaintiffs.

3. It appears that said judgment and decree was not complied by the respondents in letter and spirit *prima-facie*. Therefore, execution

proceedings were drawn by the legal representatives of Late Laxman Singh against the legal representatives of late defendants on 26.03.2013.

4. An objection was raised by the respondents/judgment debtors since original defendants/judgment debtors have expired, therefore, execution proceedings cannot be proceeded with against the legal representatives of judgment debtors.

5. Court below after considering the rival submissions came to the conclusion that present legal representatives of original defendant were not party in the original suit and decree of permanent injunction was not issued against them, therefore, execution proceedings cannot be drawn against the present legal representatives. Therefore, objections were sustained and execution proceedings were dismissed. Therefore, this petition has been preferred.

6. Learned Senior Counsel appearing for petitioners referred The Schedule and Article 136 of the Limitation Act and its proviso to bring home the fact that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. Therefore, enforcement of decree of permanent injunction passed on 10.12.1992 can be made in 2013. It is further submitted that Section 50 read with Section 146 of C.P.C. facilitates the execution of decree through legal representatives of judgment debtors. According to him after the death of judgment debtors, his legal representatives can be impleaded in his place as judgment debtors and execution proceedings can be carried out till the decree is satisfied.

7. Learned counsel for the respondents opposed the prayer and supported the impugned order. According to him looking to the nature of

decree, it is impracticable to saddle the liability over the legal representatives of original judgment debtors. According to him, from the pleadings as contained in execution application it has nowhere mentioned that what was the occasion for them to file the application after 20 years and according to him, decree has already been fully satisfied before initiation of execution. Therefore, once decree has been satisfied, then it does not give any recurring cause of action for the decree holders to initiate execution proceedings after the death of judgment debtors.

8. Heard counsel for the parties at length and perused the documents appended thereto.

9. This is the case where petitioners as decree holders are asserting their rights for enforcement of judgment and decree dated 10.12.1992 passed by the trial Court.

10. So far as point of limitation for execution of decree of permanent injunction is concerned, same is taken care of by Article 136 of (The Schedule) Limitation Act, 1963. Article 136 of (The Schedule) of the Limitation Act reads as under :-

Description of application	Period of limitation	Time from which period begins to run
136. For the execution of any decree (other than a decree granting a mandatory injunction), or order of any Civil Court.	Twelve years.	[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place : Provided that an

		<p>application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.</p>
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11. Perusal of proviso to Article 136 of The Schedule of the Limitation Act clarifies the position that enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation and understandably so because permanent injunction by very nomenclature is not transient, temporal or temporary nature of injunction. It is permanent in nature irrespective of the parties against whom the decree has been passed. Therefore, its efficacy does not lie at the mercy of life span of a judgment debtor.

12. This Court earlier in the case of **Gangabai w/o Tarachan vs Shobhanlal [2002 (2) MPLJ 183]** has taken into consideration Article 136 Proviso of Limitation Act. Instant view is supported by this judgment. Therefore, the decree of prohibitory perpetual injunction does not require any execution and it becomes operative the moment it is passed and continues to remain in force.

13. Considering the nature of injunction and its subsequent enforceability, Section 50 of C.P.C. encompasses such exigency. Section 50 of C.P.C. if read with Section 146 of C.P.C. clarifies the position in this regard. Section 50 of C.P.C. and Section 146 of C.P.C. are reproduced for ready reference:-

“Section 50. Legal representative.-(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may

apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

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***Section 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."*

14. Perusal of Section 50 of C.P.C. indicates that in case of death of judgment debtor before satisfaction of decree, same is executable against the legal representatives of the deceased. Since it is a decree of permanent injunction and therefore, it includes recurring cause of action as and when situation or status quo is disturbed by the judgment debtors, legal representatives or any person claiming under the umbrella of judgment debtor. In such situation, then decree holder shall always be entitled to assert his rights on the strength of decree passed in favour of him. Section 146 of C.P.C. deals in respect **of any other person** claiming under judgment debtor. Therefore, in the present set of facts, decree of permanent injunction assumes importance and the person against whom it is decreed moves into insignificance. If a person claiming any right, title

or interest on behalf of judgment debtor, then he has to own the liability also as per Section 146 of C.P.C.

15. In the considered opinion of this Court, when decree of permanent injunction is being passed in favour of the petitioners as decree holders, therefore, they cannot be put to disadvantageous position on the pretext of death of original judgment debtor or on the pretext of some subsequent transactions or developments by which any other person may have the chance to claim under the umbrella of judgment debtor and may raise objections regarding maintainability of execution proceedings. That would be contrary to the very spirit of decree of permanent injunction.

16. Resultantly, impugned order dated 29.03.2016 (Annexure-P/1) passed by the Court below is hereby set-aside and execution proceedings preferred by petitioners against the respondents stands revived.

Proceedings shall proceed in accordance with law. Petition stands **allowed and disposed of.**

(ANAND PATHAK)
JUDGE

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