

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**Reserved on 03.04.2024  
Pronounced on 20.04.2024**

**CR No. 6/2018**

**Vasundhara Mittra and another** .....Appellant(s)/Petitioner(s)

Through: Mr. L. K. Sharma, Sr. Adv. with  
Mr. Deepak Khajuria, Adv.

**Vs**

**Aseem Tiwari** ..... Respondent(s)

Through: Mr. Vastav Sharma, Adv. vice  
Mr. Pranav Kohli, Sr. Adv.

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1. Through the medium of present revision petition, the petitioners have challenged order dated 04.12.2017 passed by learned 1<sup>st</sup> Additional District Judge, Jammu, whereby the application filed by the respondent for bringing on record legal representatives of deceased appellant/plaintiff has been allowed and the said respondent has been substituted as appellant/plaintiff.
2. Heard and considered.
3. It appears that deceased appellant-Usha Tiwari, who happened to be the mother of respondent as well as petitioner No. 1 filed a suit for permanent prohibitory injunction in respect of property bearing House No. 36 BB, 2<sup>nd</sup> Extension, Gandhi Nagar, Jammu against the petitioners herein before 2<sup>nd</sup> Additional Munsiff, Jammu. The said suit was filed by appellant-Usha Tiwari through her son and power of attorney holder, the respondent herein. In the suit, it was pleaded by the appellant/plaintiff that she is the exclusive

owner in possession of the said property and the defendants/petitioners have no concern with the same.

4. Vide order dated 30.01.2017, the learned trial court finally decided the interim application filed by the plaintiffs and the parties were directed to maintain status quo with regard to the suit property. Against the said order, the appellant/plaintiff filed the appeal before the court of learned 1<sup>st</sup> Additional District Judge, Jammu. During the pendency of the appeal, the original appellant, namely, Usha Tiwari died on 26.05.2017. The respondent, who happens to be the son of deceased-appellant filed an application before the appellate court for substituting his name as a legal representative. The said application was contested by the petitioners herein, who happen to be the respondents before the appellate court on the grounds that cause of action did not survive in favour of the respondents as the relief of injunction claimed by original plaintiff/appellant is personal in nature.
5. Vide the impugned order, the learned appellate court observed that if a legal representative of the plaintiff can enjoy the relief sought on the cause of action claimed by the deceased/plaintiff, the cause of action would survive in favour of such a legal representative. On this basis, the learned appellate court allowed the application of the respondents and impleaded him as plaintiff in place of Late Usha Tiwari.
6. The petitioners, who happen to be the respondents before the appellate court and defendants before the trial court have challenged the impugned order on the grounds that cause of action in a suit for injunction was personal to original plaintiff-Smt. Usha Tiwari, who happened to be the mother of

petitioner No. 1 and the respondent and with her death, the cause of action does not survive in favour of the respondent. It has been further contended that in terms of the Will executed by Late Usha Tiwari, she had bequeathed the house situated at Gandhi Nagar, Jammu in favour of petitioner No. 1, who is in peaceful possession thereof, therefore, on this ground also, no cause of action survives in favour of the respondent. It has been further contended that in another suit between the parties relating to flat at New Friends Colony, New Delhi in which the respondent had sought a permanent prohibitory injunction against petitioner No. 1, the civil court at Delhi has, upon death of Usha Tiwari held that no cause of action survives in favour of the respondent after the death of his mother and accordingly, the suit was held to have abated in terms of order dated 26.08.2017 passed by the civil court at Delhi.

7. The question that is required to be determined in the instant case is as to whether cause of action in an injunction suit will survive to the legal heirs of deceased plaintiff and whether upon death of the plaintiff, the relief of injunction would be rendered nugatory.
8. So far as the legal position on the aforesaid aspect of the matter is concerned, it has to be noted that there is a distinction between the death of the plaintiff and the death of the defendant. The injunction is operative against the defendants. Upon death of the defendant, the question of binding his legal representatives by injunction would not arise. But in a case where the plaintiff, who is seeking injunction dies, the same position will not hold good. The right of injunction does not die with the death of plaintiff. In the

instant case, the plaintiff i.e. deceased-Usha Tiwari had sought injunction that the petitioners herein should not interfere in her possession over the property in dispute. A suit claiming injunction of this nature does not abate on death of the plaintiff. The cause of action would survive to his/her legal representatives, who come in possession of the said property.

9. The respondent, the son of deceased-Usha Tiwari has claimed that petitioner No. 1 herein stands disinherited by the deceased-plaintiff. The question whether she was disinherited by deceased-plaintiff and it is only the respondent, who is entitled to remain in possession of the suit property, is a matter which would be decided during the trial of the case. Similarly the merits of the claim of the petitioners/defendants that the deceased had executed a Will in respect of the suit property in favour of her daughter-petitioner No. 1 and that the said Will was her last Will would also be decided during the trial of the case. In fact, son of respondent No. 1, Sh. Yujure Tiwari has, during the pendency of this revision petition filed an application bearing CM No. 913/2020, wherein he has sought his impleaded as a respondent by pleading that deceased-Usha Tiwari had executed her last Will on 18.01.2017 by revoking her earlier Will dated 06.12.2016 and bequeathed the suit property in favour of applicant-Yujure Tiwari. The said contention of the applicant would also be a subject matter of determination before the trial court. One thing is clear that if the respondent and his son succeed in proving before the trial court that petitioner No. 1 has been disinherited from the suit property and that original plaintiff had executed a Will in favour of Yujure Tiwari, her grandson, they have a right to obtain an

injunction against the petitioners. Therefore, it cannot be stated that right to suit does not survive in their favour.

- 10.** So far as the order passed by the civil court at Delhi is concerned, learned civil judge has not discussed the matter in detail and has simply noted that as per the plaintiff, cause of action does not survive and that no application has been moved for impleadment of legal representatives though period of 90 days is over. On this ground, the learned civil judge has concluded that the suit stands abated. The order passed by the civil court does not deal with the merits of the issue relating to abatement of the suit. The said observation of the learned civil judge could not have precluded the learned appellate court from considering the issue on its merits and for taking a different view.
- 11.** For the foregoing reasons, it cannot be stated that the learned appellate court has, while passing the impugned order, either committed any illegality or it has acted with material irregularity. The revision petition is without merit and is dismissed as such. Applicant-Yujure Tiwari would be at liberty to move an application for his impleadment as a party before the appellate court/trial court. His application, is disposed of accordingly.

**(SANJAY DHAR)**  
**JUDGE**

**Jammu**

20.04.2024

Rakesh PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No