Marwadi Mothiram (Died) and ors. Vs. M. Samnaji (Died) and ors.

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Court : Chennai

Decided On : Aug-10-1916

Reported in : (1916)31MLJ772

Appellant : Marwadi Mothiram (Died) and ors.

Respondent : M. Samnaji (Died) and ors.

Judgement :

Krishnan, J.

1. This appeal arises from a suit brought by one Motiram for damages for malicious prosecution and for maliciously obtaining a search warrant in that prosecu-tion. The lower Court dismissed the suit but without costs. Motiram appealed but pending his appeal, he died. His sons were added as his legal representatives on record.

2. At the hearing a preliminary objection is taken by the respondents that the appeal has abated as the cause of action, being a personal one, did not survive to Motiram's heirs under the maxim 'actio personalis moritur cum persona.' The appellants on record, while admitting that the action is a personal one, contend that their appeal has not abated because the maxim quoted should not be applied to India as it is a technical rule of English Jurisprudence and because Section 89 of the Probate and Ad-ministration Act as construed by the High Court of Calcutta in the case reported in Krishna Behari Sen v. Corporation of Calcutta I.L.R. (1904) 0. p. 993 shows that actions for malicious prosecution do not abate with the death of the person concerned.

3. The maxim quoted is a well recognised rule of English law ; and it has been adopted and followed in India in many cases. It was applied in a case of damages for malicious prosecution and wrongful arrest by the Bombay High Court in the case of Haridas Ramdas v. Ramdas Mathuradas I.L.R. (1889) B. 677. That High Court quoted and followed the leading English case of Phillips v. Homfray. (1883) L.R. 21 Ch. D. p. 139 The Bombay case was approved of and followed by this High Court again in a case of damages for malicious prosecution where the wrong-doer had died; vide the case of Ramchode Doss v. Rukmany Bhoy. I.L.R. (1905) M. 187 The latest application of the rule brought to our notice is in the case reported in Subramania Iyer v. Venkataramier (1916) 31 I.C. p. 5. The rule that personal actions abate with the death of the person injured or injuring is thus a well established rule in this country also and I must therefore apply it.

4. The case of Gopal v. Ramchandra I.L.R. (1902) B. 597 and Paramen Chatty v. Sundararaja Naick I.L.R. (1902) M. 499 following the view of the majority in the Bombay case have no application here as in both those cases a decree for damages

had been obtained before the wrong-doer died; the legal representative was allowed to prosecute the appeal to save the estate which had devolved on him from loss by execution of the decree. In the present case, as the Lower Court dismissed Motiram's suit without costs, he was in the appeal, in the position of a person claiming damages not yet decreed. Both the cases cited recognise the rule that personal actions so long as they remain unconverted into decrees abate on death. Fulton, J. in his judgment observes, ' Now it need not be doubted that to a suit for libel the maxim actio personalis moritur cum persona applies. If previous to decree the defendant dies, the plaintiff can no longer prosecute his suit for damages-The same rule would apply in the appeal, if the plaintiff having failed in the lower Court were seeking to obtain a decree for damages in the Court of appeal.'

5. Section 89 of the Probate and Administration Act relied on has no direct application to the facts of this case. The legal representatives on record are the undivided sons of Motiram. They are not executors or administrators. They do not say that they propose to take out letters of administration nor do they seem to be in a position to do so. They are in this respect dissimilar to the legal representative in the Calcutta case Krishna Behari Sen v. The Corporation of Calcutta I.L.R. (1904) C. 993 which case therefore is not a direct authority for the present case.

6. They are in a similar position to the appellants in the case in Subramania Iyer v. Venkataramier (1815) 31 I.C. p. 5 Following that case this appeal must also be declared to have abated.

7. It is necessary however to consider one further argument of the appellants. Their learned vakil urges that though Section 89 did not apply directly, that section as construed by the Calcutta High Court is a legislative recognition of the rule that suits for damages for malicious prosecution and for wrongful search do not abate on death but the causes of action survive to executors and adminis-trators ; and that being so, he argues that there is no reason why such suits should be held to abate when the legal representatives do not belong to that category. His suggestion is that if he is right in his argument the same rule should be extended to all manner of legal representatives in such suits. To see what force there is in this argument we must consider what construction should be placed on the section.

8. It is the appellants' contention that the words 'other per-sonal injuries not causing death' should be read as referring only to injuries similar to assault or in other words bodily injuries and not to injuries similar to defamation such as that caused by malicious prosecution. The case cited by the learned vakil for the appellants in Krishna Behari Sen v. The Corporation of Calcutta (1707) 11 Madd. 150 is no doubt in his favour on this point. But with all deference to the learned Judges in that case I regret I am unable to agree with their view.

9. The result of that view is that in cases of executors and administrators while the rule of abatement of personal actions is retained in cases of defamation, it is held to be abrogated in cases of other personal injuries similar to defamation. No reason whatever is suggested by the appellants' vakil, why Legislature should make such a curious and extraordinary distinction. The first rule of construction of a statute is to give the words their ordinary and natural meaning ; but it is also a recognised canon of construction that where the language is not clear and unequivocal Legislature should not be taken to have intended any substantial alteration of the existing law by words of doubtful import. See Maxwell on Interpretation of Statutes, Chapter III and

Arthur v. Bokenham I.L.R. (1904) C. 993 per Trevor, J. Bearing these rules in mind we must see what meaning should be attached to the expression ' other personal injuries.' Ordinarily where several specific instances are mentioned followed by a general term with the word ' other ' prefixed to it, where the rule of ejusdem generis is applied the meaning of the general term should be settled with reference to all the instances preceding it. If so read in this case other personal injuries will include injuries similar to both defamation and assault. The only ground suggested for not giving the ordinary meaning to the word ' other ' is that it is hardly reasonable to speak of defamation as ' a personal injury not, causing death,' that being the expression in the section. No doubt it may appear somewhat strange in ordinary parlance to do so. But it may be pointed out that ' assault' as defined in Section 351, Indian Penal Code is just as unlikely to cause death and so it will be perhaps equally strange to associate with it the idea of causing or not causing death. However that may be, it seems to me that the strangeness of the language used is not a sufficient reason to make it the basis of a construction of the section which offends against the second canon of construction I have above referred to. For, the result of it is that it has to be held as was done in the Calcutta case, that Legislature has altered the rule as to abatement of suits which existed previously as shown above from the authorities and that with reference to that class of legal representatives alone who are executors or administrators without clear and plain language to that effect. It cannot be denied that this result is arrived at, only inferentially and in an indirect manner from the somewhat doubtful language of the section. Is it necessary then to construe the section in this manner? I do not think so. There is nothing logically or grammatically wrong in including defamation in the class of injuries not causing death. It seems to me that the scheme of the section is to divide personal injuries into two classes, those causing death and those not causing death making a separate provision for each class.

10. Apparently the two personal injuries named, defamation and assault, are given as illustrative examples of injuries that apper-tain to the body and of those that do not so appertain. It is difficult otherwise to suggest any reason why these two parti-cular injuries alone are named. If this view is correct assault and defamation will both ordinarily fall among injuries that do not cause death; and the words ' other personal injuries ' will include injuries similar to defamation such as those caused by malicious prosecution and wrongful search, so that the cause of action for damages for such injuries will not survive under the section.

11. It seems to me that this construction of the section is preferable as it leads to the result of making the section conform to the rule of law as to abatement that existed when that section was enacted, In the very case in which the judgment in appeal is the one reported in Krishna Behari Sen v. The Corporation of Calcutta I.L.R. (1904) C. 993 Henderson, J. as the trial Judge took the view that the suit abated, observing that ' the matter complained of in this case is clearly a personal injury covered by that section,' that is Section 89. See same volume pages 406, 410. This ruling was cited and approved of in Ramchode Doss v. Rukmany Bhoy I.L.R. (1905) M. 487 though no argument based on Section 89 was raised in that case.

12. No other authority on the construction of Section 89 has been cited to us. I am of opinion therefore that any argument deriv-able from Section 89 in this case is against the appellants rather than in their favour. Applying therefore the rule of abatement of personal actions to this case, I hold that the appeal has abated and that the present appellants are not entitled to prosecute it. I therefore dismiss the appeal with costs to

be paid out of the estate of the deceased.

13. The Memorandum of Objections refers to costs disallowed by the Lower Court. That must also fail for the same reason as the appeal and it is also therefore dismissed.

Abdur Rahim, Officiating C.J.

14. I agree.

15. In Appeals Nos. 229 and 230 of 1913:--Following the above Judgment, Appeals Nos. 229 and 230 of 1913 are also dismissed with costs.