

RAJASTHAN HIGH COURT

Gajanand

Vs.

Vishnu

S.B. Civil First Appeal No. 153 of 1981

(Harbans Lal, J.)

14.02.2006

JUDGMENT

Harbans Lal, J.

1. The instant civil first appeal under Section 96 of the Civil Procedure Code is directed against the judgment and decree dated 27.8.1981 passed by the learned District Judge, Sikar in Civil Original Suit No. 12/1976, whereby the suit of the plaintiff has been dismissed against defendants Nos. 1, 2, 3, 5 and 7 but has been decreed for a sum of Rs. 5,000/- against defendant No. 6 Dhanna Ram with proportionate costs.

2. Briefly stated, the relevant facts giving rise to this appeal are that plaintiff-appellant Gajanand (since deceased) was detained in custody under the Defense and Internal Security of India Rules, 1971 pursuant to the notification issued by the President of India on June 26, 1975 during the emergency imposed in the country. It was alleged that the respondents who were his political rivals had got him arrested on a false accusation due to mala fides and as a result thereof, he had to not only undergo harassment and hardship in the custody, but his social prestige was also jeopardized. After his release from custody, he filed a Suit for Damages for a sum of Rs. 20,000/- on account of malicious prosecution. The respondents herein refuted the allegations leveled in the suit. The learned court below framed six issues in the suit. After taking evidence of the parties and affording an opportunity of hearing to both sides, the suit was dismissed as against other defendants except defendant No. 6 Dhanna Ram against whom the suit was decreed as indicated above,

3. Aggrieved by the said judgment and decree, the plaintiff-appellant preferred an appeal against the respondent including Dhanna Ram. Dhanna Ram had also filed a separate appeal for the judgment and decree passed as against him. The same was disposed of as abated as his legal representatives were not brought on record during the pendency of the appeal filed by him. During the pendency of the appeal, plaintiff-

appellant Gajanand also expired and his legal representatives have been substituted in his place. Similarly, respondent No. 3 Vishambhar Dayal and respondent No. 4 Gopal also died and proceedings as against them were dropped.

4. Consequently, the instant civil first appeal is against respondent Nos. 1, 2 and 6 Vishnu, Shambhu Daval and Mohan Lal respectively.

5. I have heard learned counsel for the parties and have also perused the record.

6. The moot question involved in this appeal is as to whether the cause of action in a Suit for Damages on account of malicious prosecution survives after the death of the plaintiff or not.

7. Learned counsel for the respondents has drawn my pointed attention to the pronouncement of the Hon'ble Apex Court in the case of *Melapurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, reported¹* in wherein, it has been clearly held that if a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking is to enforce his right to sue for damages for defamation in the appeal and as this right does not survive his death, his legal representatives have no right to be brought on the record of the appeal in his place. However, the position would be different if a suit for defamation has resulted in a decree in favour of the plaintiff-appellant because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate. The appeal from the decree by the defendant becomes a question of benefit to the estate of the plaintiff-respondent which his legal representatives are entitled to uphold and defend. They are, therefore, entitled to be substituted in place of the deceased respondent-plaintiff.

8. Section 306 of the Indian Succession Act, 1925 read with Order 22, Rules 1 and 11 of the Civil Procedure Code, 1908 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in a better position than executors and administrators and what applies to executors and administrators will also apply to other legal representatives. It is thus, clear that a cause of action for defamation does not survive the death of the appellant.

9. Same view has been propounded in the case of *Cassim & Sons v. Sara Bibi*²

10. In the instant case as already indicated, the suit for Damages on account of malicious prosecution was dismissed as against the surviving respondents herein. The suit for defamation having been dismissed and thereafter during the pendency of the appeal the original plaintiff having died, the right to sue for damages for defamation

does not survive as has been clearly held in the afore-mentioned authorities.

11. In this view of the matter, therefore, this appeal cannot be continued and deserves to be dismissed on the aforesaid ground alone.

12. Learned counsel for the appellant has however, referred to the case of Shri Rameshwar Manjhi (Deceased) Through his son Shri Lakhiram Manjhi v. Management of Sangramgarh Colliery & Ors., Reported ³in which apparently is a case having no bearing on the question involved in the instant appeal. It rather supports the case of the respondents and not that of the appellant-plaintiff. It was a case under the, Industrial Disputes Act, 1947 wherein the death of the workman during the pendency of proceedings before the learned Labour Court/Tribunal for adjudication of dispute relating to termination of his service was involved and it was held that the proceedings would not result in abatement. It was further held that during the pendency of the application under Section 13-C(2) of the Industrial Disputes Act, 1947 death of workman would not result in abatement of the proceedings because heirs and legal representatives of the deceased workman are entitled to continue the proceedings for adjudication. A contrary view cannot be taken on the basis of clauses (c) and (d) of Section 1(3) of the aforesaid Act because the maxim "*Actio personalis miratur cum persona*" was not applicable in the aforesaid facts and circumstances of the case.

13. Thus, having carefully considered the rival submissions and the law cited at the bar, this appeal being no longer maintainable deserves to be and is hereby dismissed, however, without any order as to costs.

Appeal dismissed.

Cases Referred.

1. AIR 1986 SC 411
2. AIR 1936 (Vol. 23) Ran 21
3. 1994(1) SCT 500: (1994)1 SCC 292