

(2016) 12 P&H CK 0126
In the Punjab And Haryana At Chandigarh
Case No : CR No. 6961 of 2016 (O&M)

Asha Nagar

APPELLANT

Vs

Gyan Swaroop Through LR Hardeep Singh

RESPONDENT

Date of Decision : 23-12-2016

Acts Referred:

Citation : (2017) 1 PLR 829 : (2017) 3 RCRCivil 403

Hon'ble Judges : Mr. Darshan Singh, J.

Bench : Single Bench

Advocate : Mr. L.S. Mann, Advocate, for the Petitioner; Mr. H.K. Arora, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Darshan Singh, J. (Oral) - Present revision petition has been preferred against the order dated 08.09.2016 (Annexure P-6) passed by learned Civil Judge (Junior Division), Hoshiarpur, vide which the application moved by Hardeep Singh for impleading him as a legal representative of deceased Gyan Swaroop, the sole plaintiff, has been allowed.

2. Deceased plaintiff-Gyan Swaroop has filed the suit for recovery of Rs.3,00,000/- as damages along with interest on the ground of defamation. To be more specific, deceased plaintiff has sought the damages as under :

(i)

On account of defamation of plaintiff

Rs. 1,50,000/-

(ii)

On account of harassment and mental agony which regulated loss in business

Rs. 2,00,000/-

(iii)

On account of inconvenience and litigation expenses.

Rs. 40,000/-

3. Plaintiff-Gyan Swaroop has died during the pendency of the suit on 25.04.2016 thereafter Hardeep Singh on the basis of Will dated 20.04.2016 moved an application to join the proceedings being the legal representative of deceased-Gyan Swaroop. The said application has been allowed by the learned trial Court vide impugned order dated 08.09.2016.

Hence, this revision petition.

4. Learned counsel for the petitioner contended that the cause of action to claim damages on the ground of defamation was personal in nature to the sole plaintiff and the cause of action does not survive after his death. So, Hardeep Singh was not entitled to be impleaded as the legal representative of deceased plaintiff. He relied upon *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair*, AIR 1986 SC 411, *Velraj v. State of Rajasthan and Ors.* 1979 W.L.N. 700, C.P. *Kandaswamy & Ors. v. Mariappa Stores & Ors.* AIR 1974 Madras 178, *Punjab Singh and Sheodhary Singh v. Ramautar Singh and Ors.*, 52 Ind Cas 348 and *Mahtab Singh v. Hub Lal and Anr.* AIR 1926 All 610. Thus, he contended that the impugned order is illegal.

5. On the other hand, Mr. H.K. Arora, Advocate, learned counsel for the respondent contended that Hardeep Singh was the legal representative/legal heir of deceased Gyan Swaroop on the basis of the Will dated 20.04.2016 and has been rightly impleaded as the legal representative of that deceased plaintiff in order to pursue the suit.

6. I have duly considered the aforesaid contentions.

7. Admittedly, the suit was filed by deceased plaintiff-Gyan Swaroop for recovery of Rs.3,00,000/- as damages on account of his defamation allegedly committed by the present petitioner. So, the cause of action to file the suit for damages by the plaintiff was on account of his defamation which is purely personal in nature to the deceased-plaintiff and such cause of action will not survive after the death of plaintiff-Gyan Swaroop.

8. In case *Mahtab Singh v. Hub Lal and Anr.* (supra) plaintiff Mahtab Singh has filed the suit for damages for malicious prosecution. Said Mahtab Singh died during the pendency of the appeal. The Hon'ble Allahabad High Court observed that the cause of action for damages on account of malicious prosecution is by no means different from the cause of action arising from the personal injury and claim for the costs/expenses incurred in connection with that cause of action dies with it too. It was held that the appeal will abate as the right to sue does not survive to the legal representative of the deceased.

9. In case *Punjab Singh and Sheodhary Singh v. Ramautar Singh and Ors.*

(supra) also the suit was filed for damages on account of malicious prosecution. The Hon''ble Patna High Court held that the cause of action for malicious prosecution does not survive to the legal representative of Khub Lal. It was further laid down that the learned Appellate Court has erred in allowing the legal representative of Khub Lal to continue with the action after his death.

10. In case *Velraj v. State of Rajasthan and Ors.* (supra), the Division bench of Hon''ble Rajasthan High Court laid down as under :

"3. In our opinion, the law is well settled. The maxim, "Actio personalis moritur cum persona" does apply when the action is one for personal wrong. In the present case, there is no denying the fact that the suit is one for damages on account of the personal injury and wrong done to the deceased. In this view of the matter, we have no alternative but to accept the preliminary objection and dismiss the appeal on the ground that the cause of action does not survive to the legal representatives of the deceased plaintiff-appellant Valraj.

4. This appeal is accordingly dismissed, but there will be no order as to costs."

11. In case *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair* (supra), the appellant has filed the suit claiming a sum of Rs.5500/- as damages for defamation. The trial Court dismissed the suit. Appellant thereupon filed an appeal in the District Court. The said appeal was allowed by the learned District Judge. The respondent then filed the second appeal against the decree of the District Judge. The cross objections were filed by the appellant. The Hon''ble High Court of Kerala allowed the second appeal and reversed the decree of the learned Appellate Court. The cross-objections were also dismissed. It was against this decree that the appeal was filed before the Hon''ble Apex Court. When the appeal was pending before the Hon''ble Supreme Court, the sole plaintiff died. The application was moved to implead the legal representatives. The Hon''ble Supreme Court laid down as under :

"7. Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff-respondent which his legal representative is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff."

It is further laid down as under :

"9. The position, therefore, is that had the Appellant died during the pendency of

his suit, the suit would have abated. Had he died during the pendency of the appeal filed by him in the District Court, the appeal would have equally abated because his suit had been dismissed by the trial Court. Had he, however, died during the pendency of the second appeal filed by the Respondent in the High Court, the appeal would not have abated because he had succeeded in the first appeal and his suit had been decreed. As, however, the High Court allowed the second appeal and dismissed the suit, the present Appeal by Special Leave must abate because what the Appellant was seeking in this Appeal was to enforce his right to sue for damages for defamation. This right did not survive his death and accordingly the Appeal abated automatically on his death and his legal representatives acquired no right in law to be brought on the record in his place and stead-"

12. This Court also in case Ramjit Lal and another v. Ram Niwas and others, RSA No.4572 of 2010 decided on 18.09.2012 observed as under :

"Plaintiff No.3 Sultan died during the pendency of the suit. His legal heirs were impleaded as his legal representatives. However, cause of action to claim damages for malicious prosecution was personal cause of action and therefore, on the death of plaintiff No.3, the right to sue did not survive to his legal representatives."

13. Thus, in view of the consistent rule of law laid down in all the cases referred above, the cause of action to file the suit for damages on account of defamation was personal to the deceased Gyan Swaroop, the sole plaintiff, and cause of action thereof does not survive to Hardeep Singh to be impleaded as his legal representative to pursue the suit.

14. Therefore, the impugned order passed by the learned trial Court is not sustainable in the eye of law.

15. Consequently, the present revision petition is hereby allowed.

16. The impugned order dated 08.09.2016 is hereby set aside.