

(1957) 09 MAD CK 0043
In the Madras High Court

RM. P. KP. AR. Arunachalam Chettiar	APPELLANT
Vs	
V.S. alias S.V.V. Subramanian Chettiar (died) and Veerappa Chettiar brought on record as L.R. of deceased	RESPONDENT

Date of Decision : 11-09-1957

Acts Referred:

Succession Act, 1925 — Section 306

Citation : AIR 1958 Mad 142 : (1957) 70 LW 932 : (1957) 2 MLJ 537

Hon'ble Judges : Rajamannar, C.J

Bench : Division Bench

Judgement

Rajamannar, C.J.—This appeal must be dismissed in limine on a ground which we shall presently state. It arose out of a suit filed by the appellant in the Court of the Subordinate Judge of Devokattai, O.S. No. 130 of 1951, to recover a sum of Rs. 7,700 as damages for malicious arrest of the plaintiff by the defendant. The learned Subordinate Judge dismissed the suit. The plaintiff thereupon filed the present appeal. Pending the appeal the defendant, who was the sole respondent, died and his undivided son was brought on record as legal representative and made the second respondent.

2. It is now well established that the maxim *actio personalis moritur cum persona* is part of the law of this country except in so far as it has been modified by statute. In *Rustomji Dorebji Vs. W.H. Nurse and Parthasarathy Naidu*, a Full Bench of this Court ruled that in a suit for malicious prosecution, when a defendant dies, the right to sue does not survive. The principle of this Full Bench ruling will certainly apply to the present case as it is a suit for damages for malicious arrest. So far as we are aware, this decision of our Full Bench has never been doubted in this Court nor has Mr. Kesava Ayyangar learned Counsel for the appellant, been able to cite any decision of any other High Court or of a higher Court in which doubt has been expressed as to the applicability of this doctrine to India. Page, C.J., who was apparently personally inclined to an opposite view said in *D.K. Cassim and Sons v. Sara Bibi I.L.R.(1936) Rang. 385*.

I am constrained to hold that, except in so far as it has been modified by statute, the rule is and remains a part of the general law that runs in India.

3. Mr. Kesava Ayyangar referred us to Section 306 of the Succession Act of 1925. But that provision does not help him because that section is confined to executors and administrators of a deceased person. It does not apply to heirs or other legal representatives. The decision in *D.K. Cassim and Sons v. Sara Bibi* I.L.R.(1936) Rang. 385 is itself authority for this position. The second respondent is admittedly not an executor or administrator. The stray sentence in *Bhupendra Narayana Sinha v. Chandrameni Gupta* I.L.R.(1926) Cal. 987 namely,

In India the doctrine of *actio personalis moritur cum persona* does not form part of the law,

is a statement made by the same learned Judge, Page, J., as he then was. Though *ex facie* the statement appears to be very wide in its scope, the same learned Judge explained the scope of the statement in *D. K. Cassim and Sons v. Sara Bibi* I.L.R.(1936) Rang. 385 to which we have made already reference. At page 408, referring to this sentence the learned Chief Justice observed thus:

I desire to point out, however, that by the observation in *Bhupendra Narayan Sinha v. Chandramoni Gupta* I.L.R.(1926) Cal. 987 " In India the doctrine of *actio personalis moritur cum persona* does not form part of the law " the Court merely intended to hold that inasmuch and so far as claims by or against the legal representatives of deceased persons were regulated by statute, in respect of such persons the rule had no application in India.

4. We see no reason to depart from a rule which has been so well established in this country and which the legislature has allowed to remain without modification. We hold, applying that rule, that this appeal has abated on account of the death of the sole respondent, the defendant in the suit. The appeal is therefore dismissed; but, in the circumstances, there will be no order as to costs.