

(2010) 12 P&H CK 0563
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 3967 of 2001 (O and M)

State of Haryana and Others

APPELLANT

Vs

Gurcharan Singh Bhutani

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Succession Act, 1925 — Section 306

Citation : (2010) 12 P&H CK 0563

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present revision petition is to an order passed by the learned trial Court on 08.05.2001, whereby the legal representatives of the deceased Plaintiff were ordered to be impleaded to continue with the suit.

2. The Plaintiff-Respondent filed a suit for declaration claiming damages during the period of his service and for mandatory injunction to make the payment of the said damages. The Plaintiff died on 13.12.1999 during the pendency of the suit. His legal representatives filed an application for being impleaded to continue with the suit. The Petitioners relied upon a judgment of the Hon'ble Supreme Court reported as Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair , to contend that the cause of action does not survive after the death of the Plaintiff, but the learned trial Court allowed the application on the ground that it is not a suit for defamation, but suit for damages.

3. The distinction drawn by the learned trial Court is not tenable in law. In a suit for defamation, the relief claimed is for damages alone. In the said judgment, relying upon Section 306 of the Succession Act, 1925, the Court found that the cause of action does not survive after the death of Plaintiff. In the said case, the trial Court and the first Appellate Court granted damages, but the High Court

accepted the appeal and dismissed the suit. It was during the pendency of the appeal before the Hon"ble Supreme Court, the Plaintiff died and it was held that on account of suit being dismissed by the High Court, the legal representatives cannot continue with the suit. In *M. Veerappa Vs. Evelyn Sequeira and Others*, , the matter has been examined elaborately and after considering the various judgments, it was held to the following effect:

10. The maxim "*actio personalis cum moritur persona*" has been applied not only to those cases where a Plaintiff dies during the pendency of a suit filed by him for damages for personal injuries sustained by him but also to cases where a Plaintiff dies during the pendency of an appeal to the Appellate Court, be it the First Appellate Court or the Second Appellate Court against the dismissal of the suit by the Trial Court and/or the First Appellate Court as the case may be. This is on the footing that by reason of the dismissal of the suit by the Trial Court or the First Appellate Court as the case may be, the Plaintiff stands relegated to his original position before the Trial Court. Vide the decisions in *Punjab Singh v. Ramautar Singh* AIR 1920 Pat 841, *Irulappa Konar and Others Vs. Madhava Konar (died) and Others*, , *Manirammlala v. Mt. Chattibai* AIR 1937 Nag 216, *Baboolal v. Ram Lal* AIR 1952 Nag 408 and *Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair*, . In *Palaniappa Chettair Vs. B. Rajarajeswara Sethupathi Pathi alias Muthuramalinga Sethupathi Avergal, Rajah of Ramnal and Others*, , and *Motilal Satyanarayan Vs. Harnarayan Premasukh*, , it was held that a suit or an action which has abated cannot be continued thereafter even for the limited purpose of recovering the costs suffered by the injured party. The maxim of *actio personalis cum moritur persona* has been held inapplicable only in those cases where the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong doer vide *Rustomji Dorabji Vs. W.H. Nurse and Parthasarathi Naidu*, and *Ratanlal v. Baboolal* AIR 1960 Madh Pra 200 as well as in those cases where a suit for damages for defamation, assault or other personal injuries sustained by the Plaintiff had resulted in a decree in favour of the Plaintiff because in such a case the cause of action becomes merged in the decree and the decretal debt forms part of the Plaintiff's estate and the appeal from the decree by the Defendant becomes a question of benefit or detriment to the estate of the Plaintiff which his legal representatives are entitled to uphold and defend (vide *Gopal v. Ramchandra* ILR (1902) (26) Bom 597 and *Melepurath Sankunni v. Thekittil* (supra)).

4. Following the aforesaid judgment, this Court in a judgment reported as *H.S. Gambhir and Ors. v. Vam Dev Sharda and Ors.* 1990 (2) PLR 436 and a Division Bench of Delhi High Court in a judgment reported as *E.I. Ltd. and Another Vs. Klaus Mittelbachert (deceased) through L.Rs.*, , dismissed the suit filed by the Plaintiff for damages.

5. In view of the above, the order passed by the learned trial Court is not sustainable. The same is set aside. The suit is dismissed as abated on account of death of the Plaintiff.