

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

SAO No.11 of 2014 (O&M)
RESERVED ON : 21.03.2023
DATE OF DECISION : 11.04.2023

Jeet RamAppellant

versus

Ravinder Singh and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.S. Antal, Advocate for the appellant

Mr. R.K. Rana, Advocate for respondent Nos.1 to 3

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ALKA SARIN, J.:

The present appeal has been preferred against the judgment passed by the First Appellate Court setting aside the judgment and decree passed by the Trial Court and remanding the case back for being decided afresh in accordance with law.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for recovery of Rs.1 lakh as compensation for malicious prosecution/harassment/defamation. It is the pleaded case of the plaintiff-appellant that he was elected as Sarpanch of Village Munerheri,

Tehsil and District Ambala and he was highly respected in the village and enjoyed a very good reputation. The defendant-respondents are Scheduled Castes and residents of Village Munerheri. They are father and son and they colluded with each other and in 1992 filed a false/frivolous complaint under Sections 452, 436, 437, 427, 148, 149 IPC against the plaintiff-appellant and others without reasonable and probable cause. It was alleged in the said complaint that at about 8.30 PM on 29.01.1992 they were celebrating the birthday of their grandson Sunny and all the 18 accused in the said complaint trespassed into their house and the plaintiff-appellant sprinkled kerosene and set their house on fire. All 18 persons accused in the complaint were stated to be armed with deadly weapons and demolished and looted their house. During the pendency of the complaint, defendant-respondent No.1 is stated to have made a statement on 17.08.2000 withdrawing the complaint against 11 accused. During the pendency of the complaint, the plaintiff-appellant and six others remained in jail for about five months. They had to contest the complaint before this Court as well as before the Supreme Court for grant of bail. During the trial, the plaintiff-appellant had engaged the services of several lawyers for contesting the false complaint. Eventually, the plaintiff-appellant was acquitted vide judgment dated 10.12.2003 and due to the said act and conduct of the defendant-respondents, the plaintiff-appellant suffered loss of reputation. The suit was contested by defendant-respondent Nos.1 and 3 who filed separate written statements and pleaded that the appeal filed against the judgment of acquittal was pending before this Court and, therefore, the suit was premature. Besides contesting the suit on merits, the

allegations in the complaint were reiterated in the written statements. Replications were filed controverting the contents of the written statements and reiterating those of the plaint.

On the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for decree for recovery of Rs.1,00,000/- with interest @ 18% per annum ? OPP
2. Whether the plaintiff has no locus standi to file and maintain the present suit ? OPD
4. *(sic)* Whether the suit is immature ? OPD
5. Whether plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
6. Whether the plaintiff has concealed the material facts ? OPD
7. Relief.

The Trial Court decreed the suit vide it's judgment and decree dated 30.11.2009 and held the plaintiff-appellant entitled to recover Rs.1 lakh as compensation for malicious prosecution/defamation. Aggrieved by the same an appeal was preferred by defendant No.1. The First Appellate Court vide judgment dated 21.11.2003 held as under :

“19. For the reasoning given and discussion made in the preceding portion, the impugned judgment and decree cannot be legally sustained. The same are accordingly set aside. In turn, the matter in question is

remanded to the Successor Court of the Ld. Civil Judge for decision of the suit in question afresh as per law. While proceeding afresh, the said Court shall be at liberty to frame appropriate issue, if the need be. The parties through their respective counsel are directed to be present before the said Successor Court on 03.12.2013. The appeal in question is allowed and disposed-off in the above stated terms. Memo of costs be prepared. A copy of the present judgment and memo of costs, with the trial court record, be sent to the Successor Court of the Ld. Civil Judge for compliance, in advance. Appeal file, after compliance, be consigned to records.”

Aggrieved by the said order dated 21.11.2013, the present Second Appeal against Order was filed. On 01.05.2014 further proceedings before the Trial Court were stayed. During the pendency of the present appeal, the plaintiff-appellant Jeet Ram is stated to have died on 20.06.2018. CM-17145-CII-2022 was filed for placing on record the death certificate and affidavit as Annexures A-1 and A-2 and CM-17147-CII-2022 was filed for impleading the legal representatives of Jeet Ram. Notice of the said applications was issued on 23.12.2022. The learned counsel for respondent Nos.1 to 3 sought time to file a reply. Subsequently, a reply has been filed vide CM-5227-CII-2023.

The learned counsel appearing on behalf of the defendant-respondents argued that the Supreme Court in the case of **Melepurath Sankunni Ezhuthassan vs. Thekittil Gopalankutty Nair [1986 (1) SCC 118]** has held that in a case for malicious prosecution/defamation, since there was no decree in favour of the plaintiff-appellant at a time when he died, the present appeal would abate.

Per contra, the learned counsel for the plaintiff-appellant has contended that the Trial Court had decreed the suit in favour of the plaintiff-appellant and, therefore, the right accrued in favour of the legal representatives and hence the suit cannot be treated as having abated.

I have heard the learned counsel for the parties.

In the present case, the suit is for recovery of Rs.1 lakh for malicious prosecution/harassment/defamation. In the case of **Melepurath Sankunni Ezhuthassan** (*supra*), the plaintiff-appellant had filed a suit for damages for defamation. The Trial Court had dismissed the suit. In appeal, the judgment and decree was reversed, as the suit was decreed by the District Judge. The respondents therein filed an appeal before the High Court of Kerala and cross-objections were also filed. The High Court allowed the second appeal and reversed the decree of the Appellate Court. The cross-objections were also dismissed. It was against the said decision of the High Court that the appellant therein (plaintiff in the original suit) approached the Supreme Court. While the appeal was pending before the Supreme Court, the sole plaintiff died. An application was filed to implead the legal representatives. The Supreme Court held 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 representatives is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff.

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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.”

In the present case the impugned order passed by the First Appellate Court is dated 21.11.2013 whereby the suit was remanded to the Trial Court. As such, on 21.11.2013 the suit can be stated to be pending before the Trial Court. The plaintiff-appellant died on 20.06.2018 i.e. during the pendency of the suit. Applying the law laid down by the Hon’ble Apex Court, on 20.06.2018 the suit abated. There was no decree in existence on 20.06.2018 and even the operation of the impugned order dated 21.11.2013 was not stayed by this Court. The cause of action to claim damages for malicious prosecution is a personal cause of action and, therefore, on the death of the plaintiff-appellant the right to sue does not survive to his legal representatives. Thus, in view of the settled law, the cause of action to file a suit for damages on account of

defamation/malicious prosecution was personal to deceased Jeet Ram and, therefore, on his death the cause of action does not survive to his legal representatives.

In view of the above, the present appeal is dismissed as having abated. The suit of the plaintiff-appellant is also held to have abated. CM-17145-CII-2022 for placing on record death certificate and affidavit and CM-17147-CII-2022 for impleading the legal representatives of the plaintiff-appellant are also dismissed as not being maintainable.

The appeal accordingly stands dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

11.04.2023
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<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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