

Haridas Ramdas Vs. Ramdas Mathuradas

Haridas Ramdas Vs. Ramdas Mathuradas

SooperKanoon Citation : sooperkanoon.com/330564

Court : Mumbai

Decided On : Mar-13-1889

Reported in : (1889)ILR13Bom677

Judge : Nanabhai Haridas and; Parsons, JJ.

Appellant : Haridas Ramdas

Respondent : Ramdas Mathuradas

Judgement :

Parsons, J.

1. In this case the plaintiff sued Ramdas to recover damages for wrongful arrest and malicious prosecution. He, alleged that Ramdas on the 10th November, 1883, obtained warrant for his arrest on a charge of criminal breach of trust; that he was arrested on it on the 16th November, kept in jail until the 20th November, when he was released fin bail, and that he was only discharged by the Magistrate on the 23rd November, 1883. The plaint was filed on the 23rd November, 1883, and Ramdas died on the 10th May, 1885. The question before us is whether on his death the right to sue survived, or whether the suit abated under Section 861 of the Civil Procedure Cede. Act XII of 1855 has been cited to us as a special statute which gives the plaintiff the right to continue the suit against the heir of Ramdas. That Act, however, relates only to suits brought against the heirs of a deceased person for a wrong committed by the latter in his lifetime. Such is not the present

suit. As therefore, this suit is not one to which the Act relates, and as it is not a suit commenced under the provisions of the Act, the Act cannot apply to it. It is clear that the heir of Ramdas would not have been liable to suit at the time of the death of Ramdas, since the wrong Ramdas is alleged to have committed was not committed within one year before his death. We must, therefore, see whether by the common law such a suit as the present can be pursued against the estate of the deceased person. There can be no doubt that actions for wrongful arrest, for false imprisonment and for malicious prosecution are personal actions. 'It is a maxim of the common law that a personal action does not survive on the death, either of the person, who did, or of the person who sustained the wrong, and, in the absence of statutory provision to the contrary, it still prevails unless the estate is affected by the tort'--Addison on Torts, 6th ed., p. 57. That the above-quoted statement is correct in law, is shown by the cases cited as the authorities therefor. The cases of Phillips v. Homfray L.R. 24 Ch. D. 439 and Peek v. Gurney L.R. 6 H.L. 377 may also be referred to in support of the same proposition. In the former it is laid down At pp. 454, 455 that 'the only cases in which, apart from questions of breach of contract, express or implied, a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, appear to us to be those in which property, or the proceeds or value of property, belonging to another, have been appropriated by the deceased person and added to his own estate or moneys. * * * Where there is nothing among the assets of the deceased that in law or in equity belongs to the plaintiff, and the damages which have been done to him are unliquidated and uncertain, the executors of a wrong-doer cannot be sued merely because it was worth the wrong-doer's while to commit the act which is complained of, and an indirect benefit may have been reaped thereby.' Applying these principles to the present case, in which the estate of the wrong-doer did not benefit, but actually suffered, in consequence of his wrong-doing, we hold that the suit abated on the death of Ramdas, and that no right to sue the representative of Ramdas survived. 'We, therefore, reverse the decrees of the Courts below, and order that the suit do abate. Under the circumstances we direct that each party bear his own costs throughout.