Abas and ors. Vs. Sheolal and ors.

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Court : Rajasthan

Decided On : Sep-12-1950

Reported in : AIR1951Raj26

Judge : Nawal Kishore, C.J. and; K.C. Gupta, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 95

Appeal No. : First Appeal No. 38 of 1949

Appellant : Abas and ors.

Respondent : Sheolal and ors.

Advocate for Def. : Hastimal, Adv.

Advocate for Pet/Ap. : Chandmal, Adv.

Disposition : Appeal dismissed

Judgement :

Nawal Kishore, C.J.

1. This is a plaintiffs' first appeal from the judgment of the learned District Judge dismissing the suit as premature and, therefore, not maintainable. The point involved in this appeal lies within a narrow compass but before Betting it out and dealing with it, a few facts may be stated in order to show how it emerges.

2. There is a firm of Motilal Nemichand consisting of Motilal, Nemichand and Ramanlal partners which was carrying on business of commission agents at Ahmedabad. Barkat, Abas, Wali and Jan Mohammad, sons of Akbar, carried on business of cloth and colours and used to purchase their goods through the firm Motilal Nemichand. During the course of their dealings, it appears from the allegations made by the plaintiffs, Barkat and his brothers incurred certain liabilities and not having discharged them, the plaintiffs instituted two suits against them for the recovery of RS. 7,870-7-9 and RS. 24,433.0-9 respectively on 20-7-1948, in the Court of Distriot Judge, Jodhpur. On 21-7-1948, an application was made on behalf of the plaintiffs in both these suits for a warrant of attachment before judgment being issued on the ground that the defendants were about to dispose of their property and leave Marwar and thereby make it difficult for them to satisfy the decree that may subsequently be obtained by them. The Court passed an ex parte order for conditional attachment and on 27-7-1948, three houses and one shop were attached. On 13 9-1948, Barkat and his brothers, defendants, applied for the order being vacated on various grounds. The plaintiffs' application, which culminated in the attachment and was subsequently opposed by the defendants, we understand, is still pending and has not been disposed of so far. In the meanwhile, on 2-5-1949, Barkat and his brother an instituted the suit, out of which this appeal arises, against Motilal, Nemichand and Ramanlal and also against Sheolal, Ghamandiram, Kesarmal and Multanmal for recovery of Rs. 50,000 on account of damages on the ground that the application for attachment had been made out of malice, without reasonable and probable cause and with a view to compel the plaintiffs to compromise the suits by bringing undue pressure to bear upon them. Defendants pleaded inter alia that as the proceedings in connection with the application for attachment had not been disposed of and had not terminated in the plaintiffs' favour, the suit instituted by them was premature, as a cause of action could not be said to have accrued to them. The learned District Judge framed only one preliminary issue to the effect whether the suit by the plaintiffs was premature and, therefore, not maintainable. After hearing arguments, be came to the conclusion that termination of the proceedings in favour of the plaintiffs was an essential condition in order to furnish them with a cause of action and that since the proceedings had neither been confirmed nor the

order of attachment vacated in the suit in which they were pending, the Suit was premature and, therefore, not maintainable. In the result, he dismissed the suit with costs.

3. It is urged by Mr. Chandmal, the learned counsel for the plaintiffs-appellants that all that was necessary for the plaintiffs to show was that the warrant of attachment had been got issued on insufficient grounds and that it was open to him in law to establish this in the suit instituted by him. He argued in effect that principles relating to suit for malicious prosecution did not govern the present suit and that accordingly, it was not necessary that the proceedings in the previous suit should have terminated in the plaintiffs' favour. It is urged that according to Section 95, Civil P. C., the plaintiffs were competent to apply and pray for a compensation limited to Rs. 1000 but that if they wanted a decree for a larger amount, the institution of a suit was imperative. But so far as the principles of law governing the application under Section 95, Civil P. C, and the suit for compensation are concerned, they are absolutely the same and are in effect different from the principles governing a suit for malicious prosecution. In support of this proposition, he cited Manohar Lal v. Gobardhan Prasad, 9 I.C. 60 : (13 O. C. 857), a Division Bench judgment of the Court of Oudh Judicial Commissioners. In this case, the appellants had brought a suit for possession and obtained an order under Section 492, Civil P. C. of 1882 which is the same as Order 39, Rule 1 of the present Civil P.C., that the Shop and its contents should remain in possession of the Court Officer pending the disposal of the suit. On the dismissal of the suit, the property was made over to the respondent who then brought the suit, out of which this case arose, for damages. In the course of arguments in the appeal, it appears to have been urged that the principles governing application under Section 96, Civil P. C., and suits foe compensation were identical and Edward Wilson v. Kanhya Sahoo, 11 W.R. 143 and Gautiere v. Robert, 2 N. W.P. H. C. 353 were cited in support of this proposition. In Edward Wilson v. Kanhya Sahoo, 11 W. R. 143, the Court found, a distinction had not been drawn between the grounds on which compensation could be awarded under Section 95, Civil P. C, for injuries resulting from an injunction and the grounds on which a separate suit for damages could be maintained. In the other case, however, it was found that the view which prevailed was different. It was held that compensation could be awarded under Section 95

on the ground of injury resulting from careless-or mistaken action of a plaintiff in suing out mesne process whereas damages could not be awarded in a separate suit except on proof of malice and want of reasonable and probable cause. Chamier and Lindsay JJ. found that apart from authority, it would seem that to institute a suit without reasonable or probable cause and to apply for and obtain in that suit an injunction whereby a. man's shop is stopped or other loss caused to him is wrongful and should give rise to a cause of action. They ultimately came to the conclusion that if the Civil Procedure Code laid down that a wrong may have bean committed for which compensation may be granted in special proceeding when an injunction is applied for and obtained without reasonable or probable cause, it is difficult to see why the person who has been wronged should be required to prove anything more if he elects to proceed by way of regular suit, It appears from the above conclusion that the phrase 'on insufficient grounds' occurring in Section 95(i)(a) Was interpreted to mean without reasonable or probable cause. This meaning was attached to this phrase in another authority reported as Boulet v. Fetterle, 18 Bom. 717, where Starling J. held that he must interpret the words 'on sufficient grounds' as being equivalent to 'without reasonable and probable cause.' The question which now arises is whether apart from proving this, it is necessary for the plaintiffs also to establish in the regular suit instituted by them that the proceedings in the previous suit had terminated in their favour. After enunciating the proposition that this was not necessary, the learned counsel for the plaintiff-appellants had to concede that so far as the authorities were concerned, a view had consistently prevailed which was against his contention. These authorities are Joseph Nicholas v. Sivarama Iyer, A. I. R. (9) 1922 Mad. 206: (45 Mad 527); Nasiruddin v. Umerji Adam & Go., A. I. R. (28) 1941 Bom. 286 : (I. L. R.. (1941) Bom. 521) and Satish Chandra v. Munilal, A. I. R. (19) 1932 cal. 821 : (59 Cal 1073). Before discussing these authorities, it may be pointed out that an action for damages for abuse of legal process is based on tort and, therefore, on the allegation that the process of law, having been put into force maliciously or without any reasonable or probable cause. was wrongful and had accordingly prejudiced the plaintiffs in property or person. For an action of this character, it has been consistently held that the same principles will apply which govern cases relating to malicious prosecution, one of these important principles

being that the proceedings complained of had terminated in favour of the plaintiff if from their nature they were capable of so terminating. This principle of law is enunciated in Halsbury's Laws of England (Hailsham Bdn.) vol. 22, p. 27 para. 42 in the following language:

'In an action for the abuse of civil proceedings the plaintiff has to allege and prove a case similar, mutatis mutandis, to that of a plaintiff in an action lot malicious proseoution.

* * * * * *Again, the plaintiff must allege and prove that the defendant acted without reasonable and probable cause; and either that the entire proceedings against him have terminated in his favour or that the particular process complained of has been superseded or discharged.

It is not, however, necessary that the termination of the proceedings should have been in the plaintiff's favour if from their nature they were incapable of so terminating.'

4. In Joseph Nicholas v. Sivarama Iyer, A. I. R. (9) 1922 Mad. 206: (45 Mad. 527), attachment before judgment before judgment had been ordered but before it was actually effected the amount claimed by the plaintiffs was paid. Accordingly, the proceedings did not progress further than the order for attachment. The learned counsel, who argued the case on behalf of the defendants, urged in the appeal when it came to the High Court that the plaintiff had no cause of action because he did not allege in the plaint that the proceeding by which he was aggrieved had ended in his favour because it never in fast did so end. The reason was that the conditional order of attachment came to an end as soon as the plaintiff paid the amount of the claim. In the circumstances, the proceedings became incapable of terminating in favour of the plaintiff. Old field and Rao JJ. observed that on the broad question whether the termination of the proceedings in the plaintiff's favour was essential, there was abundant authority that it is so. They, however held that such authority was applicable only to cases in which a distinct termination in favour of one party or the other was possible and not to a cage such as that before them in which the proceedings could not end by their nature in any judicial disposal and had in fact been terminated by an act of the defendant himself. To

the same effect is Nasiruddin v. Umerji Adam S Co., A. I. R. (28) 1941 Bom. 286 : (I L.R. (1941) Bom. 521). It is not necessary to recite the facts of this case in detail, as the principle of law with which we are concerned is the same as enunciated In the Madras case and has been repeated in the language of that case inasmuch as reliance was placed upon it. Satish Chandra v. Munilal, A.I.R. (19) 1932 Cal. 821:(59 Cal. 1073) is also a similar case and it was observed that it was quite true that it need not always be the case that the proceedings should have terminated favourably to the plaintiff. The particular proceedings, it was observed, may in some instances, be proceedings that could so terminate. But it must be avered and proved that they so terminated if the proceedings were capable of such a termination. There are certain other observations in this judgment which appear to be significant and these establish the principle that where a party has had his rights determined in another Court, it should not be open to him to get another Court to go behind the position as constituted in the original proceedings, If this principle of law were not insisted upon, it may result in the two Courts coming to two different conclusions on the same point and between the same parties. In view of the above, there is no escape from the conclusions that, normally in order that the plaintiff may have a cause of action in a suit for damages for abuse of legal process, it is essential that he should allege and prove that the proceedings taken by him in order to show that the process had been got issued without reasonable and probable cause had terminated in his favour.

5. The learned counsel lastly urged on behalf of the appellants that in Para, 4 of the plaint, be had alleged not only that the warrant had been got issued by the defendants without reasonable and probable cause but also that it had been done in order to compel them to compromise the suits instituted by them by bringing undue pressure to bear upon them. Accordingly, he stated that his cause of action for instituting the suit was something in addition to the grounds on which he had contested the issue of the war. rant in the former proceedings and that since the defendants had employed the issue of the legal process for an object which was not within the proper scope of that process, it was not at all necessary for him to show that the proceedings of which he complained had terminated in his favour. In support of this contention, he relied upon the Law of Torts by Clerk and Lind sell, loth Edn., p. 824. The proposition enunciated there is couched in the following

language :

'A legal process, not itself devoid of foundation, may be malicioously employed for some collateral object of extortion or oppression and in such oases the injured party may have his right of action, although the proceedings of which he complains may not have been determined in his favour,'

6. A reference in this connection was made to Grainger v. Hill, (1834-40) 7 L J. 0. P. 85 : (4 Bing N. c. 812) where the plaintiff was arrested and under the duress of imprisonment was compelled to give up the possession of certain papers. It was contended that he could not sue in respect of the malicious arrest because inter alia it had not been shown that the suit under which the arrest had taken place had been determined. It was held that the objection could not prevail inasmuch as the action was not for malicious arrest but for abusing the process of the law to effect an object not within its proper scope. The learned counsel for the appellants urges that this authority is fully applicable to his case inasmuch as the warrant of attachment had been got issued with the ulterior object of putting pressure upon the plaintiffs in order to coerce them into a compromise. This he urges was not within the scops of the warrant and was, therefore, a collateral purpose with which the warrant had been got issued. Kedar Nath v. Beharilal, A. I. R. (12) 1925 Bom. 357 : (49 Bom. 629) was a case where an attachment before judgment and an injunction were applied for against the plaintiffs on insufficient grounds but no attachment was in fact levied. The plaintiffs based their cause of action on the ground that there was discredit and inconvenience by the mere fact of the bailiff going to their shop and the learned counsel appearing on their behalf contended that procuring an order for attachment with the object of getting speedy payment of the amount claimed in the suit was an abuse of the process of the Court sufficient to give the plaintiffs a cause of action for the damages. Grainger V. Hill, (1834-40) 7 L. J. C. P. 85 : 4 Bing N. C. 212) was relied upon in support of this argument but it was held that the principles of this case were applicable only where the process was employed to compel the aggrieved party to do something which he was not legally bound to do under the process and not in a case like the one before their Lordships which was analogous to an action for malicious arrest or malicious prosecution. The question which calls for a determination in this case is whether

the warrant for attachment before judgment had been got issued by the defendants for a collateral purpose, that is, for a purpose which was not within the proper scope of the warrant. It may be pointed out at once that Grainger v. Hill, (1834-40) 7 L.J.C.P. 85 : 4 Bing N. C. 212) relied upon by the learned counsel for the appellants lays down a principle of law which is not applicable to the facts of the case before us. In that case, the captain of the ship was lying ill and warrant of arrest was got issued with the object of compelling him to hand over possession of the register of the ship. The arrest wag avoided and the register was actually taken away from him. Thus since the warrant of imprisonment was employed for the purpose of compelling the plaintiff to give up possession of certain papers, it was got issued for a purpose which was clearly collateral, that is, not within the proper scope of the warrant. The case is quite different where a warrant of attachment is secured not only with the object of avoiding obstruction or delay in the execution of the decree that may be passed against the defendant but also in order to secure the speedy payment of the amount claimed in the suit. This is all within the scope of the warrant of attachment and not ulterior to it. In any case, the allegation that the warrant had been got issued out of malice and without reasonable and probable cause is wide enough and would take under its cover and include the further ground that it had been got issued with a view to compel a compromise. Accordingly, the latter cannot be held to be an additional cause of action and the suit was rightly dismissed as not being maintainable since the proceeding in the other case had not terminated in the plaintiffs favour. It may be pointed out in the end that the aspect of the case that the warrant had been got issued for a collateral purpose was not pressed in the Court below nor was any opportunity asked for leading evidence to show that the plaintiffs' object in having the warrant issued was to put pressure on the defendant and thereby compel him to compromise the suits. The appeal accordingly fails and is hereby dismissed with costs.

K.C. Gupta, J.

7. I agree.