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Court : Chennai

Decided On : Aug-30-1972

Reported in : AIR1974Mad14

Judge : V. Ramaswami, J.

Acts : Indian Succession Act, 1952 - Sections 306; [Indian Penal Code \(IPC\), 1860](#)
- Sections 380, 411 and 454

Appeal No. : Second Appeal No. 1332 of 1970

Appellant : Perumal

Respondent : Devarajan and ors.

Judgement :

1. The plaintiff is the appellant. He filed a suit for the recovery of the sum of Rs. 750/- as and for damages in respect of a transistor. The plaintiff is a teacher employed in Olagappampalayam. The first defendant is the son of the second defendant and he was studying in the S.S.L.C. class in Olagappampalayam High School. On 25-5-1965 the first defendant stole the Phillips Model Transistor belonging to the plaintiff, who gave a complaint to the Thrichengode Police against the first defendant. The police, after investigation charged defendants 1 and 2 for offences under Section 454 and 380, I.P.C. The first defendant also gave a confessional statement. The first defendant was convicted under Section 454 and 380. I.P.C. The second defendant was also convicted but in the judgment is

C.C. No. 1949 of 1965 it is stated that he was convicted under Section 380 or 411, I.P.C. When the transistor was returned to the plaintiff after the prosecution was over, he found it was not working. He gave it to G.E.C. Company for repairs but they reported that the transistor was irreparable. Thereupon he failed the suit claiming the Sum of Rs. 750/- as damages. The defendants filed a written statement in which they contended that they had not stolen the transistor, that they were made victims in the prosecution maliciously launched by the plaintiff and that they had nothing to do with the same. Pending the suit, the second defendant died and his wife and another son were impleaded as the third and the fourth defendants respectively. The trial Court found that the defendants were guilty of wrongful conversion and as a result of the same the transistor was damaged. He therefore held that the defendants were liable for the suit claim. The learned Additional District Munsif also held that the cause of action against the second defendant survived even after his death and therefore defendants 3 and 4 were also liable for the suit claim. It may also be mentioned that the trial Court found the value of the transistor as Rs. 750/-. On appeal by the first and the third defendants, the lower appellate Court held that the plaintiff had not established satisfactorily that the first defendant or the second defendant or both were responsible for the theft or the damage to the plaintiff's transistor and that therefore they are not liable for the suit claim. Hence the second appeal.

2. Even at the outset, I want to state that the view of the lower appellate Court that the plaintiff has not established satisfactorily that the first defendant or the second defendant or both were responsible for the theft is perverse and clearly against the evidence and the legal position. The lower appellate Court refused to rely on Exhibit A-3 which is a certified copy of the judgment in C.C. No 1949 of 1965. It is true that the evidence discussed in that judgment and the fact that the first defendant had confessed his guilt in his statement is not admissible in evidence in the suit. But it is not correct to state that even the factum that the first and the second defendants were charged under Sections 454, and 380, I.P.C. and they were convicted on those charges could not be admitted. The order of the Criminal Court is, in my opinion, clearly admissible to prove the conviction of the first defendant and the second defendant and that is the only point which the plaintiff had to establish in this case. The plaintiff had let in oral evidence apart transistor

was in a working condition before it was stolen and it was not in a working condition when it was returned to him. Clearly therefore he was entitled to the damages.

The view of the lower appellate Court that independently of the conviction, the plaintiff should prove that the first defendant or the second defendant had stolen the transistor is clearly not sustainable. Though the learned counsel for the respondents attempted to dispute the value of the transistor, in view of the finding of the trial Court and the case bill produced for the purchase of the transistor, there could be no dispute on the question of value. In fact it does not appear from the judgment of the lower appellate Court that there was any dispute as to the value.

3. The only other point that now remains to be considered is the point raised by the respondents that since the second defendant died during the pendency of the suit and the cause of action being based on the criminal act of the second defendant that cause of action could not survive against the second defendant's legal representatives. In this connection, he relied on Section 306 of the Indian Succession Act, 1952 and the decisions which considered the scope of that section. In the alternative, he relied on the general principles of Hindu Law and contended that the liability of the second defendant is in the nature of an *Avyavaharika* debt and as such for his illegal debt they could not be made liable. In *Arunachala Chettiar v. Subramanian Chettiar* : AIR1958 Mad142 a Division Bench of this Court held that Section 306, apart from its limited scope of applicability, does not apply to heirs or their legal representatives of a deceased but is confined to cases where a right is sought to be claimed against the executor or administrator of the deceased. The Rangoon High Court in *Cassim & Sons v. Sara Bibi*, AIR 1936 Ran 17, considered that the maxim *action personalis moritur cum persona* as part of the law of India except to the extent modified by Section 306. A view contrary to the decision in : AIR1958 Mad142 was taken by the Lahore High Court in *Peoples Bank of Northern India, Limited v. Hargopal*, AIR 1936 Lah 268 and it was held in this case that Section 306 was also applicable to the case of heirs or other legal representatives. The decision in : AIR1958 Mad142 is a decision by a Division Bench of this court and I am bound by that judgment. Section 306 is therefore of no help in considering the question whether the cause

of action has survived or not. But I am inclined to agree with the learned counsel for the respondents that the liability of the second defendant in this case is in the nature of an Avyavahrika debt and as such the third and the fourth defendants will not be personally liable to pay that debt. In this connection I may refer to the decision in Pareman Dass v. Bhattu Mahton, ILR (1897) Cal 672, and Govindprasad v. Raghunathprasad : AIR1939 Bom289 ; the decision in AIR 1939 Bom 289 is very similar to the one on hand. There a person disposed of the property of another wrongfully and deprived the original owner of that property. In a suit claiming the value against the legal heirs it was held that the son was not liable as the debt incurred by the father was due to his dishonest conduct in wrongfully disposing of the property of the plaintiff. In 'Hindu Law principles and precedents' by N. R. Raghavachariar (Sixth Edition) the learned author has given a summary of what debt could be considered as Avyavaharika debt with element of criminality, at page 345 and classifies one such debt as 'decree for money obtained by thefts'. The learned author cites, ILR (1897) Cal 672 and AIR 1939 Bom 289 as authorities for that position. The facts in ILR (1897) Cal 672 were as follows; A decree was passed against one Mangru and Sobha Mahton for damages for theft and misappropriation of paddy. When this decree was sought to be executed against the sons in respect of the joint family properties it was held that the sons were not in a pious duty to pay the debt and that therefore the interest of the sons could not be sold in execution. It therefore follows that the third and the fourth defendants will not be liable personally to pay the decree amount but if they have inherited any property from the second defendant, the decree could be executed to the extent of the value of that property inherited by them.

4. The second appeal is therefore allowed and there will be accordingly a decree as against the first defendant and as against the third defendant and the fourth defendant to the extent mentioned above. There will be no order as to costs. No leave.

5. Appeal allowed.