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JOHNSTONE AND SHAH DIN, JJ.

Muzaffar Khan and *others*—Plaintiffs—Appellants.

v.

Ghulam Muhammad Khan—Defendant—Respondent.

Second Appeal No. 905 of 1912, decided on 27th March, 1915, from the Decree of Divnl. Judge, Attock, dated 8th March, 1912.

(a) Civil P. C. (5 of 1908), O. 22, R. 1—Rights of action for personal injuries do not survive injured parties.

Rights of action for merely personal injuries do not survive the injured party, though his personal representative can maintain an action for any damage done to the personal estate in his life-time. [P. 378, C. 2.]

(b) Civil P. C. (5 of 1908), S. 100, O. 22, R. 1—Suit for damages for injuring plaintiff's reputation—Defendant alleged to have made false statements and insinuations to local Police—Suit decreed but amount reduced in appeal—Second appeal—Death of plaintiff pending appeal—Appeal held to abate.

Where the plaintiff brought a suit for Rs. 5,250 as damages alleging that defendant had, by making false statements and insinuations to the local Police, seriously injured his (the plaintiff's) reputation and obtained a decree for Rs. 4,000 which amount being reduced to Rs. 50 by the lower Appellate Court he filed a second appeal to the Chief Court but died pending the appeal, the names of his sons being substituted for his:

Held, (1) that the claim being based on a personal wrong the plaintiff's appeal abated by his death and his sons could not move the Court to grant to them, on account of a personal wrong done to their father, a further sum as damages. [P. 379, C. 1.]

(2) that the second appeal could not be allowed merely because the lower Appellate Court had directed the plaintiff to pay the defendant's costs. 27 Mad. 588; 9 All. 131; 26 Bom. 597 and 26 Mad. 499, expl. and dist. [P. 379, C. 1.]

Fazl-i-Hussain and *Bhagat Ram Puri*—for Appellants.

Muhammad Iqbal—for Respondent.

Judgment.—The claim here was made by Khan Bahadur Malik Gul Sher Khan of Pindi Gheb Tahsil. It was for Rs. 5,250 as damages, it being alleged that defendant, who is a Lambardar, had, by making false statements and insinuations to the local Police, seriously injured plaintiff's reputation and that this was the defendant's intention. The first Court gave plaintiff a decree for Rs. 4,000 but the lower Appellate Court, thinking the damages should be nominal, reduced the figure to Rs. 50. Plaintiff started a second appeal here and then died, the names of his three minor sons being substituted for his.

On behalf of defendant the preliminary objection is raised that the appeal abates, the claim being based on an alleged *personal* wrong; and we have heard arguments and have consideeed the authorities, with the result that we find we must allow the objection. We think that, while the existing decree for Rs. 50 in favour of the deceased Malik enures for the benefit of his sons, they cannot move the Court to grant to them, *on account, of the personal wrong done to their father*, a further sum as damages.

The English Law on the subject is well-known and has been much criticised in certain aspects of it. It will be found stated in Ratan Lal on English and Indian Law of Torts (1908 Edition), page 62, where it is laid down that according to Common Law executors, administrators, etc., cannot maintain actions for personal wrongs done to their predecessor, *e.g.*, libel, false imprisonment, and that such causes of action based on personal suffering die with the sufferers. Also in Lord Halsbury's Laws of England, Volume 14, paragraph 518, and Volume 18, paragraph 1164, where we find it stated that the general rule of law is that rights of action for merely personal injuries do not survive the injured party, though his personal representative can maintain an action for any damage *done to the personal estate* in his life-time. In the present case it has not been contended that defendant's actions damaged the late Malik's personal estate in any way. The distinction is clearly drawn in *Hatchard* v. *Mege* (1).

Of the Indian cases quoted in argument the first, *Sakyahani Ingls Rao Sahib* v. *Bhavan Bozi Sahib* (2), was not a case of personal wrong and is hardly in point. In *Muhammad Hussain* v. *Khushalo* (3), what was held was that a *decree* for damages for personal wrong survived the death of the injured man; this is not sufficient for appellant's purpose. Then in *Gopal* v. *Ramachandra* (4) and in *Paramen Chetty* v.

(1) (1887) 18 Q. B. D. 771 = 56 L. J. Q. B. 397.
(2) (1904) 27 Mad. 588.
(3) (1887) 9 All. 131.
(4) (1902) 26 Bom. 597.

Sundaraja Naick (5), the facts were roughly identical. Plaintiff had got a decree for damages for libel and had applied for execution. Defendant judgment-debtor appealed, but died before the hearing, and it was held that his son could prosecute the appeal. Similarly in *Bhagwant Singh* v. *Pandit Joti Sarup* (6), plaintiff got partial decree for damages for wrongful prosecution, etc. Both parties appealed, defendant died, and it was held that his son could go on with the appeal. The distinction between these three cases and the present is not obscure, for in each of them defendant's son found himself confronted by what he considered an unjust decree, *calculated to injure his estate*, and he, of course, had the right to appeal to remove the wrong coming upon himself. The question of abatement of suit or appeal in connection with claims for damages on account of personal wrongs has to be decided on quite different principles according as the party who has died is the plaintiff or the defendants.

It has been suggested to us that the appeal should not abate because the lower Appellate Court has directed that plaintiff should pay defendant's costs in that Court, but we cannot allow a second appeal on a question of costs alone.

For these reasons we hold that the appeal abates. Parties to bear their own costs.

R.M./R.K.

Appeal dismissed.

(5) (1903) 26 Mad. 499.
(6) (1897) 4 P. R. 1897.

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SCOTT-SMITH AND SHADI LAL, JJ.

Lelu and *others*—Plaintiffs—Appellants.

v.

Ram Chand and *others*—Defendants—Respondents.

First Appeal No. 24 of 1912, decided on 11th October, 1915, from the Order of Addnl. Dist. Judge, Hoshiarpur, dated 28th November, 1911.

(a) Custom—Succession—Exclusion of daughters—Land not proved to be ancestral—Suit by reversioners—Burden of proof.

In a suit by reversioners against widows and daughters of a deceased collateral for declaration of their claim to the estate of the deceased in exclusion of daughters if the land is not proved to be ancestral *qua* reversioners, the onus lies very heavily upon them to show that they would exclude the daughters. 35 Cal 1039 (P. C.), ref. to. [P. 379, C. 2.]

(b) *Riwaj-i-am*—Entries in—Value.

The *riwaj-i-am*, in the absence of any clear statement to the contrary, is considered to apply to ancestral and not self-acquired property. Hence an entry in the *riwaj-i-am* to the effect that daughters are excluded by collaterals is useless in a case where the property in dispute has not been proved to be ancestral. [P. 380, C. 1.]

Kirkpatrick and *Sundar Das*—for Appellants.

Amar Singh, *Tek Chand* and *Umar Bakhsh*—for Respondents.

Judgment.—In the suit out of which this appeal has arisen, the plaintiffs claimed that as reversioners of Khushala Ram, deceased, sole proprietor of Abbepur, they were entitled to his land after the death of his widows, defendants Nos. 2 and 3, to the exclusion of his daughters.

Defendants denied the *locus standi* of plaintiffs, saying that they were not the reversioners of Khushala Ram and that the land was not their ancestral property.

The lower Court in an exhaustive judgment held that plaintiffs were no doubt distant collaterals of the deceased proprietor, though the exact degree of relationship alleged by them had not been established, but that the land was not plaintiffs' ancestral property and, therefore, they had no *locus standi* in the presence of daughters. It, therefore, dismissed the suit and plaintiffs' appeal.

Mr. Kirkpatrick argued the appeal on behalf of the appellants, but we were so little impressed with his arguments that we did not find it necessary to hear Counsel for respondents.

We have no hesitation in holding that plaintiffs' on whom the *onus* lays, *Atar Singh* v. *Thakar Singh* (1) have not proved that the land in dispute is their ancestral property.

The only evidence of any importance in appellants' favour is an entry in the *nikasi* papers of *Sambat* 1904 (A.D. 1847), which shows the following persons as proprietors of small plots of land in the village of Abbepur :—

		ghs.	*ks.*
Ganga Ram	...	3	0
Ishar	...	5	6½
Jawala	...	4	4½
Charta	...	0	7

(1) (1910) 42 P. R. 1910=35 Cal. 1039=6 I. C. 721=35 I. A. 206 (P. C.).