

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,
and Mr. Justice Benson.

RAMCHODE DOSS (PLAINTIFF), APPELLANT,

1905.
April 3.

P.

RUKMANY BHOY (DEFENDANT), RESPONDENT.*

Legal Representatives' Suits Act—XII of 1855, s. 1, cl. 2—Does not apply to suits against the original wrong doer.

Clause 2 of section 1 of Act XII of 1855 does not apply to an action commenced against the wrong doer in his lifetime, but only to actions commenced against the executors, administrators or other representatives of a deceased wrong doer. Where therefore a suit is brought against the wrong doer in his lifetime, such suit abates on his death.

Haridas Ramdas v. Ramdas Mathuradas, (I.L.R., 13 Bom., 677), followed.

Krishna Behary Sen v. The Corporation of Calcutta, (I.L.R., 31 Calc., 406), referred to and approved.

Suit for damages. Plaintiff was the son of one Goverdhan Doss who died in February 1903. A few days after his death one Rukmany Bhoj, the original defendant in the suit, demanded from the plaintiff the return of a Government promissory note for Rs. 3,000 which she alleged she had deposited with his deceased father and also a sum of money which she said was due to her. The plaintiff told her that according to the accounts only Rs. 700 was due to her which he offered to pay in full discharge of all her claims. The defendant thereupon brought a complaint against the plaintiff before the Magistrate charging him with criminal breach of trust and other offences and obtained a search warrant, under which the plaintiff's papers and account books were seized and conveyed to the Police Court. The complaint was dismissed by the Presidency Magistrate without framing a charge.

The present suit was brought by the plaintiff against Rakmany Bhoj for damages for malicious prosecution. The defendant denied that the prosecution was false or malicious and issues were settled. Subsequent to the settlement of issues and

* Original Side Appeal No. 32 of 1904, presented against the judgment of Mr. Justice Moore in Original Suit No. 104 of 1903.

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before the final hearing, the defendant died and the plaintiff applied for leave to bring on the record, as her legal representative, the respondent Krishna Doss Vittal Doss, the sole executor, under her last will and testament.

MOORE, J., held that the suit abated on the death of the defendant and dismissed the application. In doing so he passed the following judgment:—"It appears to me that the suit abates. Reference has been made to Act XII of 1855, but following the decisions in *Haridas Ramdas v. Ramdas Mathuradas*(1) and *Krishna Behary Sen v. The Corporation of Calcutta*(2), I must hold that that Act does not apply to a suit such as this instituted by the plaintiff against the defendant (since deceased) in his lifetime."

The plaintiff preferred this appeal.

Mr. A. Read for appellants.

K. Narayana Rau and C. P. Ramaswami Ayyar for respondent.

JUDGMENT.—The only point raised in this case by Mr. A. Read is that the second clause of section 1 of Act XII of 1855 applies, and that he is entitled to proceed against the representative of the deceased defendant, the person who is alleged to have maliciously prosecuted the plaintiff.

A similar argument was urged in *Haridas Ramdas v. Ramdas Mathuradas*(1) followed by the learned Judge, and was overruled. We agree with the Bombay High Court that clause 2 of section 1 of the Act XII of 1855 does not apply to an action commenced against the defendant in his lifetime, but only to actions commenced against the executors, administrators or other representatives of a deceased wrong doer.

The Calcutta case (*Krishna Behary Sen v. The Corporation of Calcutta*(2)) referred to by the learned Judge takes a similar view with regard to the first clause of the section.

We dismiss the appeal with costs.

Messrs. Branson & Branson—attorneys for appellants.

(1) I.L.R., 13 Bom., 677.

(2) I.L.R., 31 Cal., 406.