

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
SUIT 1572 of 2010

Date	Order with signature of Judge
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For examination of parties / issues

16.02.2018

None for the Plaintiff.

Mr. Shahan Kareemi, Advocate for Defendant No.1

Mr. Muhammad Muzaffar, Advocate for Defendant No.2

This suit had been filed in 2010 for damages for malicious prosecution. Per the death certificate on record, the plaintiff passed away on 19-12-2012, and vide CMA No. 16034/2017 (under Order XXII Rule 3 CPC), a prayer has been made to make the legal heirs of the deceased as plaintiffs.

Under Order XXII Rules 1 and 3 CPC, the legal heirs of a deceased plaintiff succeed him/her in the suit if the “right to sue survives”. It is been consistently held by the Courts of this country that civil actions for torts to the person of a plaintiff do not survive his death and die with him, i.e., the suit abates (not the same on the death of a tortfeasor if his estate benefitted from the tort). This has been so held on the principle embodied in the maxim *actio personalis moritur cum persona* i.e., personal rights of action die with a person, which principle is recognized as law in Pakistan and is enforced on the grounds of justice, equity and good conscience, except where it is otherwise provided by statute. In that regard, reliance can be placed on the cases of *Mir Shakeel ur Rehman v. Yahya Bakhtiar* (PLD 2010 SC 612); *A. Majid Sama v. Asbestos Cement Industries* (1996 MLD 803); *Government of Punjab v. Mst. Kamina* (1990 CLC 404); *Nasri Begum v. Virgil L. Moore* (1989 CLC 511); *Mercantile Cooperative Bank v. Habib & Co.* (PLD 1967 Kar 755); and *Sardar Muhammad Ali v. Pakistan* (PLD 1961 Kar 88).

An exception to the above stated principle of *actio personalis moritur cum persona* is contained in Order XXII Rule 6 CPC which stipulates that “...whether cause of action survives or not, there shall be no abatement by reason of death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced

before the death took place". However, since issues in this suit have yet to be settled, it is not a case that falls within the said exception.

In view of the above, I hold that on the demise of the plaintiff, this action for his malicious prosecution died with him and the right to continue the suit does not survive to his legal heirs. This suit has abated and is disposed off as such. CMA No. 16034/2017 is dismissed.

JUDGE

Jamil