

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1504-2013 [O&M]

Date of Decision : February 24th, 2016

Mahender Kumar Sharma and another Appellants

Versus

Ram Rattan Phor .. Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Mr. Arun Singal, Advocate,
for the appellants.

Mr. Vishal Malik, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby suit filed by Ram Rattan Phor for compensation and damages was decreed by the Court of first Instance vide judgment and decree dated 10.1.2011. The first appeal filed by the present appellants was also dismissed by learned Additional District Judge, Panipat vide judgment and decree dated 14.1.2013.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff is practicing as an Advocate in District Courts,

Panipat since 1997 with good social background. Defendant No.1 and his persons got registered a Samiti in the name of Shiv Sabha and defendant No.1 was the President of said Samiti. An application was moved before the Chief Minister, Haryana against defendant No.1 and his persons for election of Executive Committee of Shiv Mandir. The police conducted the investigations and final report was produced. Defendant No.1 filed a suit for compensation and damages for his defamation and the plaintiff was counsel for the opposite party. On 20.4.2004 at about 6.00 PM, when the plaintiff was doing his work in his office, the defendants threatened him either not to appear for the opposite side as an Advocate or got the matter compromised. On 22.4.2004, defendant No.1 being the Editor/Publisher of news paper "Kranti Naya Paksh", a Hindi weekly, got published a defamatory news with *mala fide* intention to lower down his reputation. The said publication resulted into defamation of the plaintiff and he was subjected to unnecessary harassment. He has suffered professional loss as well and as such, suit for damages was filed.

4. Defendants contested the suit taking the plea that the plaintiff just wanted to pressurize the defendants by filing false frivolous litigation. The plaintiff had mentioned about publication dated 22.4.2004 without any detail and prayed that the suit be dismissed.

5. On the pleadings of the parties, issues were framed. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decreed the suit and held the plaintiff entitled for damages and the same were assessed at Rs.3,00,000/- which was to be paid by defendants No.1 and 4 alongwith simple interest of 12% per annum. The suit qua

defendants No. 2 and 3 was dismissed. The appeal filed before the Court of first Appeal was also dismissed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellants mainly submitted that the plaintiff has not been able to prove his case at all because there is no material before the Court below that the alleged publication dated 22.4.2004 resulted in to defamation of the plaintiff in any manner. He has not examined any such person, who deposed before the Court, that the reputation of the plaintiff was diminished due to publication of news item in the paper. The plaintiff has simply stepped into the witness box as his own witness and also examined one more witness, who is under the influence of the plaintiff being his client. The plaintiff has not been able to prove that he was caused any harm because of said publication as he still continued with his profession. He has not been able to prove on the basis of any income tax return or any documentary evidence that the said publication resulted into any financial loss to him. More so, in the alleged defamatory article published in the news paper, there was no mention of name of the plaintiff and thus, there was no question of any damages. More so, there was no basis for determining the amount of compensation and the Courts below ignored this fact while deciding the issues and the said findings of fact are purely result of mis-appreciation of evidence which resulted into erroneous findings and the impugned judgments and decrees passed by the Courts below are liable to be set-aside.

7. While arguing this point, learned counsel for the respondent submitted that there is no dispute that defamatory article was published in the news paper. More so, the incident has been admitted by the

defendants. As regards to mentioning of name of the plaintiff in the news item, there is no other advocate residing in the locality and every person would form the opinion that the alleged defamatory publication was concerning the plaintiff only as he is the only Advocate residing in the area. The defamatory article has certainly resulted into lowering down the reputation of the plaintiff and for that purpose, the plaintiff himself has stepped into the witness box and his version has been duly supported by one more witnesses. The Courts below have rightly taken the view. So, the present appeal is liable to be dismissed.

8. Having considered the submissions made by learned counsel for the parties and the fact that the present appeal is against concurrent findings of fact, recorded by both the Courts below and that there is no substantial question of law involved in this appeal, this Court is of the considered view that both the Courts below have formed the opinion on the basis of oral as well as documentary evidence that in fact, there was defamatory publication in the news paper which was issued at the instance of defendants No.1 and 4 [appellants herein]. Since the plaintiff is a practicing Advocate, such a defamatory publication certainly results into lowering down his reputation in the eyes of general public and causes much damage to his reputation and financial loss as well. Needless to mention that such defamatory publication leads to number of restless nights for such an effected person. The defamatory publication [Ex. P9] has branded the plaintiff a casteist and a man having criminal bent of mind. The Courts below have rightly held that the reputation is dear to every one. Keeping in view the status of the plaintiff, who is a practicing Advocate, having social status, the Courts below have already taken the most

reasonable view while assessing damages to the tune of Rs.3,00,000/-. The concurrent findings of fact have been recorded by both the Courts below on the basis of facts and evidence available on the file and there are no ground to interfere and set aside the said findings. There is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs., JT 2001(2) SC 407.**

9. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 24th, 2016
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