

(2012) 09 KAR CK 0108

In the Karnataka High Court

Case No : Regular First Appeal No. 1303 of 2005

B.M. Thimmaiah

APPELLANT

Vs

Smt. T.M. Rukimini, Raja P. Thimmaiah @ P. Thimmaiah Since
Dead and P. Sreenivasaiah Advocate

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Citation : AIR 2013 Kar 81 : (2013) 2 AKR 234 : (2013) 2 KarLJ 28 : (2013) 1 KCCR 749

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : K.K. Vasanth, for the Appellant; K.S. Bheemaiah, for R1, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—This Regular First Appeal is directed against the judgment and decree dated 01.08.2005 passed by the I Addl. City Civil 8b Sessions Judge, Bangalore, in O.S. No. 3298/1988, decreeing the suit in part and directing defendants 1 & 2 to pay a sum of Rs. 60,000/- to the plaintiff jointly and severally with interest at the rate of 18% p.a. from the date of the suit till realisation. Appellant herein was defendant No. 2 before the Trial Court. Defendant No. 1 having died during the course of trial, his legal representatives had been brought on record. They have not chosen to file any appeal. As regards defendant No. 3, the suit has been dismissed.

2. For the sake of convenience, the parties are referred to by the rank assigned to them before the Trial Court.

3. The plaintiff instituted the suit claiming damages in a sum of Rs. 60,000/- along with interest alleging that defendants 1 to 3 had in the written statement filed in O.S. No. 5034/1987, used a defamatory statement imputing "questionable and doubtful relationship" between the plaintiff on the one hand

and one B. Krishnappa on the other. It is relevant to notice here that the said suit O.S. No. 5034/1987 was filed by the plaintiff herein along with B. Krishnappa and five others seeking relief of declaration that the resolution passed by the defendants in the said suit including defendants 1 & 2 herein with regard to the management and affairs of Cauvery Ashram Higher Primary and Nursery School situated at Padarayanapura, Bangalore, was illegal. In the said suit, defendants 1 & 2 herein had filed written statement through their counsel, wherein in paragraph 2 it was stated as under:

....It is pertinent to mention that Sri I.K. Belliyappa and B. Krishnappa are interested in rival institution and relationship of Sri B. Krishnappa with Smt. Rukmini is questionable and of doubtful activities.

4. It is this allegation made in the written statement that is the foundation for filing the suit seeking damages contending that the said statement was defamatory and resulted in disreputing the plaintiff and bringing down her esteem in the eyes of persons who have come to know about such allegations. It was further stated by the plaintiff that the above statement made in the written statement was per se defamatory and they were neither true nor were they necessary for the purpose of the pleas raised in the written statement and that they were made wantonly, recklessly and irresponsibly. The plaintiff further pleaded that the said allegations were suggestive to a layman's reading in unmistakable inference and conclusion that there was intimacy between the plaintiff and the said B. Krishnappa and therefore, the imputation tantamounted to casting aspersion on the modesty and chastity of the plaintiff. She further contended that the said imputation hurt her feelings and lowered her moral and intellectual character apart from damaging her moral and social reputation of herself, her husband and her family members.

5. The plaintiff got issued a registered legal notice dated 18.01.1988 to the defendants calling upon them to pay her a sum of Rs. 1,00,000/- as damages. Defendant No. 1 received the notice. The notice addressed to Defendant No. 2 was returned with postal shara that he was always absent during the delivery time. Thereafter the notice was sent to him under certificate of posting, but the same was not replied. For the purpose of the suit, the plaintiff restricted her claim for damages in a sum of Rs. 60,000/-.

6. Defendants 1 & 2 filed common written statement, whereas defendant No. 3 filed a separate written statement. As we are not concerned with defendant No. 3, it is unnecessary to refer to the allegations made against defendant No. 3 or the stand taken by him. The scope of this appeal is restricted to the liability fastened on defendant No. 2.

7. The defence taken by defendants 1 & 2 in their written statement is that they did not know how to read and write in English. They had indeed instructed their counsel with regard to the activities of the plaintiff in her capacity as head mistress in collusion with her husband and one Krishnappa to the detriment of

the interest of the institution which had lead to the passing of a resolution by the general body on 10.09.1987 removing the previous managing committee and appointing a new managing committee. All that they wanted to state in the written statement was only with regard to the activities regarding the affairs of the school and the society and they had never intended to defame the character of the plaintiff. They further contended that the allegations in the written statement pertained only to the activities of the plaintiff and their supporters in connection with the affairs of the institution and it had nothing to do with her moral character. They also contended that they never had in their mind, at the time when they instructed their counsel, to draft the written statement so as to defame the plaintiff as alleged in the plaint. They have also urged that they never meant to impute any illegitimate intimacy with the plaintiff and B. Krishnappa. The defendants further stated that the plaintiff hailed from a very respectable family and her husband was an advocate of standing at the bar and therefore they never had anything in their mind to defame the plaintiff and therefore never instructed their Counsel to that effect.

8. Based on the pleadings, the Trial Court has framed the following issues:

(i) Whether the plaintiff proves that defendants 1 & 2 have made allegations against her character with a view to defame her?

(ii) Whether defendants 1 & 2 prove that the statement made by them are only towards the activities of plaintiff and her supporters to the society and institution?

(iii) Whether the 3rd defendant proves that the statements made are only the statement of defendants 1 & 2?

(iv) What relief?

9. On behalf of the plaintiff, plaintiff examined herself as PW-1 and produced and marked Exs. P-1 to P-8. For the defendants, defendant No. 2 was examined as DW-1 and got marked Exs. D1, D2 & C1.

10. The Trial Court, upon consideration of the evidence on record, both oral and documentary, has recorded its findings holding that the plaintiff was able to prove that defendants 1 & 2 had made allegations in the written statement imputing questionable and doubtful character against the plaintiff with a view to defame her and the words used against the plaintiff indeed affected her reputation. The Trial Court has further found that though such allegations were made in the written statement which is a document presented by the defendants to the Court, it attained the characteristic of a public document, the moment it was taken on record. It has further found that anybody can have access to the document to know the contents, hence, regardless of whether general public had come across the contents of the written statement-Ex. P1, having regard to the nature of the document and the fact that the moment it was received it attained the characteristic of a public document, it was sufficient to hold that there was due publicity. The Court below has further found that defendants 1 & 2 failed to

prove that the statement made by them in the written statement were directed towards the activities of the plaintiff and her supporters in connection with the society and the educational institution, on the other hand, the allegations pointed at the character of the plaintiff therefore had the effect of bringing her reputation down in the eyes of the people who came across such allegations.

11. Insofar as the 3rd defendant-lawyer who had drafted the written statement, the Trial Court, placing reliance on the judgment of the Apex Court in *Sukra Mahto Vs. Basdeo Kumar Mahto and Another*, has held that in the absence of any allegation of malice or lack of good faith on the part of the advocate, the pleader who had presented a petition containing defamatory statement on behalf of his client could not be held responsible.

12. With regard to the damages, the Court below has assessed it at a sum of Rs. 60,000/-, keeping in mind the nature of the imputation and the allegations made defaming the plaintiff and disreputing her by questioning her character. The Trial Court has found that it was necessary to check such an attitude of persons like defendants who intended to cause damage to the reputation of a woman by resorting to character assassination. Thus, the Court below has awarded damages in a sum of Rs. 60,000/- to the plaintiff payable jointly and severally by defendants 1 & 2 with interest at 18% p.a. from the date of suit till realisation.

13. Learned counsel for the appellants-defendants 1 & 2 has contended that the entire stand taken in the written statement has to be read as a whole and if so read, it would not result in the inference that the Court below has drawn holding that the allegations made resulted in doubting the character of the plaintiff and in imputing illegal relationship between herself and one Krishnappa. In support of his contention, he has placed reliance on the judgment in the case of *Parameshwari Bai Vs. Muthojirao Scindia*, It is his further submission that if two interpretations are possible on the allegations in question, the Court has to prefer that interpretation which is not defamatory. Reliance is placed on the judgment in the case of *Habib Bhai Vs. Pyarelal and Others*, and in the case of *Board of Directors, Y.M.C.A. and Another Vs. R.H. Niblett*, in this connection.

14. Learned counsel for the appellants has further contended that the entire allegations made against the plaintiff has to be viewed in the background of the activities that the plaintiff, her husband and their associate Mr. Krishnappa, the President of the Managing Committee were resorting to. He invites the attention of the Court to paragraphs 1 & 2 of Ex. P1-written statement to contend that the husband of the plaintiff was fabricating the documents by resorting to all illegal methods to make a wrongful gain so as to deprive the institution of its progress and improvement and that the plaintiff, her husband and Krishnappa had misappropriated the funds particularly the grants received from the Government and it was in this background to highlight such illegal collusive activities of the plaintiff, her husband and Krishnappa, the allegations contained in paragraph-2 of the written statement-Ex. P1 were made and not to impute any illegal relationship between the plaintiff and Krishnappa.

15. These contentions are strongly refuted by the learned counsel for the respondent-plaintiff. He urges that the plain and simple meaning of the allegations and accusations made by the defendants in Ex. P1 unmistakably showed that they were attributing the illegal relationship between plaintiff and Krishnappa and that is why they described the same as questionable relationship between them and their doubtful activities. He submits that these words have to be regarded as defamatory as they expose the plaintiff to ridicule in the eyes of the public and tend to lower her dignity and reputation. He strongly supports the judgment passed by the Trial Court and the damages awarded in a sum of Rs. 60,000/-.

16. Having heard the learned counsel for the parties and on careful perusal of the pleadings, evidence and the judgment rendered by the Trial Court, the point that arise for consideration in this appeal is:

i) Whether the findings recorded by the Court below holding that the allegations made in the written statement at Ex. P1 in the facts of the case resulted in defaming the plaintiff and bringing down her reputation in the eyes of the public thereby incurring tortious liability to pay the damages in a sum of Rs. 60,000/- suffer from illegality and/or perversity?

17. As already adverted to above, the allegations which are the foundation for institution of the suit for damages is as a result of the tort of defamation alleged against the plaintiff due to the defamatory statement allegedly made by the defendants in the written statement filed in O.S. No. 5034/1987. The allegations made in the written statement at paragraph-2 disclose that the defendants have contended that the husband of the plaintiff was earlier working as Secretary of the Society and it was he who got the suit instituted by acting behind the screen and many records were taken away and created by the husband of the plaintiff with the help of the plaintiff. After making such reference to the role of the husband of the plaintiff and the plaintiff, the defendants have gone on to contend that the husband of the plaintiff and Krishnappa were interested in a rival institution and the relationship of B. Krishnappa with Smt. Rukmini was questionable and of doubtful activities (emphasis added). These allegations which deal with the relationship of Krishnappa with the present plaintiff characterising it as questionable and doubtful cannot be regarded as allegations made in connection with their overall activities pertaining to the society and its affairs. If that is so, there was no necessity for the defendants to make special reference to the relationship of B. Krishnappa with the present plaintiff and describe it as "questionable and doubtful". If the allegations were only to confine to their role in the management of the affairs of the society, then the reference would have been to the relationship among all of them and not to the relationship between Krishnappa and the plaintiff. Such allegations made in paragraph-2 of the written statement unmistakably show that the defendants intended to attribute questionable and doubtful relationship between Krishnappa and the plaintiff. These allegations tend to disclose that the plaintiffs character

was questionable and doubtful in relation to her activities in connection with her relationship with Krishnappa.

18. Therefore, the contention of the learned counsel for the appellants that these allegations can only be viewed as allegations made in connection with the affairs of the society cannot be accepted. The judgments relied on by the learned counsel for the defendants have no relevance to the facts and the nature of the allegations made by the defendants as adverted to and discussed herein above.

19. In order to establish the tort of defamation, certain essential elements are necessary. Broadly speaking, there are four essentials of the tort of defamation. They are-

- i) There must be a defamatory statement.
- ii) The defamatory statement must be understood by right-thinking or reasonable-minded persons as referring to the plaintiff.
- iii) There must be publication of the defamatory statement, that is to say, it must be communicated to some person other than the plaintiff himself.
- iv) In case of slander, either there must be proof of special damage or the slander must come within the serious classes of cases in which it is actionable per se.

20. In order to find out whether a statement is defamatory or not, the first rule is that the whole of the statement complained of must be read and not only a part or parts of it and it is also necessary that in determining the natural and ordinary meaning of the words, the Court must have regard to the fact as to what the words would convey to the ordinary man. The natural and the ordinary meaning of the words which are the subject matter of defamation are the same for the lawyer and also for the layman. When the language used is derogatory, the layman reads by making implications much more freely and the law of defamation is required to take note of the same. It is not necessary, in the instant case, to deal with the inference that a layman, having knowledge of the allegations would make, as the allegations are rather clear and direct. The test to be applied for determining the question whether a statement is defamatory is to be found from the answer to the question "would the words tend to lower the plaintiff in the estimation of right-thinking members of society?". If the answer is yes, then it has to be held that the statement is defamatory.

21. In the instant case, it is clear that the allegations referred to above directed against the plaintiff are such that they will certainly give room to adverse opinion or feelings from other persons as it is an attack upon the moral character of the plaintiff attributing to her a disgraceful conduct of having questionable relationship and doubtful activities with another person. It cannot be forgotten that the plaintiff being a lady, that too a Head Mistress of an institution is the wife of an advocate and admittedly both of them belong to a respectable family and there was absolutely no occasion for the defendants to make such allegation.

In fact, this is the stand taken by the defendants themselves in the written statement filed in this case.

22. Therefore, it is abundantly clear that the allegations made in the written statement filed at Ex. P1 were false. It is not the case of the defendants that the allegations were true nor is there any material to show that there was any justification for making such allegation against the plaintiff. On the other hand, as per the stand of the defendants, they never intended to make such allegations imputing doubt regarding the moral character of the plaintiff. It is well established that malice or the evil intention of the author of the statement need not be established and it is no defence in a suit for defamation that the defendants did not intend to injure the plaintiffs reputation, if in fact, it has been so injured. Even if the defendants bonafide believe in the truth of the words published by them, they will still be liable.

23. As regards the publication of the defamatory statement, there cannot be any doubt that once the written statement is filed and taken on record, the document becomes part of the pleadings in a Court of law and the allegations made therein comes to the knowledge of at least the parties to the proceedings. In O.S. No. 5034/1987, there were six plaintiffs and two defendants. The objectionable statement was brought to the knowledge of atleast the parties to the proceedings which is a sufficient publication. It is not necessary that the defamatory statement should be made known to the general public at large.

24. It is seen that the contents of written statement has come to the knowledge of third parties. Therefore, the Court below was right and justified in holding that there was due publication of defamatory statement which has brought down the reputation of the plaintiff and has injured her. The allegations made viewed in the context of the plaintiff being a woman discharging the duties as a Head Mistress and married to an advocate and in the wake of the fact that it is made in the pleadings before a Court of law by way of defence taken, certainly has the effect of affecting the character of the plaintiff. The Court below was therefore right in recording a finding that such action of the defendants had to be taken note of seriously and damages had to be awarded against the defendants for such action to compensate the plaintiff. The quantification of damages in a sum of Rs. 60,000/- cannot also be found fault with. In fact, no arguments are advanced challenging the quantum of damages awarded.

25. This court does not approve some of the observations made by the learned Judge in paragraph 9 of the judgment, which reads as under:

the word "chastity" has no relevancy in a man's life, but it counts a lot in the life of a woman

26. Good character and reputation is as much important for a man as it is for a woman. It does count a lot in the life of both men and women. Any attack on their character would certainly injure their feelings and both of them whether man or woman would be certainly entitled to maintain an action for defamation

against the offender.

27. For all the aforesaid reasons, the points raised are answered in favour of the plaintiff and against the defendants. In the result, the appeal being devoid of merits is dismissed. Parties to bear their respective costs.