

(2010) 05 SHI CK 0266

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No's. 190 and 196 of 2005

Shri Jia Lal and Others

APPELLANT

Vs

Smt. Savitri Devi and Others
 Shri Swaran Deepak
Raina Vs Smt. Savitri Devi and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 7 Rule 13(1), Order 7 Rule 14

Citation : (2010) 05 SHI CK 0266

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—These appeals at the instance of the defendants are against a common judgment and decree dated 14.3.2005, of the learned Additional District and Sessions Judge, Fast Track Court, Chamba, whereby, the suit for recovery of Rs. Ten lac as damages filed by the contesting respondent herein, as plaintiff against the appellants herein being defendants, has been decreed against them jointly and severally.

2. The suit out of which the present appeals arise was initially filed before this Court. However, later on pursuant to enhancement of the pecuniary jurisdiction of the court of District Judge, it was transferred to the court of the learned District Judge, Chamba, vide order dated 8.10.2001.

3. Facts of the case based on the pleadings set up by the parties are as follows. According to the plaintiff, she belongs to a "very respectable family" of village Bharmour and owns considerable landed property there. Her husband, who at the relevant time was a Member Legislative Assembly (MLA) from Bharmour, enjoys "very high reputation" and "extreme respect" amongst the people of the area. The plaintiff did her B.A.B. Ed. and joined service in Education Department. At the time of filing of the suit she was working as Project Officer, Adult

Education. She is always respected by the people of District Chamba, including all nears and dears as well as by the public at large, as her husband is in active public life for more than two decades and has been holding different posts of eminence. The plaintiff is respected by one and all in the area. Her husband, prior to his being elected as MLA since 1982, had held the post of Chairman, Block Development Committee. He also remained Chief Parliamentary Secretary in December, 1989. The plaintiff never disrespected anybody and enjoys high reputation and respect in the constituency of her husband. She was always respected for her honesty, integrity and good character. She has always been respected by one and all in the area of Bharmour in particular and in the entire State of Himachal Pradesh in general including all those who are near and dear to her as well as the right thinking strata of society. Her character has throughout been spotless. It was further averred that the plaintiff has never disrespected anybody or misstated anything against anyone, but, in order to endeavour to harm her reputation and to succeed in their malafide designs the defendants deliberately made wrong submissions in publication in Chamba News Weekly during 22nd to 28th September, 1997 and 1st to 7th November, 1997. Here, it shall be pertinent to notice that it appears that initially averments relating only to Chamba News Weekly for the aforesaid period were incorporated in the plaint and later on words "Punjab Kesari 4th Sep 97" were included above the words "Chamba News Weekly" between lines 5th and 6th of para 4 of the plaint by way of ball pen writing. The defendants published these press reports intentionally to harm and lower down the reputation of the plaintiff in the eyes of society and that of her department. The imputations contained in those reports are not only untrue, false, but also a complete bundle of lies even to the knowledge of the defendants. The contents alleged by defendants No. 2 to 4 in the news which are false to the knowledge of the defendants. The purpose of these publications was to damage the reputation of the plaintiff and cause harm to the political career of her husband and to blackmail her. Defendant No. 1, who is the publisher of the news item had given this news at the behest of defendant No. 2 Shri Jia Lal, who at the relevant time was President of Gram Panchayat, Bharmour, defendant No. 3, Shri Vinod sharma, Vice President of the said Panchayat and defendant No. 4, Shri Mohinder Singh, who was President of Gram Panchayat Sachuin, Tehsil Bharmour.

4. The further case of the plaintiff was that the defendants alleged that she had threatened to burn the house of defendant No. 2 Shri Jia Lal, which allegation was absolutely incorrect, false and defamatory. It was published by defendant No. 1 with malafide motive to defame the plaintiff in the society. Defendant No. 1 had further stated in another press item that the plaintiff had lot of funds in the Education Department and people should get supply work from her as she had lot of budget. It was further alleged by him that she had given supply and printing work to the editors of Kangra and Chamba ignoring the editors of Bharmour and others. All these allegations were absolutely illegal, false unfounded, unwarranted and without any basis. The publication in Chamba news

was made by defendant No. 1 recklessly and negligently to lower down the high reputation of the plaintiff and her husband in the estimation of the right thinking people in the society. In order to achieve their wrongful and malafide designs the defendants had joined hands in vilification campaign to tarnish the image and reputation of the plaintiff. The plaintiff goes on to aver that " the defendants hold political ideology which is opposed to the moral and ethical ideology". The incriminating news items were read by large number of persons throughout the State including those persons who were well associated and connected with the plaintiff. It was lastly averred that though loss caused to the reputation and integrity of the plaintiff on account of the aforesaid incriminating publications cannot be adequately compensated in terms of money as the same is irreparable, yet she is entitled to have exemplary damages from the defendants, which she restricts to the tune of Rs. ten lac only.

5. The suit was contested by the defendants. Whereas, defendant No. 1 filed a separate written statement, a joint written statement was filed by defendants No. 2 to 4. Defendant No. 1 raised legal objections regarding lack of cause of action and material particulars and mis-joinder of parties. On merits, he admitted that the plaintiff was posted as Project Officer, Adult Education, Chamba and her husband was MLA from Bharmour and held different positions. However, the averments regarding the plaintiff enjoying extreme respect and reputation were not admitted being imaginary and self praise. It was stated that as the people of Bharmour had voted against the husband of the petitioner he had lost election for the H.P. Vidhan Sabha held in June, 1998. Hence, the respect of the plaintiff by one and all in the society was stated to be disputed and thus denied. Though it was also admitted that the husband of the plaintiff was Chairman, block Development Committee, as also Chief Parliamentary Secretary in 1989, yet at the same time it was averred that he had lost Vidhan Sabha election in 1990 also. It was stated that sweeping statement given by the plaintiff in her praise required strict proof. It was submitted that the people belonging to particular ideology or political party do not consider the followers of opposite ideology and party as "right thinking strata of the Society". It was further pleaded that the defendants had not published any press report as alleged in para 4 of the plaint, which was false or against the plaintiff to harm her reputation intentionally. It was emphatically denied that any false news was published by the defendants in Chamba News Weekly during 22nd to 28th September, 1997 and 1st to 7th November, 1997. In fact the replying defendant never published any news to harm the reputation of the plaintiff as alleged. He had also not published any news for the purpose of lowering the position of the plaintiff in the estimation of society and those with whom she is working. There was no intentional action on the part of the replying defendant to harm the reputation of the plaintiff in any manner or to defame her. It was further submitted that the replying defendant properly investigates and ascertains the facts before publishing any news. It was also denied that the purpose of the publication was to damage the reputation of the plaintiff in public. Alternatively it was pleaded that though there was no

publication of the nature mentioned by the plaintiff in para 4 of the plaint, yet "the defendant being a journalist has every right to publish news based on true facts and allegations levelled by "publicman" or any other person against the public representatives. Defendant has not published anything against the plaintiff which is false. The allegations of blackmail etc. levelled against the replying defendant were false, wrong and scandalous and he reserved his right to initiate appropriate legal action against the plaintiff. There is no publication of any news in Chamba weekly as alleged by the plaintiff. There is no mention of any other Newspaper in the copy of Plaint supplied to the Defendant. Any news or views published in the Newspaper edited by the defendant is based on facts after making proper enquires. However, there is no intention on the part of Defendant to harm the reputation or lower the prestige and defame the plaintiff."

6. The further case set up by defendant No. 1 was that he had not published any news without verifying the facts. In Chamba News Weekly, no news, with a view to harm the reputation of the plaintiff was published by him. He goes on to aver that " the defendant being a reputed journalist always publishes the news based on true facts and after properly investigating and verifying the news. The defendant never published any news with a view to intentionally defame the plaintiff or lower her reputation in any manner. The defendant has not harmed the reputation of the plaintiff intentionally as alleged. It is pertinent to mention here that the plaintiff is a Govt. employee and not a politician. The suit is malafide without any cause of action and filed with a view to toe the political line of the husband of Plaintiff, hence, suit deserved to be dismissed with exemplary costs."

7. The legal objections raised by defendants No. 2 to 4 are also akin to those taken by defendant No. 1. On merits, they have also admitted that the plaintiff was posted as Project Officer, Adult Education, Chamba and her husband was MLA from Bharmour. However, the averments set up by the plaintiff regarding her extreme respect and reputation and that of her husband were not admitted. It was also admitted that the husband of the plaintiff held different positions. However, the averments regarding the plaintiff enjoying extreme respect and reputation were not admitted being imaginary and self praise. It was stated that as the people of Bharmour had voted against the husband of the petitioner he had lost election for the H.P. Vidhan Sabha held in June, 1998. Hence, the respect of the plaintiff by one and all in the society was stated to be disputed and thus denied. Though it was also admitted that the husband of the plaintiff was Chairman, block Development Committee, as also Chief Parliamentary Secretary in 1989, yet at the same time it was averred that he had lost Vidhan Sabha election in 1990 also.

8. Defendants No. 2 to 4 go on to aver that they never issued any defamatory statement in any newspaper with a view to harm the reputation of the plaintiff. They further averred that they are the members of the political party opposed to the party being represented by the husband of the plaintiff and they were

Pradhan and Up-Pradhan of the Panchayats falling in the constituency of the husband of the plaintiff. There is political rivalry between the replying defendants and the husband of the plaintiff and the suit was filed just to harass them. It was further submitted that there was a case between defendant No. 2 and the husband of the plaintiff and an FIR was also registered regarding that incident. It was also stated that the replying defendants never instigated defendant No. 1 in getting the alleged news item published in the newspapers. Any news item published in any newspaper is based on his own enquiries. It was further averred vide paras 8 and 9 of the written statement that "replying defendants are not the publisher or Editor of any newspaper. They have not issued any statement to any newspaper. Any news item published by Defendant No. 1 in the newspaper must be based on its own investigation and enquiries and the replying Defendants have not said anything untrue or false just to lower the prestige of the plaintiff. In fact the averments made in this para are self-contradictory, confusing and without any basis". "The defendants No. 2 to 4 have not harmed the reputation of the plaintiff in any manner nor the plaintiff could point out such action in her plaint. The replying defendants never intentionally or willfully made any statement to lower the prestige of the plaintiff or any of her family members. It is further submitted that the plaintiff is a Govt. Employee and not a politician and the replying defendants have no ill-will against her. The suit is malafide and without any cause of action and has been filed to force the replying defendants to toe the political line of the husband of the plaintiff, hence, suit deserves to be dismissed with exemplary costs."

9. The plaintiff filed replication to the above written statements, wherein, she refuted the respective stands taken on behalf of the defendants and instead reiterated her own case as set up in the plaint.

10. On the above pleadings, the parties went to trial on the following issues:

1. Whether the defendants have defamed the plaintiff, as alleged? OPP.
2. If issue No. 1 is decided in the affirmative, whether the plaintiff is entitled to any damages? If so, to what extent and from whom? OPP.
3. Whether the plaint does not disclose any cause of action, as alleged? OPD.
4. Whether the suit is bad for misjoinder of parties? As alleged? OPD.
5. Whether the plaint lacks material particulars as alleged, If so, to what extent? OPD.
6. Relief.

11. On conclusion of the trial the suit was decreed against the defendants jointly and severally with costs. Whereas issues No. 1 and 2 were held in affirmative, issues No. 3 and 5 were decided in negative. Issue No. 4 was disposed as unpressed.

12. I have heard the learned Counsel for the parties and perused the records.

13. Whereas, the impugned judgment and decree dated 14.3.2005, have been assailed by the defendants on different counts, which shall be discussed here-in-after, the plaintiff has supported the findings returned by the learned trial court.

14. One of the cardinal and fundamental principles of civil law is that the parties cannot travel beyond the scope of their pleadings. The suit of the plaintiff was mainly founded on the averments set up vide para 4 of the plaint, which is extracted below in extenso:

That the plaintiff has never dis-respected anybody or misstated anything against anyone but in order to endeavour to harm the reputation of the plaintiff and to succeed in malafide designs the defendants have deliberately made wrong Punjab Kesari 4th Sept 97 submissions in publication of CHAMBA NEWS WEEKLY during 22nd to 28th September, 1997 and 1st to 7th November, 1997. The defendants have published these press reports intentionally to harm the reputation of plaintiff and lower her in the eyes of society and amongst the of her department. The imputations contained in these reports are not only false but also a complete bundle of lies. These have been made intentionally to defame and endeavour the reputation and prestige of the plaintiff in the society.

15. Thus, it is apparent that initially the incriminating news items were alleged to have been published by the defendants in Chamba News Weekly during 22nd to 28th September, 1997 and 1st to 7th November, 1997. However, a perusal of the record would go to show that none of the news items brought on record by the plaintiff, that is, Ex.P-1, an alternate copy whereof is Ex.PW-5/A and Ex.P2, which has also been exhibited as Ex.PW-1/A, pertain to this period. Whereas, the former news item had appeared in Punjab Kesari on 4th Sep., 1997, the latter is contained in Chamba News in its issue dated 8-14 September. Thus, the news items allegedly appearing in Chamba News Weekly during 22-28 September, 1997 and 1-7 November, 1997, have not seen the light of the day.

16. The handwritten addition/interpolation by way of ball pen writing contained between lines 5th and 6th of para 4 of the plaint, which has been extracted above appears to have been incorporated at some later stage. This amounts to tampering with the judicial record. This inference is deducible from perusal of the record. The suit was filed in the High Court on 25.3.1998. It was decreed exparte vide judgment dated December 18, 1998, passed by an Hon"ble Single Judge (Hon"ble Mr. Justice Surinder Sarup). The facts of the case were noticed by the Hon"ble Judge vide para 4 of the judgment dated December 18, 1998, wherein there is no reference to the alleged incriminating news item appearing in Punjab Kesari in its issue dated 4th Sep., 1997. However, it shall be pertinent to notice at this juncture that while making statement in her exparte evidence on 27.11.1998, the plaintiff had stated that " cutting of this news item in Punjab Kesari is Ex.P-1". Thereafter, when the aforesaid exparte judgment dated December 18, 1998 was set aside by a Division Bench of this Court vide judgment dated March 5, 2001, authored by the Hon"ble Chief Justice (Hon"ble Mr. Justice C.K. Thakkar, as His Lordship then was), again the facts stated therein

refer to the alleged incriminating news items appearing in Chamba News Weekly in its issues dated 22-28 September, 1997 and 1-7 November, 1997, without there being any reference to any alleged incriminating news item appearing in Punjab Kesari issue dated 4th September, 1997.

17. Further more, in the list of documents under Order 7 Rule 13 (1) CPC, filed by the plaintiff, there is mention about photo copy/copy of Chamba News, dated 4th September, 1997 and 8-14 September, 1997, without there being any mention about the alleged incriminating news item appearing in Punjab Kesari on 4th Sep., 1997. In the two lists of documents relied upon (under Order 7 Rule 14 CPC), filed by the plaintiff on 25.3.1998 and 28.4.2001, there is no specific mention about the aforesaid news item appearing in Punjab Kesari on 4th Sep., 1997 and instead the recitals therein are "Yes. A further list be filed during the pendency of suit" and "Yes as and when required", respectively. However, no such further list appears to have been filed at any stage of the proceedings.

18. It is also interesting to note that before filing of the suit the plaintiff had served a legal notice dated 23.12.1997, upon defendant No. 1, which is on record, though unexhibited. In this notice also reference is to publication of the alleged incriminating news items in Chamba News Weekly dated 22nd to 28th September, 1997 and 7th November, 1997 alone, there being no mention about the alleged incriminating news item appearing in Punjab Kesari issue dated 4th Sep., 1997.

19. The above inference is further reinforced from perusal of the written statements filed by the defendants. In reply to para 4 of the plaint, wherein, the requisite pleadings with regard to the alleged incriminating news items appearing in Chamba News Weekly have been set up by the plaintiff, the defendants have set up identical averments in the corresponding paras of the written statements that they have not published any press report as alleged in para 4 of the plaint, which is false or is against the plaintiff to harm her reputation intentionally. They have emphatically denied that any false information was published by them in Chamba News Weekly during 22 to 28 September, 1997 and 1 to 7 November, 1997. It is further averred by them that in fact they never published any news to harm the reputation of the plaintiff. Defendants No. 2 to 4 further averred that they have nothing to do with any news item published in any publication mentioned in this para by the plaintiff. Thus, had there been any mention about the alleged incriminating news item appearing in Punjab Kesari, in its issue dated 4th Sep., 1997, the defendants would have in all probability specifically replied those averments.

20. Thus, it is manifest from the above discussion that the aforesaid addition/ interpolation was not there initially and appears to have been incorporated at some stage later on and in any case only after the aforesaid judgments dated December 18, 1998 and March 5, 2001, were passed by an Hon'ble Single Judge and the Hon'ble Division Bench of this Court. It further appears that once the plaintiff had introduced this aspect of the matter in her exparte evidence on

27.11.1998, this exercise was undertaken and that too after the aforesaid two judgments had been delivered by this Court. Thus, it amounts to tampering with the judicial record. The needle of suspicion in this regard definitely points towards the plaintiff and none else. This leads to further inference that the plaintiff has not come to the court with clean hands. Thus, when the very foundation on which the suit filed by the plaintiff rested is shaken, the super structure can also not stand. Thus, I have no hesitation to say that the evidence led by the plaintiff beyond the scope of her pleadings which have also been found to be tampered with, cannot at all be looked into.

21. In some what similar circumstances, but definitely of lesser gravity and magnitude, a very serious view of the matter was taken by the Hon"ble High Court of Patna, In the matter of B, a In Re B, a Pleader of Gaya, vide the concluding part of the judgment, which is as follows:

It is perhaps true that the pleader had no mala fide intentions in the sense that he did not try to gain any undue advantage over his adversary and he made these corrections probably with a view to avoid any objection being raised by the judgment-debtor in future; but at the same time it cannot be overlooked that to tamper with public records is a serious matter, and when it is done by a pleader who has peculiar facilities afforded to him by reason of his position for handling such record, the conduct cannot be easily excused. In my opinion we cannot take a more lenient view of the matter than what has been suggested by the learned District judge and taking his recommendation as well as that made by the Munsif into consideration, we think that in this case the pleader concerned should be suspended from practice for a period of one year and we order accordingly.

22. Though the averments with regard to the reputation of the plaintiff's husband, who at the material time was MLA and damage to the same owing to the alleged defamatory and incriminating news items said to have been published at the instance of the defendants were set up in the plaint, yet the fact remains that he had not joined the suit as co-plaintiff. This aspect of the matter can also not be lightly over looked.

23. The plaintiff has based her suit on the two alleged defamatory news items, namely, Chamba News Weekly and Punjab Kesari. However, though defendant No. 1, Shri Swaran Deepak Raina, is stated to be the Chief Editor of Chamba News Weekly, yet it is not made out as to who is the owner, printer and publisher of the said weekly. Further more, with regard to Punjab Kesari, neither its editor nor owner, printer and publisher have been joined as parties to the suit. In a suit for damages based on libel emanating from a publication in a newspaper all those functionaries of the concerned news paper being necessary parties ought to be joined as such. However, since it was not done at the initial stage when the suit was filed and later on when a prayer in this regard was made vide application dated 7th May, 2003, moved under Order 1 Rule 10 CPC, the same was held to be palpably time barred, the suit having been filed in the year 1997, the suit also suffered from this infirmity.

24. The very case of the plaintiff was that the aforesaid incriminating news items were published at the behest of defendant No. 1, Shri Swaran Deepak Raina, being the Chief Editor of Chamba News Weekly and local correspondent of Punjab Kesari. However, though he has appeared as DW-1, yet perusal of his deposition would go to show that he was not confronted with news items Ex.P-1 and Ex.P-2 (also exhibited as Ex.PW-5/A and Ex.PW-1/A). Here, it shall be pertinent to observe that though in his written statement defendant No. 1 had set up defence of justification, yet in his deposition as DW-1, the case set up by him is that of total denial. It appears that it was owing to the reason that whereas the alleged incriminating news items appearing in Chamba News Weekly were stated in the plaint to be for the period 22-28 September, 1997 and 1-7 November, 1997, which, as already observed have not seen the light of the day, the plaintiff has adduced in evidence news item Ex.P-1 (also exhibited as Ex.PW-5/A) appearing in Punjab Kesari in its issue dated 4th Sep., 1997 and Ex.P-2 (also exhibited as Ex.PW-1/A) in Chamba News Weekly issue dated 8-14 September, 1997, which were not made basis of the suit and thus have not been owned by him. It was also not suggested to him that news item Ex.P-1 appearing in Punjab Kesari issue dated 4.9.1997, was at the instance of defendants No. 2 to 4. It being so and there being no evidence except the statement made by the plaintiff that this news item was got published by defendant No. 1 in connivance with defendants No. 2 to 4, the suit qua them is bound to fail. In so far as the news item appearing in Chamba News Weekly is concerned, even as per the plaintiff, defendants No. 2 to 4 have no connection with the same. It was also not suggested to defendant No. 1 that news item Ex.P-1 was given to him by defendants No. 2 to 4.

25. Even otherwise, the plaintiff while appearing as PW-1 and her witnesses PW-2 Shri Kahan Singh and PW-3 Shri Beni Parshad, have admitted during cross examination that the plaintiff and her husband were still enjoying good reputation in the area. Thus, where was the loss of reputation and alleged defamation of the plaintiff and her husband owing to the alleged publication of the allegedly incriminating news items. The part of the statement made by PW-3 Shri Beni Parshad, in the last sentence of chief examination that he "did not relish those news items if these were wrong" would also not advance the case of the plaintiff for the reason that on the one hand the statement itself is in the nature of a qualified statement and on the other the alleged news items have not been brought on record.

26. The claim for damages to the tune of Rs. Ten lac was set up by the plaintiff vide para 10 of the plaint, a perusal whereof would go to show that there is no basis for quantifying the amount of damages, general or special. It is also not made out as to how the amount of damages has been assessed. Admittedly, no departmental enquiry was held against the plaintiff on account of the alleged incriminating news items appearing in Chamba News Weekly. As already observed, there is also no material to infer any loss of reputation and consequent defamation of the plaintiff and her husband on this count. No independent

witness except PW-2 Kahan Singh, who has admitted that he is worker of the same political party, to which the husband of the plaintiff belongs, has been examined by the plaintiff to prove all these facts. Thus, there is no nexus between the quantum of damages suffered, if any, and damages claimed by the plaintiff and granted by the learned trial court.

27. The above discussion brings me to hold that the impugned judgment and decree dated 14.3.2005, cannot be sustained and are accordingly reversed. Consequently, both the appeals are allowed, leaving the parties to bear their own costs. Let a duly signed copy of this judgment be placed on the records of RFA No. 196 of 2005.