

ALLAHABAD HIGH COURT

Baldeo Sahai

Vs

Shiva Datt Sharma

(Bennet, J.)

03.10.1939

JUDGMENT

Bennet, J.

1. This is an application, purporting to be under the Contempt of Courts Act, brought by Baldeo Sahai and Sumat Prasad against Shiva Datt and his father Ram Swarup. Pt. Ram Swarup, opposite [party](#) No. 2, has brought a suit for possession of certain land and removal of constructions against the applicant Baldeo Sahai. The applicant filed a written statement in which he alleged that the suit had been brought at the instance of Bhagwan Das, brother of the plaintiff, and of Shiva Datt, opposite party No. 1, son and pairokar of the plaintiff, and he described Shiva Datt as "awara." On 27th March 1939 Ram Swarup, opposite party No. 2, filed an application for this word "awara" to be struck out and asking for an apology and stating that on failure of an apology proceedings would be taken. On 5th April 1939 the Munsif passed an order stating: The defendant's vakil has stated that the word "awara" be substituted by the word "awaragard" which simply means an aimless wanderer while awara might also mean a vagabond. Let the amendment be made and filed.

2. On 14th April 1939 Shiva Datt Sharma, opposite party No. 1, sent a notice to applicant 2 who is the counsel for applicant 1 in the civil suit. This notice is to the effect that the use of the word "awara" in the written statement filed by applicant 2 was without justification and defamatory, that Shiva Datt was an [Insurance](#) Agent of the Hindustan Co-operative Insurance Society Limited at Calcutta and that the words would affect him in his business. The notice ended by stating: Therefore I hereby inform you to pay me Rupees 1000 as damages for defamation within a week otherwise I will take action against you in law.

3. The present application claims that both the application to strike out the word "awara" made in the Court of the Munsif and the notice constitute contempt of Court in regard to the civil suit. Now as regards the application to the Munsif, the Munsif is empowered under Order 6, Rule 16, Civil P.C., to strike out anything in the pleadings which is unnecessary or scandalous. The Munsif was clearly acting within his jurisdiction in this matter and the application was made to the Munsif within the jurisdiction of the Munsif. We do not think that any contempt of Court arises from such an application to the Munsif. In regard to the notice, learned Counsel stated that he had one authority for the proposition, that is, *Rajendra Singh v. Uma Prasad*¹ Now this ruling

was in a very different case. There was a suit on a mortgage executed by the deceased father of the minor defendant in favour of the deceased father of the plaintiff. The usual plea was taken in para. 9 of the written statement that the mortgage was not binding on the minor because it was tainted with immorality. After the issues had been settled and the plaintiff's evidence had closed and the defendant's evidence had begun, a notice was sent by the plaintiff to the defendant's guardian. The notice quoted para. 9 of the written statement in full and stated that this was defamatory of the plaintiff's deceased father and lowered his reputation in the estimation of his fellow-men and stated that unless an unqualified apology and withdrawal was sent within a week and Rs. 10,000 was paid as damages action would be taken in the Civil and Criminal Courts. It is clear that a distinction is to be drawn between that case and the present case because the notice in the ruling required that the plea of the mortgage being invalid because of immoral consideration was to be withdrawn. In the present case there is nothing in the notice asking that any action should be taken in the conduct of the civil suit. The present notice is merely the usual notice which is given as a preliminary to filing a suit for damages for libel. The ruling itself on p. 32 distinguishes the case in the ruling from such cases: Learned counsel for Dr. Misra has cited before us some English cases in which it has been held that in cases of libel or defamation it is not objectionable to serve notice on the offending party giving him an opportunity to withdraw the defamatory words and threatening to take legal steps against him if he fails to do so. Such cases obviously stand on quite a different footing. We are not here dealing with the case of a private defamation. The present case is one where an attempt was made to put pressure on the defendant to withdraw a plea which had been taken in the written statement, duly filed in Court, which was the subject of consideration by the Subordinate Judge of Dehra Dun. We think there can be no doubt that such an action amounted to a direct interference with the administration of justice in preventing the defendant from pressing his defence and putting forward the plea which might, if established, prove fatal to the suit; and in that way an indirect attempt was made to exclude the plea taken on behalf of the minor from the consideration of the Court.

4. As the ruling itself clearly distinguishes a case like the present from the case in the ruling we do not think that the ruling can be cited for a case like the present. It appears to us that in the present case the notice did not require any action to be taken in regard to the civil suit. On the other hand, the ruling did require the withdrawal of a plea which was a most material plea in the civil suit. To put pressure on a party to withdraw a plea in a civil suit is quite a different matter from a notice stating that a suit for defamation or libel will be brought. The notice in fact had been given after the Munsif had passed his order directing the substitution of the word "awara." Learned counsel for the applicant admits that the opposite party would be within their rights in bringing this suit for libel and that the bringing of such a suit for libel would not amount to contempt of Court. He is not able to explain how the notice for such a suit could amount to contempt of Court if the filing of the suit itself would not amount to contempt of Court.

5. Learned counsel asks us to draw the presumption that the notice was not bona fide and that the suit for libel would not be filed for any other motive except to bring pressure on the applicant in the present civil suit. There is no reason why such a presumption should be drawn. Where a word has been used which the user himself has withdrawn in the Court of the Munsif there is no reason to suppose that a suit for defamation in regard to that word is inspired by any other motives than the usual motives for a suit for defamation. We consider that no case has been made out under the Contempt of Courts Act and accordingly we dismiss this application with costs.

Verma, J.

6. I entirely agree. A Hindu son is entitled to impugn alienations made by the father, and one of the grounds on which he can impugn such alienations is the ground that the consideration for the alienation was tainted with immorality. Such a plea, if established, is fatal to the case of the alienee, and is thus a material plea. The plea taken in para. 9 of the written statement in *Rajendra Singh v. Uma Prasad (1935) 22 AIR All 117(Supra)* was a plea of that nature. But a statement that the plaintiff's suit, which according to the defendant is false, has been instigated by the plaintiff's son, and the use of abusive epithets about the plaintiff's son, do not in my opinion constitute a "plea" recognized in law.

Cases Referred.

1(1935) 22 AIR All 117