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part of the Act limited by the wording of that part to the actual person who might change his religion or be excluded from caste. No one can read s. 9 of Regulation VII without seeing that if Mr. *Bajpai's* argument is correct the operative portion of the Act instead of extending the principle to the rest of the Company's provinces, would have limited the relief it was intended to extend. As I read the operative portion of the Act, it relates to different classes of persons. In the earlier portion it protects any person from forfeiture of right of property by reason of his or her renouncing their religion or being excluded from caste. In the case before us those words would have protected the father of the plaintiff, who was the person who renounced his religion, and they protected him from losing any right which he had. The latter portion of the section, in my opinion, protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste. If the latter part of the section was restricted to the protection of the right of inheritance of the persons renouncing their religion or being excluded from caste, their case was covered by the words of the early part of the section.

Reading the section as I do, and I think it is the natural reading of the section, I give effect to the intention of the Legislature in passing the Act, which we find expressed in the preamble, and to the principle of s. 9 of Regulation VII.

The effect of this construction of the Act is that the appeal is dismissed with costs.

STRAIGHT, J.—I concur.

Appeal dismissed.

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August 17.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

DAYA (DEFENDANT) *v.* PARAM SUKH (PLAINTIFF).*

Defamation—Suit by father in his own right for defamation of daughter—Suit not maintainable.

A suit for defamation of his daughter cannot be maintained by a Hindu father suing in his own right and not as general attorney or on behalf of the daughter. A

* Second Appeal No. 545 of 1887 from a decree of W. H. Hudson, Esq., District Judge of Farakhabad, dated the 5th January, 1887, reversing a decree of Babu Prag Das, Munsif of Kanauj, dated the 23rd September, 1886.

suit for defamation can only be brought by the person actually defamed, if the person is *sui juris*, and if not *sui juris*, then under the provisions of the Civil Procedure Code, by his guardian or next friend. *Dawan Singh* v. *Mahip Singh* (1) and *Parvathi* v. *Mannar* (2) distinguished. *Subbaiyar* v. *Kristnaiyar* (3) and *Luckumsey Rowji* v. *Hurbun Nursey* (4) referred to.

THIS was a suit for damages for defamatory words spoken by one of the defendants in reference to the plaintiff's daughter; and the plaintiff also claimed damages for expenses incurred by him in connection with his daughter's *gauna* ceremony, in reliance upon an agreement between himself and the defendants, and which expenses he alleged had been thrown away in consequence of the defendant's conduct. One of the two defendants was son of the other, and he had been, some years prior to the institution of the suit, married to the plaintiff's daughter. A date was fixed for the celebration of the *gauna* ceremony, and the plaintiff made the necessary preparations for such celebration; but the defendants did not attend. Shortly afterwards the plaintiff went to the defendants to ask for an explanation, and the father then said that the plaintiff's daughter was a person of bad character, and he and his son would take no part in the *gauna*, and would not dine at the plaintiff's house. This statement was alleged to have been made in the presence of several caste-fellows of the plaintiff. The defence to the suit was, *inter alia*, that it could not be maintained by the plaintiff, or any one other than the person defamed.

The Court of first instance (Munsif of Kanauj) dismissed the suit on this ground, referring to *Oodai* v. *Bhawanee Pershad* (5) and *Subbaiyar* v. *Kristnaiyar* (3).

On appeal by the plaintiff, the District Judge of Farakhabad reversed the first Court's decree and allowed the claim. The Judge observed:—

"I think that the appellant's third and fourth pleas must be admitted. There can be no doubt that the plaintiff suffered defamation of character from the words used by the defendants, and that he is entitled to compensation for it. The case quoted by the lower

(1) I. L. R., 10 All., 425.
(2) I. L. R., 8 Mad., 175.
(3) I. L. R., 1 Mad., 383.
(4) I. L. R., 5 Bom., 580.
(5) 1 Agra, 264.

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Court does not apply, for the position of the parties in the two cases is different. That was a case of a possibly not very closely allied relative suing on behalf of a female presumed to be capable of suing for herself; this is a case of a father suing for injury done to himself by words spoken against his daughter of tender age and under his protection. The rulings also quoted by the appellant's pleader from the reports of the Madras and Bombay High Courts are not applicable to the circumstances of the present case. The injury done to the daughter's reputation in the present instance is undoubtedly a personal injury to the plaintiff himself. In the second place, it does not affect the plaintiff's claim on account of pecuniary loss that no compact is proved to having been made for fixing the date of the *gauna*. It is sufficient that the plaintiff was authorized to presume that the ceremony would be performed at some approaching date, and that he made preparations in anticipation of such performance. The plaintiff's witnesses have given a list of items of expense which verify the plaintiff's estimate of Rs. 200 for cost of entertainment: and his pleader is willing to reduce his claim for damages on other grounds to an equal sum. I therefore reverse the judgment of the lower Court, and give the plaintiff-appellant a decree for Rs. 400 with all costs."

The defendant Daya appealed to the High Court on the ground, *inter alia*, that the plaintiff had shown no cause of action.

Munshi *Nawal Bihari Bajpai*, for the appellant.

Pandit *Bishambar Nath*, for the respondent.

EDGE, C. J.—The plaintiff brought this suit to recover damages for defamatory words spoken by the appellant in reference to the plaintiff's daughter. He also claimed as damages certain expenses being thrown away by reason of the appellants declining to allow his son to take the plaintiff's daughter to his house and refusing to take part in her *gauna*. The lower appellate Court has awarded Rs. 200 in respect of the defamatory words, and Rs. 200 in respect of the expenses claimed. The appellant did not plead that the words were true; he merely said he had only repeated what he heard. That does not amount to justification. It is contended on behalf

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of the appellant that this suit should be dismissed. On behalf of the plaintiff-respondent it was contended that a Hindu father could in his own right and not suing as general attorney or on behalf of his daughter maintain an action for defamation of his daughter. For that purpose my brother Mahmood's judgment in the case of *Dawan Singh* v. *Mahip Singh* (1) and the case of *Parvathi* v. *Munnar* (2) were cited. The judgment of my brother Mahmood does not, in my opinion, support that contention. That judgment was directed to show that in India an action for defamatory words spoken could be maintained not by any person other than the defamed person, but by the person who was defamed, without the allegation or proof of special damages and under circumstances in which a similar action could not be maintained in England. I have mentioned to my brother Mahmood this contention as to his judgment, and he has told me that he did not intend to lay down a proposition that any person other than the person defamed could maintain the action for defamation. The case in I. L. R., 8, Mad., to which I have referred, was a suit brought by the person who was actually defamed: consequently it has no bearing on this particular point. In my opinion an action for defamation can only be brought by the person actually defamed if the person is *sui juris*, and if the person is not *sui juris*, then under the provision of the Code of Civil Procedure by the guardian or next friend. If any relative who suffered pain of mind by reason of defamatory language uttered as to another relative could maintain an action for defamation, the defamer might be liable to as many actions as there were members of the family of the person defamed. It was held by the Madras High Court in the case of *Subbaiyar* v. *Krishnaiyar* (3), that a brother could not maintain an action for the defamation of his sister. I think that is a right decision. It was held by the Bombay High Court in *Luckumsey* v. *Hurbun Nursey* (4), that the heir and the nearest relative of a deceased person could not maintain a suit for defamatory words spoken of such deceased person, although they were alleged to have caused damage to the plaintiff as a member of the same family.

(1) I. L. R., 10 All., 425. (2) I. L. R., 8 Mad., 175
(3) I. L. R., 1 Mad., 383. (4) I. L. R., 5 Bom., 580.

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Those two cases show, as I have always understood the law to be, that an action for damages is a purely personal action which can only be maintained by or on behalf of the person defamed. The same principle was applied, although not in an action for defamation, by this Court in *Oodai* v. *Bhowanee Pershad* (1). I am of opinion that so far as this suit is one to recover damages for the defamation of the defendant's daughter, it cannot be maintained. It is not necessary to consider whether the words are actionably defamatory, as we hold that the father has no cause of action in respect of them. So far, I am of opinion that the appeal should be allowed. As to the part of the suit for expenses incurred by the father thrown away by reason of the acts of the defendants, I am of opinion that the appeal should be dismissed. As I understand the finding of the District Judge, the expenses he has allowed have been reasonably incurred by the plaintiff in reliance on the agreement of the defendant-appellant that the *gauna* should be carried out. The appeal as to Rs. 200 for *gauna* will be dismissed with proportionate costs, and the appeal as to Rs. 200 awarded in respect of the alleged defamation will be decreed with proportionate costs.

TYRRELL, J.—I fully agree with the view expressed by the learned Chief Justice and in his order disposing of the appeal (2).

Appeal allowed in part.

1888
December 13.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

MUHAMMAD WILAYAT ALI KHAN (PLAINTIFF), *v.* ABDUL RAB AND ANOTHER (DEFENDANTS),*

Pre-emption—Wajib-ul-arz—Muhammadan Law—Refusal by pre-emptor to purchase—Immediate demand—Pre-emptor claiming property as to part of which he has disqualified himself from suing.

The *wajib-ul-arz* of a village provided that a co-sharer wishing to sell his share must give notice to the other co-sharers, and that first a nearer co-sharer and next a more distant co-sharer should have a right of pre-emption. Where, such notice having

* First Appeal No. 49 of 1887 from a decree of D. T. Roberts, Esq., District Judge of Moradabad, dated the 23rd December, 1886.

(1) 1 Agra, 264.

(2) See *Ajudhia Parshad* v. *Shibbu Mal* (Panjab Record, 1889, No. 27) in which Rattigan and Roe, JJ., held that a Hindu husband could sue in his own right for damages for defamation of his wife.