

in the first paragraph of the petition of cross objections must prevail and we allow these cross-objections accordingly. The result is that the appeal fails and is dismissed with costs. We allow the cross-objections and award costs in favour of the respondent against the appellant.

*Appeal dismissed and cross-objections allowed.*

1919

MUHAMMAD  
H. BIB-ULLAH  
v.  
MUHAMMAD  
SHAFI.

1919

January, 16.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

NARSINGH DAS (PLAINTIFF) v. SADA RAM AND OTHERS (DEFENDANTS).\*

*Libel—Letter written by one member of the Bohra caste to another member of the same caste accusing a third person of having been instrumental in breaking off a betrothal.*

A member of the Bohra caste, residing in Jodhpur, wrote a letter to a caste-fellow of his at Aligarh informing him that one N. D., another member of the caste, had been instrumental in breaking off a certain betrothal and in getting the betrothed girl married to another person. It was in evidence that the breaking off of a betrothal was regarded in the caste as a very bad or improper act.

The writer and the recipient of this letter were made defendants to a libel action by the person therein referred to, and the writer pleaded that the person referred to in the letter was not the plaintiff, but a different person bearing a similar name. No plea of privilege in a matter regarding the caste was raised, or, if adumbrated, was not substantiated.

*Held* that the plaintiff was entitled to a decree for substantial damages against the writer of the letter in question, and that the recipient, who had shown the letter to another member of the caste, was also liable, though to a lesser degree.

THE facts of the case were as follows:—

One Sada Ram, who resided at Poh Karan in Jodhpur, wrote the following letter to Biddhi Chand, who resided at Aligarh.

From—Sada Ram Fakir Chand, Poh Karan,

To—Biddhi Chand Meghraj, Aligarh.

“The son of Bhikham Das of Aligarh has been betrothed to the girl at Sikandara. The girl of Sikandara came and she was accompanied by the *gumashta* of brother Narsingh Das. Mahesh Das caused her to be married in the family of a Chandak at Bhongra. Please inform Bhikham Das of it . . . Such highhandedness has been practised here. Please inform the members of the brotherhood and see if there is any remedy. The state of affairs here is hopeless and you must note this. We write the above for

\* First Appeal No. 354 of 1916, from a decree of Raghunath Prasad, Officiating Second Additional Subordinate Judge of Aligarh, dated the 31st of July, 1916.

1919

NARSINGH  
DAS  
v.  
SADA RAM.

your information. Please also inform Bhikham Das . . . In this affair there appears to be an instigation by Narsingh Das."

The last sentence may also be translated as 'In this matter, Narsingh Das appears to have given his advice.' Biddhi Chand as was found by the court below, handed over this letter to one Narain Das, a member of the brotherhood, with the remark "*Bare ghazab hai bat hai* that Narsingh Das should have done so." The plaintiff Narsingh Das instituted a suit for defamation against Sada Ram, Fakir Chaud, Biddhi Chand and Meghraj and claimed Rs. 5,250 as damages. He alleged that there had been an enmity of long standing between the plaintiff and Sada Ram, defendant No. 1, and that the letter was written maliciously, and the contents were false. The defendant No. 1 pleaded that the Narsingh Das referred to in the letter was a different man and not the plaintiff. He further pleaded that among the brotherhood according to the custom observed it was bad to break off one betrothal and enter into a new one, therefore the information given by the defendant as Chaudhari of the *biradari* could not be called defamatory. The Subordinate Judge held that the Narsingh Das referred to in the letter was the plaintiff, but dismissed the suit on the ground, *inter alia*, that the words used in the letter were not defamatory, inasmuch as at the present time the breaking of a betrothal was not so much looked down upon by the members of the brotherhood. The plaintiff appealed to the High Court.

*Babu Piari Lal Banerji*, (Munshi *Lakshmi Narain* with him,) for the appellants:—

The defendant No. 1, (Sada Ram) in his written statement admits that breaking of a betrothal is deemed to be a '*bad act*' in the community. The finding of the court below is against the pleadings. There is evidence on the record that once a person was fined Rs. 300 by the *biradari* for breaking off a betrothal. Charging a man with having instigated another to break off a betrothal is defamatory. There is evidence on the record that there is enmity of very long standing between the plaintiff and the defendant. The defendant having denied that the letter referred to the plaintiff cannot be allowed to plead justification or good faith or privilege according to law.

1919

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 NARISINGH  
 DAS  
 v.  
 SADA RAM.

He should have taken the plea of privilege in clear and unambiguous terms after admitting all the other facts. The defendant on a previous occasion charged the plaintiff with a similar act and got him fined Rs. 100 by the *biradari* behind his back. That conclusively proves the malicious intention of the defendant. After receipt of the letter the defendant No. 3 (Biddhi Chand) spoke about it to many members of the brotherhood. That amounts to publication and makes Biddhi Chand liable. It cannot be said that Biddhi Chand acted in good faith. If he really believed the allegations contained in the letter, he should have gone and asked the plaintiff if the allegations were true; moreover, he does not plead that he published the letter in good faith; his defence is that he never received the letter and never handed it over to Narain Das, and the court below has found that allegation to be false.

Mr. *B. E. O'Connor*, for Biddhi Chand and Meghraj, respondents :—

Nothing has been proved to establish malice or bad faith against my client; moreover, it has not been proved that Meghraj said anything defamatory to the plaintiff. The evidence of Kewal Ram has been disbelieved.

Munshi *Panna Lal* for Fakir Chand, respondent :—

Nothing has been proved against my client. If his name appeared in the letter, it was because he was a partner in the firm. The mere fact that his name appeared on the letter-heading makes him liable in no way.

Babu *Saila Nath Mukerji*, for Sada Ram, respondent :—

It is submitted that the letter written by Sada Ram does not contain any defamatory statement. The breaking off of the betrothal may be a bad thing, but merely advising another to do so would not be necessarily bad. In fact the principal witness of the plaintiff admits that now-a-days such acts are not punished by the members of the brotherhood. Then again it does not appear that my client acted maliciously. The Mahesh Das mentioned in the letter is the plaintiff's brother-in-law. The girl was married to a very near relation of Mahesh Das. The defendant might have believed in good faith that the plaintiff had given his advice in the matter. In any case litigation of

1919

NARSINGH  
DAS  
v.  
SADA RAM

this nature should not be encouraged. The plaintiff appellant should have appealed to the brotherhood and that body would be in the best position to decide whether the letter written by the defendant was really defamatory, and if so, what ought to be the measure of damages.

Babu *Piari Lal Banerji*, for the appellant, was not heard in reply.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of a suit for libel. The alleged libel is contained in a letter admittedly written by the defendant Sada Ram. A translation will be found at page 49A and is in the following words :—

“Our compliments to you. We pray God to protect you and ourselves. Bai Sardari died on Maghsar Sudi 9th. We informed you of it in a previous post card which we trust you have received. The son of Bhikam Das (son of Net Ram) of Aligarh has been betrothed to the girl at Sikandra. The girl of Sikandra came and she was accompanied by the gumashta of brother Narsingh Das. Mahesh Das caused her to be married in the family of a Chandak of Bhongra. Please inform Bhikam Das of it. We promised to pay Rs. 100 to the state employes provided they did not let the marriage to be celebrated, but Mahesh Das paid a larger amount and consequently the marriage could not but be held. We did not receive any letter from Bhikam Das. Other persons of Ghandi's Bas (name of locality) here came to us and it was from them that we came to know about the betrothal. Subsequently we inquired from Kundan Lal Chanak, and he too told us that the betrothal took place. Such high-handedness has been practised here. Please inform the members of the brotherhood and see if there is any remedy now. The state of affairs here is hopeless, and you must note this. We write the above for your information. Please also inform Bhikam Das. There is nothing more to pen. We shall write more on hearing from you. Please keep sending letters to us. In this affair there appears to be an instigation by Narsingh Das.”

The sentence “such high-handedness has been practised here” has also been translated as “A horrible thing has been practised here.” The sentence “In this affair there appears to be an instigation by Narsingh Das” has also been translated “In this affair there appears to be the advice of Narsingh Das.” For reasons which we shall state hereafter we do not think that there is any material importance in the different translations. The first question to be considered is whether or not the letter (quoted above), assuming it to have been written and published by the defendant Sada Ram, is defamatory. There is sworn evidence, which we see no reason to disbelieve, that the breaking

off of a match where the girl has already been betrothed and marrying her to some one else is considered a very discreditable and improper thing amongst the members of the caste to which the parties belong. There are on the record documents which show that some years ago the breaking off of a match in this way was visited with very substantial penalties by the *panchayat* of the brotherhood. Sada Ram himself in the fifth paragraph of his written statement (a paragraph which apparently was intended to suggest privilege) states as follows :—

“According to the custom observed by the members of the brotherhood it is bad to break off one betrothal and to enter into a new one.”

The translation of the word “bad” does not sufficiently represent the meaning of the expression as contained in the vernacular. It is clear that the vernacular means that it is a very improper proceeding. It would seem therefore that if the letter means that the plaintiff had taken part in the breaking off of the match between the son of Bhikam Das and the girl at Sikandra, it was imputing to the plaintiff that he was a participator in a matter which the caste considered to be most improper and highly reprehensible. Reading the letter as a whole we have not the slightest hesitation in saying that the defendant Sada Ram imputed to the Narsingh Das mentioned in the letter that he had been guilty of such an act. It will be seen that in the earlier part of the letter the writer says that the girl when she was going to contract the second marriage was accompanied by the *gumashta* of “brother Narsingh Das.” The *gumashta*’s name is not mentioned, and it is clear that the sting of the sentence is the statement that it was the *gumashta* of *Narsingh Das* who went with the girl. If there was any ambiguity in this part of the letter, it is made clear by the concluding sentence, namely, “In this affair there appears to be the advice (or instigation) of Narsingh Das.” The next question is whether the writer intended to refer in the letter to the plaintiff. The court below has found that he did, and we have not the smallest hesitation in coming to the same conclusion. The defendant did not go into the witness-box and was never examined as a witness in the case; but when he was examined before the hearing in a proceeding of the court, he admitted that the

1919

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 NARSINGH  
 DAS  
 v.  
 SADA RAM.

1919

NARSINGH  
DAS  
v.  
SADA RAM.

only Narsingh Das whom he knew was the plaintiff. He never stated (as a witness) that he meant any person else. It is unnecessary to enlarge upon this matter, because, as we have said before, we have not the smallest hesitation in agreeing with the court below that the defendant referred to the plaintiff when he wrote the letter.

The next question to be considered is whether or not the defendant Sada Ram published the letter. When he was examined in the "proceeding" previous to the trial he admitted that he wrote the letter, but he said that after writing it he changed his mind and did not send it. The court below in a somewhat inconsistent judgment has come to the conclusion that Sada Ram wrote the letter and sent it by post to the party to whom it was addressed, namely, the defendant Biddhi Chand. If this conclusion be correct, it is clear that there was a publication. We also agree with the court below so far, that we believe that the letter was sent to Biddhi Chand by the defendant Sada Ram.

The defendant in paragraph 5 of his written statement seems to suggest a plea of privilege. No doubt, if the defendant had proved that he as a member of the brotherhood, received information of a reliable kind which he honestly believed to be true, and that he merely wrote the letter for the purpose of giving information to the brotherhood in order that the matter might be investigated, a plea of privilege might be sustained. In the present case, however, no attempt whatever was made to prove that the plaintiff had taken any part in the breaking off of any marriage, nor was any evidence given to show that the defendant Sada Ram had received information concerning the plaintiff's action which he honestly believed to be true. On the contrary, there is the clearest evidence that there was ill-will between the plaintiff and the defendant and that some years ago a house which the defendant Sada Ram had constructed was pulled down as the result of the direct or indirect action of the plaintiff. In our opinion no proper plea of privilege was pleaded, and certainly no facts were proved by the defendant which could sustain a plea of privilege even if it had been pleaded.

The result is that, as between the plaintiff and this defendant, the defendant is proved to have written and published a letter containing serious implications against the plaintiff and it would seem to us that upon the finding arrived at by the court below itself it ought certainly to have given a decree for damages against Sada Ram.

1919

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NARISINGH  
DAS  
v.  
SADA RAM.

As against Biddhi Chand the case does not stand on the same footing. This was the person to whom the letter was addressed and who, in the opinion of the court below, duly received the letter. A witness called Narain Das was examined, and he proved that Biddhi Chand gave him the letter stating that it was a very "horrible" thing. He goes on to state that Biddhi Chand said to him that Narsingh Das, that is, the plaintiff, had sent the girl who had been previously betrothed and got her married to another person. The witness did not in his direct evidence make any further allegation against Biddhi Chand as a publisher of the defamatory allegations against the plaintiff. The learned Judge made some very sweeping remarks about the plaintiff's evidence and the evidence of the plaintiff's witnesses; but he certainly does not say anything definite against Narain Das. It is quite clear that Sada Ram wrote his letter with the intention of sending it by post to Biddhi Chand. He has never come into the witness-box to say that he did not send the letter and therefore there was every probability that the letter was received by Biddhi Chand. If Biddhi Chand received the letter it would not be at all improbable that he would show the letter to Narain Das, who was a member of the brotherhood, and, assuming that Biddhi Chand believed the allegations in the letter to be true, there would be nothing unnatural or even reprehensible in his having said to Narain Das that it was a "horrible thing." This would only mean that, assuming the allegations were true, it was a horrible thing for Narsingh Das to have done. However, if Biddhi Chand showed the letter to Narain Das, this would amount to a publication. Narain Das says that Biddhi Chand handed the letter over to him. Narain Das has produced the letter in court, and the evidence of Narain Das coupled with the evidence of the plaintiff is the only explanation we have of how the letter came to be at Aligarh.

1919  
NARSINGH  
DAS  
v.  
SADA RAM.

Sada Ram does not reside in Aligarh but lives at Poh Karan in the Jolhpore territory. We see no reason why the evidence of Narain Das should not be believed. Previous to the institution of the suit the plaintiff caused a written notice to be given to Sada Ram in which he clearly and distinctly set forth his complaint that a false statement had been made by Sada Ram in the letter addressed to Biddhi Chand, and he called upon Sada Ram to publicly apologize for what he had done and to admit that the statements were not true, in which case the plaintiff said that he would not bring the suit, otherwise he would. Sada Ram and his son Fakir Chand took no notice of this letter. No similar notice was served upon the defendant Biddhi Chand or his son. The plaintiff, it is true, alleges that he verbally gave a similar notice, but we doubt very much that he did so. Had Biddhi Chand come into the witness-box and had he honestly admitted that he received the letter, as we believe he did, and stated that all that he had done was to hand over the letter to Narain Das as a member of the brotherhood to give the plaintiff an opportunity of denying charges, we think that in all probability the suit would never have been instituted against him at all. Unfortunately, he did not adopt this course, but on the contrary absolutely denied that he ever received the letter at all or had handed it over to Narain Das.

The learned Judge in the court below, without giving any good reason for discrediting the evidence of Narain Das, which, as we have already said, was highly probable, has raised various hypotheses as to what was done with the letter. He says that it was possible that Biddhi Chand handed the letter over to Bhikam Das and that the plaintiff got it from Bhikam Das. There is no evidence on the record to support this; but even if it were true, the handing over of the letter to Bhikam Das would equally have been a publication and the obligation upon this defendant Biddhi Chand to honestly admit the receipt of the letter and tell the truth as to what he had done with it was just the same. We think that there ought to be a decree against Biddhi Chand also but for a far less amount than should be awarded against Sada Ram.



1919

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 NARSINGH  
 DAS  
 v.  
 SADA RAM.

Meghraj is alleged to have repeated the defamation at a village called Mai in the Aligarh district. The evidence that he did so is supported by the evidence of one Kewal Ram who belongs to that village. Meghraj, defendant, says that he was not in the village at all, but he admits that his wife and child were there. It certainly was probable that Meghraj did visit Mai (where his wife and child were); and if he went there, it would be highly probable that he would repeat the story to members of the brotherhood at that place. However, we do not feel justified in overruling the finding of the court below with regard to this defendant.

With regard to Fakir Chand, the son of Sada Ram, although the letter was written by his father, his name also appears on the letter. Furthermore, when before the suit the plaintiff gave the written notice, Fakir Chand did not repudiate the writing of the letter and the making of the false statements. While, therefore, we think that no decree should be given against Fakir Chand, we do not think that he ought to get costs against the plaintiff.

The only matter which remains to consider is the question of damages. As against Sada Ram we find that he made a false charge against the plaintiff, imputing to him participation in, if not instigation of, very improper conduct. We also find that there was ill-feeling, in other words, what in legal language is understood as 'malice.' The plaintiff is a man of position, and undoubtedly the making of these allegations against him would cause him a good deal of annoyance and was calculated to lower him in the eyes of his fellow caste-men. The matter was made rather worse by the fact that there had been a previous attempt to charge the plaintiff with having taken part in a prior transaction of the same nature. The defendant Sada Ram, instead of taking advantage of the written notice served by the plaintiff, chose to disregard it. He had the audacity to put in a plea in his written statement that the Narsingh Das whom he referred to was not the plaintiff but another Narsingh Das, an allegation which in the opinion of the court below, and in our opinion, was wholly false. Under the circumstances we think that there should be substantial damages awarded to the plaintiff as against

119

NARASINGH  
DAS  
v.  
SADA RAM.

Sada Ram, at any rate a sum which will be a reasonable indemnification to the plaintiff for the costs and expenses which he must have incurred in bringing the present suit. The sum awarded against Biddhi Chand ought to be in our opinion a much smaller amount.

We allow the appeal, set aside the decree of the court below and grant the plaintiff a decree against the defendant Sada Ram for Rs. 1,500, with full costs in all courts; by this we mean that he shall receive the full costs incurred in the court below and in this Court, and not merely costs proportionate to the amount decreed. The plaintiff will also have a decree against the defendant Biddhi Chand for the sum of Rs. 100 and costs as if he had recovered a decree for this amount. This will apply to costs in both courts. We dismiss the suit as against the defendant Meghraj and Fakir Chand, but direct that they and the other defendants do bear their own costs in all courts.

*Appeal allowed and decree modified.*

1918  
October, 22.

*Before Mr. Justice Zudall and Mr. Justice Muhammad Rafiq.*  
BAL KRISHNA DAS AND ANOTHER (PLAINTIFFS) v. HIRA LAL AND OTHERS  
(DEFENDANTS).\*

*Hindu Law—Mitakshara—Sale by daughter of entire house inherited by her to discharge debt of father—House not saleable piecemeal—Legal necessity—Suit by reversioner to recover house from vendees.*

To pay off an antecedent debt of her father, the daughter of a separated Hindu sold a house which had been the property of her father in his life-time and had been previously mortgaged by herself and her mother jointly as security for the same debt. The debt at the time of the sale amounted to Rs. 7,775, and the house was sold for Rs. 19,500. On the other hand, it was found that the house was not one which could have been divided and sold piecemeal.

*Held* that the reversioner to the last male owner was not in the circumstances entitled to recover the house from the vendees.

THE facts of the case are fully set forth in the judgment; but for the purpose of explaining the arguments they may be briefly stated as follows:—

One Ramjas died in 1853, leaving a house in Calcutta and certain movable property. His widow succeeded him, and

\*First Appeal No. 11 of 1916, from a decree of Udit Narain Singh, Subordinate Judge of Benares, dated the 17th of May, 1915.