

Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Gokaran Nath Misra.

1926
April, 6.

GAYA DIN SINGH (DEFENDANT-APPELLANT) v. MAHABIR
SINGH (PLAINTIFF-RESPONDENT).*

*Defamation, essential elements for maintaining a claim for—
Special damage, if to be proved—Defendant's statement
that plaintiff had married an Ahir's daughter, whether
defamatory of the husband also—Husband's right to
maintain a suit for damages.*

Held, that the rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, does not apply and should not be followed in India. An action for damages for oral defamation is maintainable and affords a case for damages even in absence of proof of special damage.

Where the defendant stated that the plaintiff, a high-class thakur, had married an Ahir's daughter and that he should be put out of caste, while there was not a word of truth in the statement, *held*, that the words used by the defendant were not only defamatory of the plaintiff's wife but were also defamatory of the plaintiff and gave the plaintiff a cause of action. [I.L.R., 8 Mad., 175 and I.L.R., 10 All., 425, followed. I.L.R., 32 Calc., 1060 and I.L.R., 34 Calc., 48, relied upon. I.L.R., 1 Mad., 383; I.L.R., 5 Bom., 581; I.L.R., 11 All., 105 and I.L.R., 18 Mad., 251, referred to.]

Mr. K. P. Misra, for the appellant.

Mr. Aditya Prasad, for the respondent.

STUART, C. J. and MISRA, J. :—This is a second appeal against a decision of the District Judge of Rai Bareilly awarding the plaintiff damages for a slander found on the facts to have been made upon him by the defendant-appellant. The finding of fact is very clear. The plaintiff is a Rajput by caste belonging to the high clan of the Tilok Chandi Bais. The defendant is proved on the facts to have stated that the

* Second Civil Appeal No. 344 of 1925, against the decree, dated the 14th of April, 1925, of Aprakash Chandra Bose, District Judge of Rai Bareilly, affirming the decree, dated the 30th of January, 1925, of Gokul Prasad, Subordinate Judge of Partabgarh, decreeing plaintiff's claim.

1926

 GAYA DIN
SINGH
v.
MAHABIE
SINGH.

plaintiff had married an Ahir's daughter and that he should be put out of caste. There was not a word of truth in the statement. The plaintiff had never married an Ahir's daughter. The learned Counsel for the appellant at first was inclined to take the view that no action for slander could lie in India without proof of special damages. Upon this point it is only necessary for us to state that we hold with the decision in *Parvati v. Mannar* (1), which is to the same effect as the decision in *Dawan Singh v. Mahip Singh* (2), that the rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, does not apply and should not be followed in India. Such an action, as the present action, is, in our opinion, maintainable, and affords a case for damages even in absence of proof of special damage; but the question is not very material inasmuch as the plaintiff has given proof of special damage. The next point taken by the learned Counsel, which was in fact his main point, was that no case lay because the defamation was not a defamation of the plaintiff but the defamation of the plaintiff's wife. In support of this proposition he quoted the decision in *Subhaiyar v. Kristna Iyar* (3), where a Bench of the Madras High Court held in 1878 that a brother had no cause of action for damage because the defendant had slandered his sister. The doctrine laid down therein has very little bearing on the facts of the present case. He then referred to the decision in *Luckumsey Rowji v. Hurban Nursey and others* (4), in which a single Judge laid down that a cousin could not institute a suit for damages in respect of the defamation of a deceased cousin after his death. This again has little bearing upon the matter before us. The next decision which he quoted is that of *Darya*

(1) (1865) I.L.R., 8 Mad., 175.

(2) (1888) I.L.R., 10 All., 425.

(3) (1878) I.L.R., 1 Mad., 383.

(4) (1861) I.L.R., 5 Bom., 581.

1926

GAYA DIN
SINGH
v.
MAHABIR
SINGH.

v. *Param Sukh* (1), in which it was laid down that a Hindu father could not bring a suit for damages in respect of defamation of his married daughter when he was not an attorney for his daughter. We do not question the correctness of that decision, but, as we shall show, the facts here are hardly similar. The next decision of the Madras High Court, which quoted with approval the three previous decisions, is in *Brahmanna v. Ramakrishnamma and others* (2). There the defendant had made a statement that the plaintiff's wife had committed adultery with a low caste man and that her three children were begotten by the low caste man and not by her husband. There the Bench, which decided the case, found as a fact that there was nothing to show that the words implied that the husband knew of his wife's want of chastity and with that knowledge lived with her. The language used was consistent with the plaintiff's belief in his wife's chastity. Holding that view as to the facts the case was undoubtedly rightly decided. None of these decisions really appear to us to affect the matter. The present case is a case similar to the cases quoted in *Girwar Singh v. Siraman Singh* (3) and in *Sukhan Teli v. Bipad Teli* (4). At page 1066 of the former decision MUKERJEE, J., refers to cases where words defamatory of A are also indirectly defamatory of B and give the latter a cause of action. Upon the facts of this case the words used by the defendant were not only defamatory of the plaintiff's wife but were also defamatory of the plaintiff. It is undoubtedly defamatory to a high caste Thakur lady to state that she is an Ahirin. but the statement also defames her husband. It is perfectly clear from what the defendant said, that he considered that her husband should be outcasted

(1) (1889) I.L.R., 11 All., 105. (2) (1895) I.L.R., 18 Mad., 251.
(3) (1905) I.L.R., 32 Calc., 1060. (4) (1907) I.L.R., 34 Calc., 48.

because he was living with her, and the defendant thereby implied that he had done an act disgraceful in itself in having the relationship of husband with a woman who was not a member of his own caste. In our opinion the defamation of the plaintiff is established. Not only his wife but he himself also was defamed. On the question of damages we consider that the lower court has determined the damages very correctly. The plaintiff is a man of a very high caste and in a responsible official position. The defamation was a very serious one to a man of his position and we do not consider that the damages awarded are, in any way excessive. They have been very clearly made out. We, therefore, dismiss this appeal with costs.

1926

GAYA DIN
SINGH
v.
MAHABIB
SINGH.

Appeal dismissed.

PRIVY COUNCIL.

NIRMAN SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) v.
LAL RUDRA PARTAB NARAIN SINGH AND OTHERS
(DEFENDANTS-RESPONDENTS).*

1926
P. C.
July, 1.

[On appeal from the Court of the Judicial Commissioner of Oudh at Lucknow.]

*Limitation Act (IX of 1908), article 127—Joint Hindu family—
Exclusion of one co-parcener from joint Hindu family,
what constitutes—Mutation proceedings, nature of—
Receipt of maintenance by junior co-parceners, whether
amounts to possession over joint property.*

Held, that proceedings for the mutation of names are not judicial proceedings, in which the title to and the proprietary rights in immovable property are determined. They are much more in the nature of fiscal inquiries instituted in the interest

* Present :—Viscount DUNEDIN, Lord ATKINSON, and Mr. AMEER ALI.