

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE &
J.M.F.C., BELTHANGADY, D.K. DISTRICT**

PRESENT: Sri Devaraju H.M.

B.A., LL.B.,
Prl. Senior Civil Judge & JMFC
Belthangady, D.K.

Dated: This the 22nd day of August 2023

O.S.No.60/2022

PLAINTIFF: Harish Salian

-Vs-

DEFENDANT: Laxmana Gowda

I.A.No.II

APPLICANT: Sri Harish Salian,
Aged about 50 years,
S/o. Ananda Bangera,
R/at Moorthaje House,
Navoor village & Post,
Belthangady Taluk,
D.K. ...Plaintiff

(By. Sri. A.S.K., Adv.)

Vs

OPPONENT: Laxman Gowda,
Aged about 70 years,
S/o. Shivayya Gowda,
R/at Erthilal House,
Indabettu Village,
Bangady Post,
Belthangady Taluk,
D.K.Defendant

(By Sri. A.N., Adv.)

ORDER ON I.A. NO. II

This is an application filed by plaintiff under Order XXXIX Rule 1 and 2 of CPC, praying to grant an ad-interim order of temporary injunction, restraining the defendant, his agent, servants or anybody claiming under him from publishing any defamatory articles/statements in respect of plaintiff in social media, till disposal of the suit.

2. In support of application, the applicant/plaintiff sworn to an affidavit that he has filed the suit for the relief of decree for damages and for permanent injunction. The defendant has published defamatory articles in social media like whatsapp and facebook on 05.08.2022. The said articles contained the false and defamatory statements about his personal life and also social life. The articles were published without any basis and only with an intention to defame him. He came to know that defendant is preparing to publish more defamatory and imputation articles against him in the social media. If the defendant succeeds in his acts, his

reputation in the society will be degraded and the public will look at him in a suspicious manner. With these reasons, prayed to allow the application.

3. The defendant has appeared through counsel and filed memo adopting the written statement as objection to I.A.No.II.

4. The defendant has denied the averments pleaded in the plaint as false and concocted. He has specifically denied that he has published the defamatory articles against plaintiff in social media. He has specifically contended that he hails from reputed family and he has been in public service for more than forty years. The plaintiff and defendant both of them have been serving as Directors and working together in the V.S.S. Sangha, Bangady. They shared common platforms on various occasions. He has never degraded the status and reputation of plaintiff at any point of time and never intends to do so also. He is aged about 70 years and he does not have knowledge about operating mobile phone, except receiving and dialing the phone calls. He

never written or uploaded or forwarded any messages, as alleged in the plaint. He does not have any facebook account. With these reasons, prayed to dismiss the I.A.No.II.

5. Heard the argument of learned counsels for both side.

6. I have perused the I.A.No.II, annexed affidavit, objection and materials placed on record.

7. The following points that would arise for my consideration;

POINTS

1. Whether plaintiff has made out a prima facie case ?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether plaintiff will be put to much injustice and hardship, if an order of temporary injunction is not granted?
4. What order?
8. My findings to the above points are as under:
Point No.1: In the affirmative
Point No.2 : In the affirmative
Point No.3: In the affirmative

Point No.4: As per final order
for the following:-

REASONS

9. **POINT NO.1:** It is the case of plaintiff that defendant has published defamatory statements in social media like whatsapp and facebook. The defendant has denied the same.

10. It is the burden on the plaintiff to prima-facie establish at this stage that defendant has published defamatory statements in the social media. In order to establish the same, the plaintiff has produced the photocopy of whatsapp message, office copy of notice dated:15.08.2022 and postal acknowledgement, as to service of notice to the defendant. On perusal of the photocopy of the whatsapp statement, the allegations alleged in para 4 of the plaint were forwarded by mobile number 9900982098. It is the contention of plaintiff that this mobile number is of defendant. The defendant never disputed the mobile number found in the whatsapp statement. So, from the above facts, it is evident that the mobile number referred to above i.e.

9900982098 belongs to defendant. The contents, which are in Kannada language pleaded in para 4 of the plaint were forwarded by defendant mobile number. According to the materials placed on record, the allegations alleged in Kannada language at para 4 of the plaint was not published by defendant, but it has been forwarded from the mobile number of the defendant. Any defamatory statements published or forwarded without material amounts to degrade the reputation of the person. At this stage, it is prima-facie established that the defamatory statement against plaintiff has been forwarded from the mobile number of defendant.

11. It is the defence of defendant that since he is 70 years old, he does not know the operating of social media in the mobile phone, except receiving and dialing the phone calls. The said facts can be determined during the course of trial. At this stage, it is prima-facie established that the defamatory statement against plaintiff has been forwarded in the whatsapp from defendant mobile number. The plaintiff has made out a

prima-facie case for trial. Accordingly, this point is answered in the **affirmative**.

12. **POINT NO.2 AND 3:** Both the points are interlinked with each other. Therefore, in order to avoid repetition of facts, they are taken together for discussion.

13. It is the case of plaintiff that he has got balance of convenience and if the order of temporary injunction is not granted, he will be put to much hardship and injustice. The plaintiff has made out prima-facie case for trial. The balance of convenience lies in favour of plaintiff rather than defendant. In the event, defamatory statement against plaintiff forwarded from the mobile number of defendant in social media, naturally it will affect the respect of plaintiff in the society. If the respect of plaintiff is degraded in the society, it cannot be regain by any means. Further the said damages cannot be assessed by any means.

14. During the course of argument, the learned counsel for defendant argued that defendant has not

published or forwarded the message in the social media and he will not do the same in future also.

15. According to the materials placed on record, the defamatory statement has been forwarded from the mobile number of defendant. If the same is continued in future, naturally it will affect the reputation of the plaintiff. Considering all these facts, it is established that the balance of convenience lies in favour of plaintiff and he will be put to much hardship and injustice, in the event the defendant is not restrained from publishing or forwarding any defamatory statement against plaintiff in the social media. Accordingly, both the points are answered in the **affirmative**.

16. **POINT NO.4:** In view of my findings on the point no.1 to 3 in the affirmative, I proceed to pass the following-

ORDER

The I.A.II filed by plaintiff under Order XXXIX Rule 1 and 2 of CPC, is hereby allowed.

The defendant is restrained from publishing, uploading or forwarding any defamatory statements or articles against plaintiff in any manner in social media, till disposal of the suit.

Considering the facts and circumstances of the case, the parties are directed to bear their own cost.

(Dictated to the stenographer, transcribed by her, transcript revised, corrected, signed and then pronounced by me in the open court on this 22nd day of August 2023)

(DEVARAJU H.M.)
Prl. Sr. Civil Judge & J.M.F.C.
Belthangady, D.K.