

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 488 of 2014**

Dhanendra Kumar Sahu S/o Devlal Sahu Aged About 45 Years R/o Joratarai,
P.S. Somni, Tah. And Distt. Rajnandgaon C.G.

---- Appellant**Versus**

1. Arjun Kumar Singh S/o Sukhdev Singh In Charge P.S. Somni, At Present
Posted as Inspector, P.S. Rajnandgaon, Tah. and Distt. Rajnandgaon C.G.
2. State Of Chhattisgarh Through the Collector, Rajnandgaon, Distt.
Rajnandgaon C.G.

---- Respondents

For appellant	: Mr. Vishnu Koshta, Advocate.
For Respondent No. 1.	: Not noticed.
For Respondent No. 2/State	: Mr. Lav Sharma, PL

Judgment**30/09/2015**

1. Heard on admission.
2. Instant second appeal under Section 100 of the Code of Civil Procedure, 1908 (in brevity 'CPC') is directed against the judgment and decree dated 12-9-2014 passed by the District Judge, Rajnandgaon in Civil Appeal No. 1-B/2011 whereby and whereunder the plaintiff's first appeal filed against the judgment and decree dated 4-1-2011 passed by the 2nd Civil Judge Class -1, Rajnandgaon in Civil Suit No. 3-B/2010 has been dismissed affirming the judgment of the trial Court.
3. Brief facts necessary for disposal of this appeal are that plaintiff/appellant filed a civil suit for damages against the respondent No. 1/defendant No. 1 on the ground that some other persons sold the land which was duly registered before the office of Registrar, Rajnandgaon in which the plaintiff was also witness. Though there was no complaint by any of the parties, the defendant No. 1 maliciously and illegally for falsely prosecuting the plaintiff lodged FIR to diminish the honour and repute of the plaintiff. Thereafter, he got published news in newspaper by which repute and honour of the plaintiff was diminished. There was no legal provision to publish said news in newspaper. Thereafter a final report was submitted. The Registrar also inquired the matter and found that there was no loss of revenue which was accepted by the Collector. Naib Tehsildar also after due examination certified said sale under Section 110 of the CG Land Revenue Code. The

trial Court on a close scrutiny of the evidence led, submissions made and material placed on record dismissed the suit and held that the plaintiff failed to prove his complaint and pleading and thereby no damages are allowed to the plaintiff. Against said judgment of the trial Court, the plaintiff preferred first appeal before Sessions Judge, Rajnandgaon. The first appellate court after re-appreciating the entire evidence, dismissed the appeal and affirmed the findings recorded by the trial Court.

4. Against the judgment and decree of the first appellate court, the plaintiff has preferred this second appeal *inater alia* on the ground that respondent No. 1 without any basis registered the FIR and also got published the news to diminish the honour and repute of the plaintiff as per Ex. P-8 and P-9. Ultimately the criminal proceedings were sent for acceptance as final report as mentioned in Ex. P-4. The Collector also accepted the report of the District Registrar that as there was no loss of revenue and also there was no objection to lady co-sharer, the matter be filed. The Naib Tehsildar also vide order Ex. P-2 certified the registered bainama under Section 110 of the CG Land Revenue Code. The respondent No. 1 deliberately registered the case hence appeal be admitted and substantial question of law be framed as mentioned in the memo of appeal.
5. I have heard learned counsel for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC and perused the judgments and decree including records of two courts below.
6. Learned counsel appearing for the appellant supported the grounds taken in the second appeal and submitted that substantial question of law needs to be formulated along with admission of the appeal. He further submitted that as the substantial question of law as mentioned in the memo of appeal is involved, the appeal be admitted and disposed of accordingly.
7. A perusal of the entire facts goes to show that the very root of the matter i.e. FIR registered by respondent No. 1 is neither adduced in evidence by the plaintiff nor in any way admitted in evidence. It is further revealed that the concerned journalist of the said newspaper or editor or any person responsible for publishing any material to diminish the repute and honour were not made party. On examination of Ex. P-4, the letter of Superintendent of Police for sending the matter for acceptance under Section 173 of the Code of Criminal Procedure, no order by the concerned Magistrate for accepting the final report was ever adduced before the trial Court. The report of the District Registrar accepted by the Collector was only to extent that there was no revenue loss and no objection to the woman co-

share holder. Ex. P-2, the order passed by the Naib Tehsildar is for the fact that on the basis of registered sale deed, he certified it as per section 110 of the CG Land Revenue Code.

8. On due consideration, it appears that as the plaintiff/appellant did not adduce document which was the basis of alleged damages and other facts, both the courts below rightly dismissed the prayer made in this behalf by the plaintiff/appellant. On due consideration and perusal of entire evidence, in the considered opinion of this Court, there is no substantial question of law requires to be formulated for hearing of the second appeal.
9. It is settled law that this Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. Existence of substantial question of law is the *sine qua non* for the exercise of the jurisdiction under the amended Section 100 of the CPC. The findings recorded by both the Courts below in the case are essentially finding of facts. Learned counsel appearing for the appellant failed to point out any substantial question of law which may arise for determination in the case. In absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss the appeal.
10. In view of above, since no substantial question of law arises for determination in the second appeal, this is not a fit case for admission. Consequently, the appeal is dismissed at motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of CPC.
11. The appeal is accordingly dismissed.
12. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge