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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 138/2014

RAKESH KUMAR SHARMA

..... Appellant

Through: Mr.Sanjay Sharma, Advocate.

versus

KASHMIRI DEVI

..... Respondent

Through: Mr.M.L.Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

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17.03.2015

1. This is a regular second appeal filed by the appellant.
2. The contention of the learned counsel for the appellant is that although his suit was for malicious prosecution for the period of limitation has been prescribed under Article 74 of the Schedule to the Limitation Act, 1963 as three years from the date of termination of prosecution qua the party and the suit of the respondent/plaintiff had terminated on 27.11.2001 and it was well within time yet the suit has been held to be barred by limitation by the trial court and therefore this constitutes a serious error in the judgment of the court below.
3. It has also been contended that no finding has been returned by

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the trial court or the first appellate court in regard to the same. Accordingly, it is urged that this constitutes a substantial question of law, which needs to be considered.

4. I have considered the submission made by the learned counsel for the appellant and I have also gone through the record.

5. The present appellant filed a suit against the respondent for defamation and recovery of Rs.3 lakhs as damages. In the said suit, obliquely in para 6 a reference was made with regard to the alleged malicious prosecution by the respondent of the present appellant and in the relief clause, it was prayed as under:

“That the plaintiff, therefore, most respectfully prayed that the Hon’ble Court be graciously pleased to pass a decree in favour of the plaintiff and against the defendant awarding damages for malicious prosecution and defamation suffered by the plaintiff in the sum of Rs. 3 lakhs together with future interest at the rate of 18% per annum from the date of the suit and till realization.”

6. The suit was contested. The learned trial court framed the following issues.

1. Whether the suit of the plaintiff is without any cause of action? OPD.

2. Whether the plaintiff is entitled for a decree for a sum of Rs.3 lacs as claimed? OPP.

3. Whether the plaintiff is entitled for interest, if yes, at what rate and for which amount? OPP.

4. Relief.”

7. The present appellant examined herself as PW1, Sh. Anil Kr.Sharma was examined as PW2 and Sh.Ashok Kumar as PW-3.

8. The defendant examined herself as DW-1.

9. PW-3 had proved the record of WP(Cr.) No.664/2000 titled Ved Prakash Sharma & Ors. v. State and Anr. and the judgment dated 27.11.2001 as Ex.PW 1/9, which reads as under:

“ We have perused para 5 of the reply of respondent No.3. Para 5 of the reply reads as follows:

Inadvertently this is a case of mistaken identity where Rameshwar Kumar Sharma was mentioned as Rakesh Kumar Sharma. To rectify this mistake the respondent has given application in the court and to concerned police officials for the change of name. Copy of the said application reannexed herewith. It is denied that petitioner no.4 is a law-abiding citizen.

In view of the averments made in para 5 of the reply, it is clear that Rakesh Kumar Sharma is not involved in the incident. This being so, no criminal proceedings can be taken against Rakesh Kumar Sharma.

The writ petition is allowed to the extent indicated above.

A copy of this order be sent to the trial court.”

10. The learned trial court after analysis of the evidence, dismissed the suit of the appellant by observing that the suit of the appellant/plaintiff was barred by limitation. For the purpose of returning this finding, the learned trial court referred to Article 75 of the Schedule to the Limitation Act, 1963 and observed that the period of limitation prescribed for suing in order to get damages on account of libel/slender is one year and since in the instant case, the suit has been filed after expiry of one year from the date of alleged defamatory material, therefore, the suit was held to be barred by time and the same judgment and decree was upheld by the first appellate court on being filed.

11. Still not feeling satisfied, the appellant has filed the present regular second appeal urging the points as have been reproduced above.

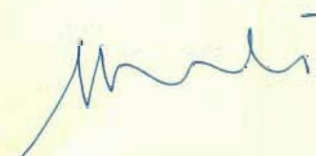
12. I am not in agreement with the contention of the learned counsel for the appellant that the matter involves any substantial question of law. The reasoning for this is that the suit filed by the appellant/plaintiff was a suit for defamation and recovery of Rs. 3 lakhs as damages and nowhere in the title the factum of malicious prosecution has been mentioned although in the body of the suit, there is an oblique reference to malicious prosecution and similar mention is found in the prayer clause also where damages have been quantified at Rs.3 lakhs. The damages have also not been segregated for the two torts i.e. for defamation and malicious prosecution thereby leaving an impression that the damages which were sought by the appellant/plaintiff were essentially for defamation though he had a grievance that he has been maliciously prosecuted.

13. In addition to this, if one sees para 15 of the suit with regard to the cause of action, the averments made by the appellant/plaintiff is that the cause of action accrued to the appellant/plaintiff when the respondent/defendant is alleged to have made false accusation against the appellant relating to the occurrences between 8th and 14th August, 1999.

14. Section 9 of the Limitation Act, 1963 clearly lays down that once the period of limitation starts running, then no subsequent ability or disability stops the said period of limitation. In the cause of action clause the appellant has not given separate dates with regard to the accrual of the cause of action to him with regard to the defamation, malicious prosecution or for that matter recovery. Therefore, this seems to be an afterthought by the appellant to contend now before this court that the trial court as well as the first appellate court had not adjudicated the rights of the appellant on the touchstone of malicious prosecution.

14. In any case, after having suffered an adverse concurrent finding by the two courts below on the question of limitation, which is essentially a question of fact, it, in my view, does not constitute any question of law much less a substantial question of law.

15. Accordingly, the present regular second appeal, in my considered opinion, does not raise any substantial question of law and the same is dismissed.



V.K. SHALI, J

MARCH 17, 2015/dm