Item No.8

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MC(RSA) No. 3 of 2013
Ref :- RSA No. 8 of 2012

(Through Video Conference)

Dr. Nongmaithem Birendra Singh, aged about 57 years by profession, Government Service in Veterinary Department at present Guigailong Pig Breeding Farm Tamenglong, S/O Late N. Amuba Singh of Mayaikoibi, P.O. Imphal, P.S. Singjamei, Imphal West District, Manipur.

... Applicant

- Versus -

1. Shri Thokchom Ibohal Singh, aged about 60 years, by profession Advocate, S/O Late Th. Yaima Singh of Brahmapur Nahabam Leikai, P.O. Imphal, P.S. Porompat, Imphal East District, Manipur.

2. Director, Veterinary and Animal Husbandry, Government of Manipur.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE MV MURALIDARAN

25.08.2020

[1] Since the appeal in RSA No. 8 of 2013 has been filed by the appellant and this Court admitted the appeal by order dated 31.07.2013 with the following substantial questions of law :

"*1) whether the first appellate court was justified in confirming the judgment and decree passed by the trial court which decreed plaintiffs; suit directing the defendants to pay a sum of Rs.6,00,000/- (Rupees six lakhs) with interest at the rate of 12% per annum?*

2) whether the suit filed by the plaintiff for the relief claimed and granted is maintainable and if so whether money decree for a sum of Rs.6,00,000/- could be passed in plaintiffs' favour and against the defendant on such facts pleaded therein?

3) whether the two courts below were justified in holding that on the facts pleaded, a decree of this nature could be passed in plaintiff's favour for realization of Rs.6 lakh?"

[2] While pendency of this second appeal, the appellant came to know that the appeal with memo of ground has been filed without substantial questions of law.

[3] Therefore, the present Misc. Case being MC(RSA) No. 3 of 2013 has been filed seeking the prayer as follows :-

> "*It is, therefore, prayed that Your Lordship be pleased to allow the appellant to amend the memorandum of appeal in the manner proposed below under Order 6, Rule 17 of the Code of Civil Procedure, 1908 read with Section 151 of the same Code for the ends of Justice.*"

[4] As per the averments made in the affidavit, it is the case of the appellant that the appellant came to know that the memo of appeal is required to be amended in the manner proposed as below and unless the amendment is allowed, the appellant shall suffer irreparable injuries.

[5] It is also the case of the appellant that if the amendment is allowed by this Court there will be no change in the character of the second appeal. Therefore, the appellant has filed this present MC(RSA) No. 3 of 2013 seeking the

above prayer and the proposed amendment is mentioned at page 6 of MC(RSA) No. 3 of 2013 which reads as follows :

"PROPOSED AMENDMENT

1. *Let the following Para be inserted as Para No.8 just after "Para No.7" but just before the words and figures i.e. Sub-para "That, being aggrieved with the impugned judgment and decree of the Ld. District Judge Manipur East, the appellant have filed the 2nd appeal on the following grounds among others" appearing at page No.8 of the Memorandum of Appeal.*

   "8. That, the substantial questions of law involved in the present Appeal are as follows:-

   1) *Whether the document Exhibit P/4/1 (the alleged Promissory Note/Undertaking) dated 29.08.2008 is admissible in the eye of law without any material evidence/corroboration and authentication?*
   2) *Whether there is perversity in passing the impugned decree both by the trial court as well as the First Appellate Court?*
   3) *Whether the First Appellate Court failed to see the perversity in the judgment and decree dated 25-01-2011 passe*d by the trial Court?"

[6] On fair reading of the above memo of appeal and the proposed amendment, if this Court considers the same and allowed the Misc. case in MC(RSA) No. 3 of 2013, no prejudice will be caused to the respondents in this appeal since the appellant seeks only the substantial questions of law to be involved in the present appeal.

[7] Therefore, considering the above, since there is no representation for the respondent though one Mr. Th. Ibohal's name is printed in the cause list, no one appeared for the respondents. Hence, this Misc. Case in MC(RSA) No. 3 of 2013 is allowed.

[8] Registry is directed to carry out the amendment.

JUDGE

Sushil

WAIKHOM TONEN MEITEI
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