

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

**RSA No. 3 of 2021 with
MC(RSA) No. 22 of 2024**

Mst. Memcha Bibi

.....Appellant/s

- Versus -

Md. Abdul Motim Choudhury

.... Respondent/s

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

Order

23.08.2024

[1] Present Mr. Kh. Santa, learned counsel for the appellant and Mr. NG. Somorjit, learned counsel for the respondent.

[2] Heard the learned counsel for the parties on the substantial questions of law.

[3] The appellant herein has instituted a suit being O.S. No. 34/35 of 2014 before the Civil Judge (Senior Division), Imphal East praying for declaration of title and eviction. Whereas, the respondent herein who is a defendant has also filed counter claim for eviction of the appellant/plaintiff herein on the plea that he is the owner of the suit land.

[4] Vide judgment and decree dated 25.11.2019, the Ld. Civil Judge (Senior Division), Imphal East dismissed the suit filed by the petitioner herein holding that the defendant is the owner of the suit

land and the plaintiff could not prove their position over the suit land. The plaintiff/appellant herein did not prefer any appeal against the judgment and decree passed by the Ld. Trial Court rejecting his suit. However, the respondent/defendant filed an appeal before the Ld. District Judge, Imphal East being First Civil Appeal Case No. 9 of 2020 and vide order dated 30.04.2021, the appeal was partly allowed by the Ld. District Judge, Imphal East by evicting the appellant/plaintiff from the suit land.

[5] Being aggrieved by the order dated 30.04.2021, the plaintiff approached this Court by second appeal under Section 100 of CPC. In the memo of appeal, the appellant/plaintiff raised the following questions as substantial questions of law involved in the present second appeal under Section 100 of CPC. Para 3 is reproduced as such:

“3. That, the substantial question of law involved in the Second Civil Appeal as follows:

- a) Whether the Appellate Court didn't remand the case under order XLI Rule 23 – A of CPC as to why the Appellate Court didn't remand or refer the issue to the Ld. Trial Court for deciding the issues?*
- b) Whether the proposition with regard to adverse possession is not discuss by the Trial Court as to why the Appellate Court didn't remand the Trial Court for deciding the issues?*
- c) Whether the preposition of law observed by the Ld. Appellate Court below amounts to interference with the free judicial exercise?”*

[6] Mr. Kh. Santa, learned counsel for the appellant/plaintiff, submits that the First Appellate Court ought to remand the case to the Trial Court for adjudication by framing issue on adverse possession.

[7] Mr. NG. Somorjit, learned counsel for the respondent/defendant, submits that since the appellant/plaintiff has not preferred any appeal against the decree dismissing his suit, the finding of the Ld. Trial Court has attained finality and the question of adverse possession amounts to challenging the decree of the Trial Court in Second Appeal without preferring any First Appeal and as such, the same plea cannot be taken in Second Appeal.

[8] This Court has considered the submissions made at the bar and perused the materials on record.

[9] This Court agrees the submissions of Mr. NG. Somorjit, learned counsel for the respondent/defendant, that the purported question of law cannot be considered Second Appeal as it amounts to challenge the finding of the Original Court while dismissing the civil suit without finding any appeal against. However, this Court is of the opinion that the only issue involved in the present appeal is whether the appellant/plaintiff is liable to be evicted from the suit land or not as held by the First Trial Court.

[10] Accordingly, the following substantial question of law is framed as to whether the First Appellate Court was right in directing the appellant/plaintiff to be evicted from the suit land. The appeal is admitted on this ground.

[11] Since paper book is already prepared, list this case on 19.09.2024 for hearing.

JUDGE

Kh. Joshua Maring