

**Appellant Vs. Respondent**

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**Court :** Kolkata

**Decided On :** Mar-10-2017

**Judge :** Ranjit Kumar Bag

**Appellant :** Appellant

**Respondent :** Respondent

**Advocate for Def. :** Mr. Subhasish Sengupta

**Advocate for Pet/Ap. :** Mr. Sudip Deb

**Judgement :**

Form No.(J2) IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE Present: The Honble Justice Ranjit Kumar Bag C. S. No.246 of 2013 Dr. Prof. Pradip Kumar Mitra V. Lipi Basu & Anr. For the Plaintiff: Mr. Sudip Deb, Adv. Mr. Saunak Sengupta, Adv. Mr. Paritosh Sinha, Adv. Mr. Debayan Sen, Adv. For the Defendant No.1: Mr. Shuvasish Sengupta, Adv. Mr. Soumyajit Mishra, Adv. Mr. Balarko Sen, Adv. Hearing concluded on:

20. 12.2016 Judgement delivered on:

10. 03.2017 R. K. Bag, J.

This suit for libel is instituted by Dr. Pradip Kumar Mitra holding the post of Director of Institute of Post-Graduate Medical Education and Research (in short IPGMER)

in Kolkata against his sister-in-law for damages to the tune of Rs.1,10,00,000/-. The mother-in-law of the plaintiff, Smt. Abha Rani Ghosh aged about 75 years is widow and living with the plaintiff. The father-in-law of the plaintiff, Manindra Kumar Ghosh died on June 4, 2003. The defendant no.1 (hereinafter referred to as the defendant Lipi.) is the sister-in-law of the plaintiff. also doctor by profession. The husband of the defendant Lipi is It is contended by the plaintiff that the plaintiff had to look after his mother-in-law as the defendant Lipi and her husband did not take up the responsibility to look after the mother-in-law. The defendant no.2 (hereinafter referred to as the defendant Lekha.) is the wife of the plaintiff and the plaintiff has not claimed any relief against the said defendant Lekha in the instant suit.

2. The mother-in-law of the plaintiff instituted Title Suit No.9 of 2012 against her two daughters - the defendant Lipi and the defendant Lekha before Learned Civil Judge (Junior Division), 4th Court, Sealdah (hereinafter referred to as the Civil Court at Sealdah.) praying for declaration that her husband executed his last Will and testament on November 15, 1983, by which he bequeathed his dwelling house situated at Premises No.25, Snuff Mills Street, P.S. Belghoria, Kolkata-700056 in her favour. The defendant Lekha supported the case made out by her mother in Title Suit No.9 of 2012, whereas the defendant Lipi contested the said suit by filing written statement. The copy of the said written statement was served on the defendant Lekha in the address where the plaintiff has been residing with his wife - the defendant lekha and his mother-in-law at Premises No.213/1, EE, Sector-2, Salt Lake, Kolkata-700091. It is alleged that the defendant Lipi has made false and defamatory statement against the plaintiff in paragraph 10 of the said written statement, though the plaintiff is not a party to the said Title Suit No.9 of 2012. The defendant Lipi has described the plaintiff in the said written statement as a person of dubious ethics, who persuaded his father-in-law to invest Rs.75,000/- in the business of his wife and who also persuaded his mother-in-law to institute Title Suit in the Civil Court at Sealdah in order to grab the dwelling house of his father-in-law since deceased. The defendant Lipi has also pleaded in the said written statement that the plaintiff led luxurious life and sent his two sons abroad for study by earning money from unaccounted sources.

3. One Soumendra Nath Kundu, Personal Assistant attached to the plaintiff when he served as Director of IPGMER, Kolkata, came to learn from one Utpal Chakraborty, Learned Advocate about the written statement filed by the defendant Lipi in the Title Suit pending before the Civil Court at Sealdah. It is contended by the plaintiff that the said Soumendra Nath Kundu had gone through the written statement while the same was kept in the custody of Learned Advocate Mr. Utpal Chakraborty in the High Court at Calcutta and the contents of the same being derogatory to the dignity of the plaintiff, were communicated to the plaintiff in writing. The statements made by the defendant Lipi in the written statement before Civil Court at Sealdah have lowered down the dignity of the plaintiff in the estimation of his colleagues and members of the society and those statements have cast aspersion on the high reputation of the plaintiff holding dignified post in a Government Organisation. The specific contention of the plaintiff is that the defendant Lekha being the wife of the plaintiff is running her own business of pathological centre and has independent source of income and as such the false allegations made by the defendant Lipi in the written statement filed before the Civil Court at Sealdah have lowered down the reputation of the plaintiff in the eye of public. The cause of action for filing the present suit arose both within the jurisdiction of the High Court at Calcutta and outside the jurisdiction of the High Court at Calcutta. So, the plaintiff has instituted this suit before this Court praying for decree for Rs.1,10,00,000/- against the defendant Lipi.

4. The defendant Lipi has contested this suit by filing written statement wherein she has denied and disputed the material allegations made in the plaint. According to the defendant Lipi, the suit filed by the plaintiff is barred by limitation and by the principles of estoppel, waiver and acquiescence. The contention of the defendant Lipi is that the plaintiff has no cause of action against her for institution of the suit for libel. The defendant Lipi reiterates that the averments made by her in paragraph 10 of her written statement filed before the Civil Court at Sealdah are correct and she will prove the correctness of the facts pleaded by her by adducing evidence during trial before the said Civil Court at Sealdah. It is alleged that the plaintiff has instituted the present suit in order to create pressure on the defendant Lipi and to prevent her from proving the statements made by her in paragraph 10 of the written statement by adducing evidence before the Civil Court at Sealdah.

The contention of the defendant Lipi is that she has not made any false allegation against the plaintiff and there is no possibility of causing any injury to the reputation and the character of the plaintiff as alleged in the plaint. The further contention of the defendant Lipi is that the contents of the written statement have not been disclosed to any outsider as alleged by the plaintiff for creating cause of action for institution of the present suit. According to the defendant Lipi, the suit is liable to be dismissed with costs.

5. On the above pleadings the issues framed by the Court are recast as follows: (i) Has this Court territorial jurisdiction to entertain and try the suit?. (ii) Are the averments made in paragraph 10 of the written statement filed by the defendant Lipi in connection with Title Suit No.9 of 2012 before Learned Civil Judge (Junior Division), 4th Court, Sealdah amount to libel of the plaintiff?. (iii) Is the plaintiff entitled to get decree for Rs.1,10,00,000/- as prayed for?. (iv) Is the plaintiff entitled to get other reliefs?.

6. Issue No.(i): The plaintiff has made out a case in the pleading that the defendant Lipi has made false and malicious allegations against the plaintiff in paragraph 10 of the written statement filed by her in connection with Title Suit No.9 of 2012 instituted by the mother-in-law of the plaintiff against the said defendant Lipi and her sister - the defendant Lekha, which is pending for adjudication before the Civil Court at Sealdah. The plaintiff has pleaded in paragraph 5 of the plaint that the copy of the said written statement of Title Suit No.9 of 2012 was served on the defendant Lekha on October 29, 2013 at Premises No.213/1, EE, Sector-2, Salt Lake, Kolkata-700091 wherein the plaintiff resides with his wife - the defendant Lekha and his mother-in-law. The above premises at Salt Lake is outside the original jurisdiction of the High Court at Calcutta. The plaintiff has stated both in the pleading and in evidence that the friends, employees and associates of the plaintiff came to know about the allegations made by the defendant Lipi in the written statement filed before the Civil Court at Sealdah. However, the plaintiff has candidly admitted during his cross-examination in reply to question no.194, 200 and 201 that he has not disclosed the name of any such friend or employee or associate in the plaint. In the absence of disclosure of any name of friend or employee or associate of the plaintiff in the pleading it is well-

nigh impossible for me to hold that the statements made in the written statement by the defendant Lipi in connection with Title Suit No.9 of 2012 were communicated to any of the friends or employee or associates of the plaintiff. The plaintiff has stated in reply to question no.227 during cross-examination that his colleagues like Dr. Sailendra Nath Pal, Dr. Snehangshu Banerjee and some of the residents who are residing near the house of father-in-law of the plaintiff including one Shusobhon Ghosh came to know about the contents of the written statement filed by the defendant Lipi before the Civil Court at Sealdah in connection with Title Suit No.9 of 2012. In the absence of examination of any of these persons as witness of the plaintiff before this Court, the evidence of the plaintiff to the effect that he came to learn about distribution and circulation of the written statement filed by the defendant Lipi from his colleagues, will go down as hearsay evidence as the said evidence is clearly barred under Section 60 of the Indian Evidence Act.

7. The plaintiff has specifically pleaded in paragraph 12 of the plaint that one Soumendra Nath Kundu, the colleague of the plaintiff saw the contents of the written statement filed by the defendant Lipi in connection with Title Suit No.9 of 2012 in the custody of one Utpal Chakraborty, Learned Advocate practising in the High Court at Calcutta, when Soumendra Nath Kundu came to the High Court in connection with some other case and the said Soumendra Nath Kundu communicated the contents of said written statement to the plaintiff. The reply given to questions no.143, 144, 145, and 152 to 158 by the plaintiff during his cross-examination goes to establish that the plaintiff has no knowledge why Soumendra Nath Kundu went to the High Court on March 26, 2013 and that the presence of Soumendra Nath Kundu in the High Court on March 26, 2013 is doubtful. The plaintiff has produced one letter addressed to him by Soumendra Nath Kundu on March 30, 2013 and the same is marked Exhibit-P. The contents of the said letter marked Exhibit-P disclose that on March 26, 2013 the said Soumendra Nath Kundu went to the High Court for one Gouranga Chatterjee, MLA and at that time the said Soumendra Nath Kundu saw one document in the custody of one Utpal Chakraborty, Learned Advocate and came to learn from the said document that the document relates to Title Suit No.9 of 2012 pending before the Civil Court at Sealdah and there are some allegations in the said document which would lower down the reputation and dignity of the plaintiff. On close

scrutiny of the said letter marked Exhibit-P, I don't find that Soumendra Nath Kundu has disclosed the allegations made by the defendant Lipi in the written statement of Title Suit No.9 of 2012 in the said letter. Nor do I find from the said letter marked Exhibit-P that the said Soumendra Nath Kundu has communicated to the plaintiff about any defamatory statement made by the said defendant Lipi in the written statement filed in connection with Title Suit No.9 of 2012.

8. The question arises in my mind how the plaintiff came to know from the said Soumendra Nath Kundu about the defamatory statement made by the defendant Lipi in the written statement filed in connection with Title Suit No.9 of 2012 pending before the Civil Court at Sealdah. On consideration of the statement given by the plaintiff in reply to question nos.53, 54, 55 and 56 I find that Soumendra Nath Kundu, Personal Assistant attached to the plaintiff did not disclose any thing to the plaintiff verbally, but he communicated everything through the letter marked Exhibit-P. The plaintiff has given detailed description in the evidence how Soumendra Nath Kundu came to learn about the derogatory statements made by the defendant Lipi against the plaintiff during conversation between one Utpal Chakraborty, Learned Advocate and others outside Court no.25 of the High Court at Calcutta. The said conversation between Utpal Chakraborty, Learned Advocate and others heard by Soumendra Nath Kundu are not reflected in the letter written by Soumendra Nath Kundu to the plaintiff on March 30, 2013 (Exhibit-P). Admittedly, Soumendra Nath Kundu was not examined by the plaintiff to establish before this Court what were the conversations between Utpal Chakraborty, Learned Advocate and others which was directly heard by him and as such the contention made on behalf of the plaintiff that he came to learn about the defamatory statements made by the defendant Lipi in the written statement filed in connection with Title Suit No.9 of 2012 is not supported by any credible evidence. It is pertinent to point out that the plaintiff has specifically stated in his evidence in reply to question no.54 that Soumendra Nath Kundu did not communicate anything to the plaintiff verbally with regard to the alleged defamatory statements disclosed by the defendant Lipi in the written statement filed before the Civil Court at Sealdah. Since the letter written by Soumendra Nath Kundu to the plaintiff (Exhibit-P) does not indicate about communication of defamatory allegations made by the defendant Lipi and since Soumendra Nath Kundu has not been examined

by the plaintiff as witness, I am constrained to hold that the plaintiff did not come to know about the statements made by the defendant Lipi in connection with Title Suit No.9 of 2012 from Soumendra Nath Kundu. The logical inference of my above observation is that the cause of action for filing the instant suit did not arise within the original jurisdiction of the High Court at Calcutta. The plaintiff must have come to know about the statements made by the defendant Lipi in the written statement filed in connection with Title Suit No.9 of 2012 from the copy of the written statement served on the plaintiff and the defendant Lekha in the residential address of the plaintiff at Salt Lake where both the mother-in-law of the plaintiff and the wife of the plaintiff have been residing. This issue is, thus, decided against the plaintiff.

9. Issues No.(ii), (iii) & (iv): All these issues are inter-connected and as such these are taken up together for convenience of discussion. Since both parties have adduced evidence I would like to decide these issues in spite of holding that this Court has no territorial Jurisdiction to entertain the suit.

10. The plaintiff has initiated action for libel against the defendant Lipi on the ground that the defendant Lipi has made defamatory allegations against him in paragraph 10 of the written statement filed by her in connection with Title Suit No.9 of 2012 pending before the Civil Court at Sealdah. To establish the case of libel the following ingredients must be proved by the plaintiff as laid down in Chapter12, Defamation, Privacy and Related Matters of Winfield & Jolowicz on Tort., 18th Edition, 2010, page-570, which is as follows: (i) The statement must be defamatory, (ii) It must refer to the claimant, i.e. identify him, (iii) It must be published, i.e. communicated to at least one person other than the claimant.

11. Now, I would like to scan the evidence to find out whether the plaintiff has been able to establish before the Court the above ingredients to succeed in an action of libel. One Manindra Kumar Ghosh, father-in-law of the plaintiff died on June 4, 2003 leaving behind his dwelling house situated at Premises No.25, Snuff Mills Street, PS-Belghoria, Kolkata-700056. Manindra Kumar Ghosh died leaving behind his wife - Abha Rani Ghosh, elder daughter defendant Lipi, and younger

daughter - defendant Lekha. The defendant Lipi was married to Dr. Santanu Bose in the year 1980. The defendant Lekha was married to the plaintiff in the year 1982. Manindra Kumar Ghosh was an employee of Food and Supply Department, Government of West Bengal. He purchased the dwelling house by taking loan from the Government of West Bengal, which was repaid on his retirement. It transpires from the evidence of the plaintiff that Manindra Kumar Ghosh had to take loan from provident fund at the time of marriage of his daughters and the said loan was repaid in due course. There is no dispute that Manindra Kumar Ghosh got all his retirement benefits including leave encashment, gratuity, provident fund and pension. It is also not disputed that Abha Rani Ghosh, wife of Manindra Kumar Ghosh is also getting small amount of family pension after the death of Manindra Kumar Ghosh. It is established from the evidence on record that Abha Rani Ghosh continued to live in the dwelling house purchased by her husband after the death of her husband till the year 2008. It is not disputed that Abha Rani Ghosh had undergone an operation in SSKM Hospital in Kolkata for implantation of pacemaker in the year 2008. Thereafter, Abha Rani Ghosh started living with the defendant Lekha in the house of the plaintiff. The plaintiff has adduced evidence to establish that the plaintiff is looking after his mother-in-law Abha Rani Ghosh as her elder daughter - the defendant Lipi and her husband have refused to take up maintaining the mother-in-law of the plaintiff. the responsibility of 12. Abha Rani Ghosh has instituted Title Suit No.9 of 2012 against her elder daughter - the defendant Lipi and her younger daughter - the defendant Lekha praying for declaration that her husband executed his last Will and testament on November 15, 1983 by which he bequeathed his dwelling house in her favour. The younger daughter defendant Lekha with whom Abha Rani Ghosh has been residing in the house of the plaintiff supported the case made out by Abha Rani Ghosh in the said Title Suit No.9 of 2012, whereas the elder daughter, the defendant Lipi contested the said suit by filing written statement. By proving copy of the written statement filed by the defendant Lipi in the said Title Suit No.9 of 2012 as Exhibit-I, the plaintiff has alleged that the defendant Lipi has made defamatory statements in paragraph 10 of the said written statement. It is alleged in paragraph 10 of the written statement (Exhibit-I) that the plaintiff is a person of dubious ethics who persuaded his father-in-law Manindra Kumar Ghosh to invest Rs.75,000/- in the

business of his wife (the defendant Lekha) and who also persuaded his mother-in-law to institute the said Title Suit No.99 of 2012 in order to grab the dwelling house of his father-in-law since deceased. It is further alleged in the said written statement (Exhibit-I) that the plaintiff led luxurious life and sent his children abroad for study by earning money for unaccounted sources. According to the plaintiff, the above allegations made by the defendant Lipi against the plaintiff in Title Suit No.9 of 2012 are false and the same have lowered down the reputation of the plaintiff in the estimation of his colleagues and friends. On the other hand, the defendant Lipi has reiterated in the written statement that whatever has been stated by her in paragraph 10 of written statement of Title Suit No.9 of 2012 is correct and the same can be proved by her by adducing evidence in the said suit pending before the Civil Court at Sealdah.

13. The first question for consideration of the Court is whether the allegations made by defendant Lipi in paragraph 10 of the written statement filed in connection with Title Suit No.9 of 2012 are defamatory in nature and the second question for consideration of the Court is whether the alleged defamatory statements of the defendant Lipi were published i.e. communicated to at least one person other than the plaintiff. Mr. Subhasish Sengupta, Learned Counsel for the defendant Lipi contends that the defendant Lipi is protected by doctrine of absolute privilege in the suit for defamation for statements made by her in connection with judicial proceeding. On the other hand, Mr. Sudip Deb, Learned Counsel for the plaintiff submits that the defendant Lipi has not taken the plea of absolute privilege in the written statement and as such she is debarred from taking the defence of absolute privilege in this suit for libel. The defences available to the defendant in a suit for defamation may be quoted below from Chapter-12 of Winfield and Jolowicz on Tort., 18th Edition of 2010, page-601: (i) Justification (truth), (ii) Fair comment, (iii) Privilege, which may be (a) absolute or (b) qualified and (iv) Offer of amends under the Defamation Act, 1996.

. Before deciding the two points mentioned above I would like to deal with the decisions cited by Learned Counsel representing both parties.

14. Mr. Deb has relied on the decision of the Privy Council in *Siddik Mahomed Shah V. Mt. Saran and Ors.*

. reported in AIR 1930 PC57 wherein it is held by the Privy Council that the Court cannot look into the evidence upon a plea which has never been pleaded. The defendant Lipi did not plead about absolute privilege for the allegations made by her in paragraph 10 of the written statement in Title Suit No.9 of 2012. In my view, the question whether the allegations made by a party in connection with a judicial proceeding will be covered by absolute privilege is a question of law and the same need not be pleaded in the pleading. Accordingly, I don't find any relevance of this decision in the present case. Nor do I find any relevance of *A.E.G. Carapiet V. A. Y. Derderian.* reported in AIR 1961 Cal 359, wherein the Division Bench of our High Court has held in paragraph 10 that Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all.

15. In *Digby V. Financial News Ltd.*

. reported in [1907]. 1 Law Reports 502 the plaintiff brought an action for libel for publication of an article in the newspaper of the defendant. The defendant pleaded the defence of fair comments. The plaintiff sought particulars of the defence to ascertain whether the materials supplied by the plaintiff and relied on by the defendant for writing an article in the newspaper were untrue. With the above factual matrix, it is held by the Court of appeal in England that the defence being one of fair comment and no justification having been pleaded, the plaintiff was not entitled to particulars sought for. This decision has no relevance in the facts of the present case.

16. In *E. Hulton & Co. V. Jones.* reported in [1910]. AC20 it is held by the House of Lords that in an action for libel it is no defence to show that the defendant did not intend to defame the plaintiff, if reasonable people would think the language to be defamatory of the plaintiff. While I fully agree with this proposition of law, I would

like to point out that in the instant case the defendant Lipi has reiterated that the statement made by her in paragraph 10 of the written statement filed in connection with Title Suit No.9 of 2012 are correct and she would like to prove the same by adducing the evidence before the said Court. As a result, the question does not arise about the plea that the defendant did not intend to defame the plaintiff and as such this decision has no relevance in the facts of the present case.

17. In *B. M. Thimmaiah V. Smt. T. M. Rukimini*. (RFA No.1303 of 2005 decided on September 10, 2012 by Learned Single Judge of Karnataka High Court) the defendant did not take the plea that the allegations were true, whereas in the instant case the defendant Lipi has reiterated that the allegations made against the plaintiff are true and she will be able to prove the same before the concerned Court by adducing evidence. Moreover, in this unreported case the specific stand of the defendant is that the defendant never intended to make any allegation imputing doubt regarding moral character of the plaintiff, whereas in the instant case the defendant Lipi has tried to justify the allegations made against the plaintiff in the context of the pleading of the plaintiff in the Title Suit No.9 of 2012. That apart, the plea of absolute privilege claimed by the defendant of the present case is absent from the reported case. So, the ratio of the unreported case is not applicable in the facts of the present case.

18. In *Sukra Mahto V. Basudeo Kumar Mahto and Anr.*

. reported in AIR 1971 SC1567 the Supreme Court dealt with criminal defamation where the accused took the defence that the imputation on the character of the complainant was made in good faith for the protection of interest of the accused person and as such the said imputation is excluded from defamation made under 9th Exception to Section 499 of Indian Penal Code. In the instant case, the defendant Lipi has claimed absolute privilege for making statement in paragraph 10 of the written statement filed by her in connection with Title Suit No.9 of 2012 pending before the Civil Court at Sealdah and as such the facts of the present case are clearly distinguishable from the facts of the reported case. So, the ratio of the report is not applicable in the facts of the present case. In *Indian Express Newspapers (Bombay) Pvt. Ltd. V. Jagmohan Mundhara and Anr.*

. reported in AIR1985 Bom 229, the defendant prepared a film by name Kamla. based on the newspaper report of a journalist who purchased a woman by name kamla. from Madhya Pradesh to highlight the flesh trade flourishing in some parts of the country. The plea taken by the defendant is that the defendant did not intend to defame the plaintiff. The facts of this case are clearly distinguishable from the facts of the present case where the defendant Lipi has taken the defence of absolute privilege for disclosing the statement in paragraph 10 of the written statement in connection with Title Suit No.9 of 2012. So, the ratio of the reported case cannot be made applicable in the facts of the present case.

19. In P. C. Purushothama Reddiar V S. Perumal. reported in AIR 1972 SC608the Supreme Court dealt with the admissibility of the report submitted by the police officers in discharge of official duty. The contention raised against admissibility of those documents was turned down by the Supreme Court by holding that the said reports are prepared by the public officers in discharge of official duty and the same are relevant and admissible under Section 35 of the Evidence Act without examining those police officers . This report has no relevance in deciding the issue involved in the present case. In Hamnath Malhotra and Anr. V. Dhanoo Devi Agarwal. reported in AIR1975 Cal 98 the Division Bench of our High Court held in paragraph 12 of the judgement that where a particular document is admitted in evidence without objection by the other side, the contents of such document though may not be conclusive evidence are also admitted. I have already considered the document marked Exhibit-P which is a letter written by one Soumendra Nath Kundu to the plaintiff by following this decision.

20. Mr. Sengupta has relied on the decisions reported in 198(2013)DLT35 AIR1918 All 69, AIR1985 Ker 233 and 2010(1) CHN191in support of his contention that the statements made by the defendant Lipi in paragraph 10 of the written statement in connection with Title Suit No.9 of 2012 are covered by absolute privilege and as such the suit for defamation is not maintainable against any allegations made by her in the said written statement. In Brig. B. C. Rana (Retd.) V. Ms. Seema Katoch and Ors.

. reported in 198(2013)DLT35the Delhi High Court dealt with the suit for defamation based upon the defamatory statements made by the defendants in affidavit filed before the Registrar of Co-operative Society, which is a quasi-judicial authority. The defendants prayed for rejection of the plaint under Order 7 Rule 11(d) of Code of Civil Procedure on the ground that the allegations made in the affidavit are immune from action for defamation, as they are covered under the defence of absolute privilege. Relying on the decision of Patna High Court in Pandey Surinder Nath Singh V. Bageshwari Prasad. reported in AIR1961 Pat 164, it is held in paragraph 36 of the judgment that the privilege attaches not merely to proceedings at the trial, but also to proceedings which are essentially steps in judicial proceedings, including statements in pleadings.

. The ultimate conclusion of Learned Single Judge of Delhi High Court is that the statements made in the affidavit filed by the defendants in proceedings before the Registrar of Co-operative Societies having all the trappings of the quasi-judicial authority are absolutely privileged and the same cannot be made the basis for any action for defamation and as such the plaint is rejected under Order 7 Rule 11(d) of Code of Civil Procedure.

21. In Chunni Lal V. Narsingh Das. reported in AIR1989 All 69, the Full Bench of Allahabad High Court held that the defamatory words used in connection with the judicial proceedings are not actionable on the ground of absolute privilege and as such the suit for damages for defamation instituted by the plaintiff was dismissed. In K. Daniel V. T. Hymabhathy Amma. reported in AIR1985 Ker 233 it is observed by Kerala High Court in paragraph 8 and 9 of the judgement that the English Courts have reiterated the view during last four hundred years that the statements made by Judges, Juries, counsel, parties and witnesses in the course of judicial proceedings are not actionable in civil law for defamation as the occasion is absolutely privileged. It is further held in paragraph 13 of the said judgement that the English Common Law relating to absolute privilege enjoyed by Judges, advocates, attorneys, witnesses and parties in regard to words spoken or uttered during the course of a judicial proceeding is applicable in relation to a civil suit filed for damages for defamation. The reasons for granting absolute privilege to the statements made in the course of judicial proceedings are laid down in paragraph

11 of the judgement which are as follows: 11. It is imperative that Judges, counsel, parties and witnesses participating in a judicial proceeding must be able to conduct themselves without any apprehension of being called upon to answer a claim for damages for defamation. They must be able to act uninfluenced by any such fear. Freedom of speech on such occasions has to be totally safeguarded. Hence it is necessary to protect the maker of statements on such occasions. The privilege arises on account of privilege attached to the occasion and not to the individual. It is possible that sometimes counsel or the parties or witnesses may take advantage of the occasion and indulge in false or malicious statement which has the effect of bringing down the reputation of some other person; that would certainly be mischievous. But to say that statement would be privileged only in the absence of malice would put these persons in considerable strain and apprehension on such occasions. Basis of privilege is not absence of malice or the truth of statement or the intention of the maker but public policy. Any restriction on privilege during the occasion would create constraints in the process of administration of justice.

. In this reported case the respondent/defendant attempted to explain the background of the prior relationship between the parties and to establish that the appellant/plaintiff had a strong motive to put forward a false money claim to harass the respondent/defendant in the course of cross-examination during a previous criminal proceedings. By dismissing the second appeal it is held by the Kerala High Court in paragraph 17 of the judgement that in the light of these materials it cannot be said that the impugned statements were absolutely irrelevant or were made de hors the matter in hand or had no reference to the enquiry in that case. The statements were made on an occasion protected by the rule of absolute privilege.

22. In Karma Lakelands Pvt. Ltd. V. Ravi Goel and Ors.

. reported in 2010(1) CHN191 Learned Single Judge of this Court revoked the leave granted under clause 12 of the Letters Patent and the plaint was directed to be returned to the plaintiff for filing the same before the appropriate forum. I dont

find any relevance of this report in deciding the issues involved in the present suit where the evidence is adduced by both parties without praying for deciding the preliminary issue on the territorial jurisdiction of this Court.

23. By keeping in mind the above decisions, let us scan the evidence on record to find out whether the allegations made by the defendant Lipi against the plaintiff in paragraph 10 of the written statement filed in connection with Title Suit No.9 of 2012 pending before the Civil Court at Sealdah are defamatory and if so whether the defendant Lipi is protected by absolute privilege in any action for libel by the plaintiff. It transpires from the evidence of the plaintiff that the plaintiff has taken up the responsibility to look after his mother-in-law after implantation of pacemaker of the mother-in-law in SSKM Hospital in the year 2008. It further transpires from the evidence of the plaintiff that his father-in-law executed one Will by which the dwelling house and other properties were bequeathed to his wife, but the said Will was not probated as both the daughters of the plaintiff agreed to lend their signatures for grant of probate of the Will at any material point of time. It also transpires from the evidence of the plaintiff that the said unregistered Will was lost and the defendant Lipi did not agree for selling out the dwelling house of her father for procuring money for the treatment of mother-in-law of the plaintiff. The mother-in-law of the plaintiff sent two letters to her two daughters requesting them to give consent for selling out the dwelling house for procuring money for her medical treatment. The letter sent to the defendant Lekha who happens to be the wife of the plaintiff and with whom the mother-in-law of the plaintiff has been residing is marked Exhibit-3. I fail to understand the logic behind writing a letter by the mother to her daughter when both of them are residing in the same house and both of them are in good relation with each other. In my view, this letter is written by the mother-in-law of the plaintiff in favour of the defendant Lekha (Exhibit-3) in order to create documentary evidence to be used in judicial proceeding. However, the defendant Lipi has given reply to the letter sent by her mother and the said reply is marked Exhibit-5. It appears from the said reply marked Exhibit-5 that the said defendant tried to contact with her mother in every possible way and she was completely in the dark about the deterioration of the financial condition of her mother in spite of having sound financial support of her father during his life time. The defendant Lipi has stated in the said letter (Exhibit-5) that she was worried

after knowing the present financial condition of her mother but she wanted to look into all the papers of his father to understand why the financial condition of her mother deteriorated to such an extent that her mother is now thinking to sell out the dwelling house. After receiving this letter from the defendant Lekha on October 29, 2011, the mother-in-law of the plaintiff instituted Title Suit No.9 of 2012 for declaration that her husband executed Will in her favour on November 15, 1983 by which he bequeathed the dwelling house to his wife, in spite of the fact that the said Will is lost and probate of the said Will was not obtained for about nine years, though the financial condition of the mother-in-law of the plaintiff deteriorated after the death of her husband in 2003.

24. The defendant Lipi made the statement in paragraph 10 of the written statement in Title Suit No.9 of 2012 in connection with the pleading contained in paragraph 5-6 of the plaint of Title Suit No.9 of 2012. It appears from paragraph 5-6 of the plaint (Exhibit-6) of Title Suit No.9 of 2012 that the mother-in-law of the plaintiff has ventilated his grievance for not giving consent by the defendant Lipi for the purpose of transferring the dwelling house and for the declaration in respect of the Will which was lost and which was not probated from the date of death of the father-in-law of the plaintiff on June 4, 2003. The plaintiff has been residing with both defendant Lekha and his mother-in-law - Abha Rani Ghosh in the house of the plaintiff at Salt Lake, Kolkata. The defendant Lipi has not denied allegations made by her against the plaintiff in paragraph 10 of the written statement of Title Suit No.9 of 2012. On the contrary, the defendant Lipi has reiterated that the statements made by her in the written statement of Title Suit No.9 of 2012 are correct and that she will prove the same by adducing the evidence before the Court where the said suit is pending.

25. It is elicited from the evidence of the defendant Lipi that her father was an employee of Department of Food and Supply, Government of West Bengal and he purchased the dwelling house by taking loan from the Government. The copy of service book of the father of the defendant Lipi produced by the plaintiff (Exhibit-U) indicates that the father of the defendant Lipi used to draw Basic Pay of Rs.910 in the year 1983 in the Pay Scale of Rs.425-Rs.1030. This Court can take judicial notice of the fact that an officer of Government of West Bengal belonging to

Group-A Services used to draw Basic Pay of Rs.660 at the time of joining in the service in the year 1983. It is further elicited from the evidence of the defendant Lipi that her father got the retirement benefits like pension, encashment of provident fund, gratuity, leave encashment, The defendant Lipi has stated in evidence that her father had mediclaim policy and he was diagnosed as cancer before three days of his death. It transpires from the evidence of the defendant Lipi that her mother was taken away from SSKM Hospital by the plaintiff and his wife - the defendant Lekha without giving any intimation to the defendant Lipi and thereby she was surprised when she did not find her mother in the bed allotted to her in the hospital when she visited the hospital. The defendant Lipi has also stated in evidence that the plaintiff used to look after the treatment of her mother when she was admitted in SSKM Hospital for implantation of pacemaker as the husband of the defendant Lipi was away from the station and the plaintiff got her discharged from the hospital without giving any intimation to the defendant Lipi. The plaintiff has tried to prove by adducing evidence that he had to bear the expenditure incurred for purchase of the pacemaker for his mother-in-law, though documentary evidence indicates that the plaintiff paid Rs.70,000/- out of Rs.1,05,000/- spent for purchase of pacemaker for the mother-in-law of the plaintiff. The defendant Lipi has stated in evidence that she was not allowed to meet her mother in the house of the plaintiff. The specific evidence of the defendant Lipi is that her father invested Rs.75,000/- in the business of the wife of the plaintiff on persuasion of the plaintiff. The defendant Lipi adduced evidence that her father had sound financial condition during his life time and the mother of the defendant Lipi should not suffer from financial stringency for selling out the dwelling house wherein the defendant Lipi has 1/3 share.

26. The specific evidence of the defendant Lipi is that his father invested Rs.75,000/- in the business of the wife of the plaintiff, which is denied by the plaintiff. The plaintiff has specialised in pathology and was a teacher of pathology in various medical colleges. The defendant Lekha along with her son and daughter are running pathological centre under name and style of M/s. Arika Diagnostic Pvt. Ltd in the house of the plaintiff at Salt Lake, Kolkata. It is elicited from the evidence of the plaintiff that Arika Diagnostic Pvt. Ltd. was started in the year 2010-2011 and the wife of the plaintiff was a partner of pathological laboratory under name

and style of Calcutta Research Centre from the year 1990. The affidavit (Exhibit-2) annexed to the plaint indicates that the wife of the plaintiff was a partner of M/s. Calcutta Research Centre even on January 29, 2009. It goes without saying that any person will have to invest money to become a partner of a pathological Centre. The plaintiff has admitted in evidence that his wife was not a working lady, but a housewife. However, the plaintiff has stated during cross-examination that his wife was doing private tuition while the plaintiff was posted at North Bengal in the year 1987. The plaintiff could have produced the passbook or the statement of bank account of his wife to show that his wife has earned substantial amount of money by private tuition for investment of the said money in the business to become partner of M/s. Calcutta Research Centre in the year 1990. The housewife having bachelor degree in science cannot suddenly earn substantial amount of money by making private tuition for investment of the said money in the business to become a partner of a pathological centre like M/s. Calcutta Research Centre. With the above background facts the statement made by the defendant Lipi that the plaintiff persuaded the father of the said defendant to invest Rs.75,000/- in the business of the wife of the plaintiff cannot be branded as out of context or irrelevant. The other allegations are made by the defendant Lipi against the present plaintiff in the written statement of Title Suit No.9 of 2012 in the context of deteriorating financial condition of the mother, while the mother has been residing with the plaintiff from the year 2008 and the mother enjoys family pension and has inherited the movable properties of her husband including retirement benefits, and as such the said allegations are not made de hors of the context and cannot be branded as irrelevant in the context of the pleading of the plaintiff of Title Suit No.9 of 2012.

27. On close scrutiny of the entire statement made by the defendant Lipi in paragraph 10 of the written statement of Title Suit No.9 of 2012 in the background of the pleading made by the plaintiff in the said Title Suit and in the background of relationship between the parties from the year 2008 onwards, I cannot persuade myself to hold that the impugned statements made by the defendant Lipi in paragraph 10 of the written statement of Title Suit No.9 of 2012 are absolutely irrelevant or the same are made de hors the context of the case in hand and have no reference to the issues involved in the said case. By following the proposition of

law laid down by the Kerala High Court in K. Daniel V. T. Hymabhathy Amma (supra) and the decision of Delhi High Court in Brig. B. C. Rana (Retd.) V. Ms. Seema Katoch and Ors.

. (supra) and Full Bench decision of Allahabad High Court in Chunni Lal V. Narsingh Das. (supra) I would like to hold that the defendant Lipi is entitled to enjoy absolute privilege for the statement made by her in the judicial proceeding of Title Suit No.9 of 2012.

28. In view of my above findings, I can safely hold that the plaintiff has failed to prove that the allegation made by the defendant Lipi in paragraph 10 of the written statement in Title Suit No.9 of 2012 amount to libel. The plaintiff is not entitled to get any damage as he failed to establish that the statements made by the defendant Lipi in paragraph 10 of the written statement of Title Suit No.9 of 2012 are defamatory in nature. Nor has it been established from the evidence on record that the statements made by the defendant Lipi were communicated to any one other than the plaintiff. The alleged defamatory statements made by the defendant Lipi in paragraph 10 of the written statement filed in connection with Title Suit No.9 of 2012 pending before the Civil Court at Sealdah are not actionable on the ground of absolute privilege and as such the present suit must fail. All the issues no.(ii), (iii) & (iv) are, thus, decided against the plaintiff.

29. On consideration of the pleadings and evidence of both parties and the relationship between the parties and the conduct of the plaintiff, I am of the view that the plaintiff has instituted this suit by fabricating the false cause of action in order to create pressure on his sister-in-law, the defendant Lipi. plaintiff. So, I am inclined to impose cost on the The cost is assessed at 2,000 G.M.s. The suit is, thus, dismissed with costs. The urgent xerox certified copy of the judgment and order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities (R. K. Bag, J.)

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