
(1986) 03 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Second Appeal No. 260 of 1974

Bhagwan Dass and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1986) 1 WLN 574

Hon'ble Judges : S.M. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sobhag Mal Jain, J.—This appeal has been filed by the plaintiffs against the judgment and decree dated November 14, 1973 of the Civil Judge, Balotra, dismissing the plaintiffs' suit by allowing the appeal filed by the State of Rajasthan defendant No. 1 against the judgment dated 5th August, 1972 of the Additional Munsif Magistrate, Barmer, who had decreed the suit.

2. The aforesaid suit was filed by the present appellants in the Court of Munsif, Barmer, for the recovery of an amount of Rs. 1,616.98 p. against the State of Rajasthan and four others, namely,—(1) Provincial President, Bharat Sewak Samaj, Jaipur, (2) Shri Devi Shanker Tiwari, Former Provincial President, Bharat Sewak Samaj, (3) Shri Naval, Kishore Badgoti, Former Provincial Organisation Secretary, Bharat Sewak Samaj and (4) Shri Purushottam Das Kudal, Advocate, President, Provincial Bharat Sewak Samaj, Ajmer. The averments made in the plaint were that a Lok Karya Kshetra of the Bharat Sewak Samaj was established at Choutan on March 26, 1964. A sum of Rs. 4,116.98 was sanctioned by the Government for being used for the said Karya Kshetra, Chouhtan for the year 1966-67. Out of this amount, a sum of Rs. 2,5000/- only was received by the Bharat Sewak Samaj, Chouhtan, on different dates but a sum of Rs. 1,616.98p. remained outstanding. Several times letters were written to the Government to make this payment, but no reply was received and the said amount remained

with the Government as deposit for the Lok Karya Kshetra, Bharat Sewak Samaj, Chouhtan. The plaintiff No. 1 described himself as the convenor of the Lok Karya Kshetra, Chouhtan and plaintiff No. 2 as its Principal Assistant. A Notice u/s 80, CPC, was sent to the Government on January 22, 1971, but as no payment was made by the Government, the aforesaid suit was filed by the plaintiffs on March 23, 1971. It was prayed that a decree for Rs. 1,616.98p. may be passed against the State of Rajasthan and in the alternative, if the said amount had been received by Shri Devi Shanker Tiwari, defendant No. 3 or Shri Nawal Kishore Bargouti, defendant No. 4, the decree for the said amount of Rs. 1,616.98p. may be passed against those defendants.

3. Defendants No. 1 and 4 were proceeded ex-parte. Defendants No. 2, 3 and 5 filed their written statement and denied their liability to pay any amount and pleaded that they had no personal liability in the matter. They further submitted that the suit was barred by limitation.

4. The suit was tried by the Additional Munsif, Barmer, who by the judgment, dated the 5th August, 1972, decreed the plaintiffs' suit against the State of Rajasthan defendant No. 1. The suit was however, dismissed against the defendants No. 2 to 5.

5. On appeal filed by the State of Rajasthan, the Civil Judge, Balotra, by the judgment dated the 14th November, 1973 set aside the judgment and decree passed by the Additional Munsif, Banner and dismissed the plaintiffs' suit. The learned Civil Judge came to the conclusion that the conditions 1 to 6 of Ex. A/1 were not complied with and, therefore, the plaintiffs were not entitled to receive the said amount. It was further held that the amount was sanctioned as gratuitous act and it did not, therefore, create any legal right in the; plaintiffs. The plaintiffs failed to prove that they had a legal right to recover the amount and, therefore, the suit was liable to be dismissed.

6. Aggrieved by this, the plaintiffs have filed the present second appeal in this Court. Shri Singhvi, learned Counsel for the appellants, has contended that defendant No. 2 failed to file a written statement and ex-parte proceedings were taken against it. He has further urged that it was established from the record that the amount of Rs. 4,116.98 was sanctioned by the Government for the Lok Karya Kshetra, Chouhtan. Out of this a sum of Rs. 2500/- only was paid and the plaintiffs were entitled to receive the remaining amount which was not paid. The Government Advocate, on the other hand, has submitted that it was for the plaintiffs to prove affirmatively that there was a privity of contract between the plaintiffs and the Government, which entitled the plaintiffs to recover the amount as claimed in the suit. He has further submitted that the mere omission to file a written statement did not amount to an admission of liability by the Government. The doctrine of implied admission by non-traverse is not attracted. The plaintiffs led evidence, but have failed to establish that they had a legal right to recover the amount from the Government. The Government Advocate has supported the reasons given by the learned Civil Judge, dismissing the plaintiffs suit.

7. There is considerable force in the arguments of the learned Government Advocate. The burden to prove that the Government had incurred a liability to pay the entire amount of Rs. 4116.98 to the Lok Karya Kshetra, Bharat Sewak Samaj, Chouthan was on the plaintiffs. True, no written statement by the State Government was filed in the case. The plaintiffs have, however, examined PW 1 Birdhi Chand to prove their case. I have been taken through the statement of this witness by the learned Counsel for the appellants. The evidence produced by the plaintiffs does not establish the fact that the Government incurred a liability to pay this amount to the plaintiffs. The plaintiffs have not produced any order or communication of the Government showing that the amount of Rs. 4116.98 was sanctioned by it for the Lok Karya Kshetra, Chouhtan. The counsel for the appellants has referred to the document Ex. A/1, which is a letter dated 31st March, 1968 sent by the Pradesh Sangthan Mantri Rajasthan Pradesh Bharat Sewak Samaj to Shri Birdhi Chand Shashtri Lok Karya Kshetra, District Banswara. After going through this document, I am unable to agree with the submission of the learned Counsel that this document in any way creates any liability of the Government to pay the amount to the plaintiffs. There is complete absence of evidence to prove that there was any privity of contract between the Government and the plaintiffs and further, that the Government was under a legal obligation to pay the amount of Rs. 4116.98 to the plaintiffs. In this view of the matter, I affirm the judgment of the learned Civil Judge, dismissing the plaintiff's suit.

8. The result is that the appeal is dismissed with costs.