

(1984) 12 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Second Appeal No. 21 of 1973

Chander Raj

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 03-12-1984

Acts Referred:

Citation : (1984) WLN 453

Hon'ble Judges : S.N. Bhargava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Bhargava, J.—This is a second appeal against the judgment and decree passed by Additional District Judge, No. 2, Jodhpur confirming the decree passed by the Additional Civil Judge, Jodhpur and dismissing the suit of the plaintiff.

2. The plaintiff filed present suit against the defendants for the recovery of a sum of Rs. 2,300/-. The plaintiff took on lease Kharda mine and Bambolai mine in the Mining department on January 14, 1966 and paid a sum of Rs. 500/- as security for each mine totaling to Rs. 1,000/- and further paid a sum of Rs. 493.60 and Rs. 493.56 as dead-rent for both the mines. The plaintiff has alleged that when he started the work at the mines, the Revenue officers restrained him at the Kharda mine because it involved risk and damage to the Kharda Bandh and employees of Jodhpur His Highness restrained the plaintiff from working on the mines as the land belonged to His Highness being his personal property. The plaintiff met the Collector and Tehsidar who gave him certificate on October 29, 1966 which runs as under:

It is certified that the Mining Lease granted to Shri Chander Raj Singhvi in village Bhambholi and village Kharda, was not given possession because the village Bhambholi belongs to H.H. Jodhpur a personal property. The possession in Kharda was not given because it was near Kharda dam boundary and the working would have been dangerous to the Dam.

Therefore, the plaintiff filed the present suit for the refund of the security its well as dead-rent. The defendants in their written statement stated that the land of Bhamboli mine belonged to His Highnesses or that the plaintiff was allowed to work on the Kharda mines. It further pleaded that Tehsildar was not competent to issue any certificate like Ex. 2., as the land belong to the Mining Department. It however took a plea that the plaintiff has surrendered the two leases which was accepted by the department therefore, plaintiff was not entitled to refund of any amount. Following issue were framed:

1. Whether after taking the contract of Kharda and Bambolai mines, the revenue authorities and the employees of His Highnesses restrained the plaintiff, as given in para No. 3 of the Plaint?
2. Whether the contract given by the defendants was beyond the powers and authority?
3. Whether the notice given by the plaintiff was defective and hence the suit is not maintainable?
4. Whether the plaintiff on 17-6-66 served a surrender letter for both the leases and if so what would be its effect on the suit?
5. Relief.

3. The plaintiff examined himself and the defendant did not examine any witness but only produced certain documents including a letter dated 5-2-1967 addressed by the Mining Engineer, Jodhpur to Shri Kailash Singhvi. In reply to his letter dated January 21, 1967 regarding grant of mining lease near village Bambolai. It has been stated in the letter that the area false in the personal property of High Highness and as such you may please produce "No objection Certificate" from His Highness and the other document was a order passed by the Director, Mines dated August 2, 1967 rejecting the application of Shri Chander Raj Singhvi, appellant under Rule 8 for the reasons that the proposed land belongs to the Maharaja Jodhpur being included as his personal property, However, the trial court in his brief judgment has found that plaintiff was not allowed to work on the Kharda mine but on the Bhambolai mine he had taken out 80 tonnes of stone and thereafter the employees of His Highness did not allow him to work from that mine. Issue No. 2 was also decided against the plaintiff. Issue No. 3 was decided against the defendant. While discussing issue No. 4 it was observed that since the plaintiff had surrendered which was accepted by the department on February 15, 1967 the plaintiff was not entitled to any refund as prayed in the plaint. The plaintiff preferred an appeal and the learned Additional District Judge No. 2, Jodhpur also discussed the appeal and confirmed the judgment of the learned Trial Court. It is against this judgment that the present appeal has been preferred.

4. Learned Counsel for the appellant has vehemently submitted that the learned Additional District Judge No. 2, Jodhpur seriously erred in not relying on Ex 2, a

certificate issued by the Tehsildar on the ground that it was not original but only a carbon copy, and the plaintiff has not proved this carbon copy. I have looked into the original of Ex 2 and I find that Ex.2 is signed by Tehsildar with a seal under his signatures. Though the body of the document seems to be a carbon copy, therefore, I am of the view that learned Additional District Judge No. 2, Jodhpur clearly erred in not placing reliance on this document Ex.2, therefore, I have myself looked into the pleadings and evidence adduced by the parties. Learned Counsel ("or the appellant further pleaded that in view of the fact that he was not allowed to work on Kharda mine and that the land of Bhambolai mine did not belong to the State, but was the personal property of His Highness, Jodhpur and thereafter, the State was not competent to grant any lease and even if the plaintiff had taken out 80 tonnes of stone from Bhambolai mine, the State could not have forfeited the security as well as the dead rent.

5. On the other hand learned Counsel for the respondent has stated that this being a second appeal, this Court should not interfere and separate the judgment of both the courts below.

6. As I have already observed that the learned Additional District Judge No. 2. Jodhpur erred in not taking into consideration Ex.2 while deciding the case, I think it is in the interest of justice to reconsider the whole matter. It is not disputed that the appellant was not allowed to work on Kharda mines, and therefore, I see no reason as to why the dead-rent as well as the security deposited by him should not be refunded to him. Similarly for the Bhambolai mines as well in view of the document produced by the defendants themselves, it cannot be denied that the land of Bhambolai mine belongs to His Highness of Jodhpur and, therefore, the State had no jurisdiction, right or interest, to give any mining lease towards that land. If the appellant had taken out 80 tonnes of stone from that mine, the matter is between the His Highness and the appellant, and the defendants cannot claim anything on that account, if the appellant was not able to work on these mine. Even if it is believed that he had surrendered himself, his claim for refund of the earnest money and dead-rent cannot be rejected. In view of this matter I am inclined to accept this appeal and set aside the judgment of the two courts below.

7. As a result, this appeal is allowed, judgments of the two courts are set aside and the plaintiff's suit for a sum of Rs. 2,300/- is decreed with costs throughout. The plaintiff will be further entitled to 6% interest from the date of suit till realisation.