
(2019) 09 SHI CK 0152

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 230 Of 2008

Himachal Pradesh State Forest Corporation Limited

APPELLANT

Vs

Kuldeep Singh

RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:

Citation : (2019) 09 SHI CK 0152

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Rajesh Verma, Raghunandan Chaudhary

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this appeal, appellant-Corporation has challenged the judgment and decree passed by the Court of learned Civil Judge (Sr. Divn.), Kangra at Dharamshala, District Kangra, HP, in Civil Suit No. 146 of 2001, decided on 02.09.2006, vide which, learned Trial Court dismissed the suit filed by the present appellant for recovery of /-against the present respondent, as also against the judgment and decree passed by the Court of learned District Judge, Kangra at Dharmshala, in Civil Appeal No. 144-D/XIII/2006, dated 17.01.2008, whereby learned Appellate Court while dismissing the appeal filed by the appellant, upheld the judgment and decree passed by the learned trial Court.

2. Brief facts necessary for adjudication of the present appeal are that appellant-Corporation filed a suit for recovery of Rs. 58,433/- alongwith interest against the present respondent/defendant. The case of the plaintiff was that forest Corporation through its Divisional Manager, Forest Working Division, Dharamshala, invited tenders of rates per quintal for resin extraction work and delivery thereof at specified roadside depots in respect of resin blazes pertaining to Dharamshala Forest Working Division of the plaintiff-Corporation. Lot No. 13-R/97/Palampur was also included in the tenders. Defendant offered rate of

Rs.421/- per quintal for the said lot. The bid of the defendant was accepted. Thereafter, an agreement was entered into between the plaintiff and the defendant qua the said lot on 10.04.1997. As per plaintiff, in terms of the conditions so incorporated in the said agreement, defendant- Labour Supply Mate was allotted 2500 blazes in lot No. 4-R/98/Palampur, for the purpose of extraction of resin. Defendant was required to extract 100 quintals of resin. It was agreed between the parties that if defendant failed to extract 100 quintals yield from the lot, then for shortfall, defendant shall have to compensate the Corporation @ 3100 per quintal. As per plaintiff, the work of extraction of resin which was carried out by the defendant was not satisfactory and post receipt of "Sakki Report" it was found that yield extracted by the defendant was 25.52 quintals less than the target fixed. Notices were served upon the defendant on 20.11.1999 and 17.2.2000 to make the loss good but as the same was not done by the defendant, suit stood filed by the plaintiff for recovery of an amount as per details given in the plaint.

3. The suit was resisted by the defendant inter alia on the ground that no agreement whatsoever, as alleged by the plaintiff, was entered into between the parties with regard to the lot in question. According to the defendant, his signatures were obtained by the officers of the plaintiff on blank papers. However, neither any agreement was entered into between the parties nor there were any conditions contemplated between the parties as were alleged in the plaint, nor the defendant was liable to pay any amount on account of alleged shortfall of extraction of resin yield to the plaintiff-Corporation. It was further the stand of the defendant that for the purpose of extraction of the resin, the defendant was only to provide the labour whereas other things including the tools and tin etc were to be provided by the Lot Incharge of the plaintiff-Corporation and in the lot in hand, the concerned Lot Incharge failed to provide requisite things well in time during the tapping season and same duly stood reported to the higher authorities by the defendant. According to the defendant, shortfall, if any, was on account of said omissions on the part of the plaintiff-Corporation and further for the reasons that during the tapping season, no work could be done as the entire area got engulfed in fire due to summer season and on account of heavy fire, the extraction work was disturbed. This was followed by rainy season during which also extraction work could not be carried out. If there was any shortfall on account of said natural calamities, then defendant was not responsible for the same. Defendant also denied that plaintiff was entitled for recovery @ 3100/- per quintal for the alleged shortfall.

Receipt of notice from the plaintiff was also denied by the defendant.

4. On the basis of pleadings of the parties, learned Trial Court framed the following issues:-

"1. Whether the plaintiff is entitled for the recovery of suit amount from the defendant? OPP

2. Whether the suit is not maintainable? OPD

3. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD

4. Whether the plaintiff has not come to the court with clean hands? OPD

5. Whether the plaintiff has got no cause of action? OPD

6. Relief."

5. On the basis of pleadings and evidence led by the parties in support of their respective cases, the Issues so framed were answered by the learned Trial Court as under:-

"Issue No.1 : No.

Issue No. 2 : No.

Issue No. 3 : Yes.

Issue No.4 : Yes.

Issue No. 5 : No.

Issue No. 6 : Suit dismissed with costs as per operative portion of this judgment."

6. Learned Trial Court dismissed the suit of the plaintiff-Corporation inter alia by holding that purported agreement entered into between the plaintiff and the respondent-Corporation , i.e. Ext. PW1/A, could not be taken into consideration as the same was not proved on record by the plaintiff-Corporation, in accordance with law. Learned Trial Court held that neither the scribe of the agreement nor any witness, in whose presence, said agreement was entered into was examined by the plaintiff-Corporation to prove the fact that agreement Ext. PW1/A was, in fact, an agreement entered into between the defendant and the plaintiff-Corporation. Learned Trial Court further held that even it is to be presumed that said agreement was entered into between the parties, yet, plaintiff was not entitled for any recovery because the "Sakki Report" i.e. report on the basis of which it could be deciphered that there was shortfall on account of omissions of the defendant, was never produced in the Court by the plaintiff-Corporation. Learned Court further held that as the plaintiff had not approached the Court with clean hands as it had failed to produce on record the relevant material, the plaintiff in fact was estopped even from filing the suit. On these bases, learned Trial Court dismissed the suit.

7. In appeal, findings so returned by the learned Trial Court were upheld by the learned Appellate Court. It held that plaintiff-Corporation had set up a case that defendant had executed agreement Ext. PW1/A in its favour. To prove the execution of the said document, plaintiff-Corporation examined PW1 Shri D.R. Kaushal, retired Divisional Manager of the forest Corporation. In his cross examination, this witness admitted that said agreement was neither executed in

his presence nor the same bear his signatures. Learned Appellate Court observed that no witness to agreement Ext. PW1/A was produced and examined to prove the execution of the said agreement by the plaintiff-Corporation. It also observed that neither the original agreement was produced in the Court nor a photocopy of agreement Ext. PW1/A was proved from the original. Official, who executed said agreement on behalf of the Corporation, was not examined by the plaintiff. No evidence was led on behalf of the Corporation as to why the original of agreement Ext. PW1/A was not available with the plaintiff-Corporation or that the same was in fact lost. Learned Appellate Court also observed that no application even for adducing secondary evidence was filed on behalf of the Corporation and no evidence was led to demonstrate that either the official, who had executed the said agreement was/were not alive or their presence could not be procured in spite of exercise of due diligence by the Corporation. On these bases, learned Appellate Court held that only option with the Court was to hold that plaintiff-Corporation had failed to prove valid execution of agreement Ext. PW1/A. Learned Appellate Court further held that in the absence of valid proof of execution of the said agreement, the corporation had no right to enforce the same against the defendant and findings which stood returned by learned Trial Court with regard to agreement Ext. PW1/A called for no interference. Learned Appellate Court also held that plaintiff-Corporation had not led any evidence to prove the fact that quantity of 100 quintals of resin could have been extracted from 2500 blazes but for the default of the defendant due to his negligence. It held that in the absence of proof of any such default or negligence on the part of the defendant, it could not be held that defendant was liable to pay any amount to the Corporation on account of loss or damages. Learned Appellate Court thus while concurring with the findings returned by the learned Trial Court dismissed the appeal.

8. Feeling aggrieved, the appellant-Corporation has filed the present appeal, which was admitted on 27.03.2009, on the following substantial questions of law:-

"1. Whether both the Courts below have misread and mis-appreciated the pleadings and evidence, particularly written statement and statement of defendant as DW- 1, whereby execution of agreement is admitted unequivocally, thereby rendering the judgment and decree(s) passed against law?

2. Whether document exhibit PW-1/A (agreement) is duly proved on the record of the trial court but has been misconstrued by the courts below?"

9. I have heard learned Counsel for the parties and also gone through the judgments and decrees passed by the learned Courts below as well as the record of the case.

10. I will answer both substantial questions of law separately.

11. Substantial question of law No. 1:- Whether both the Courts below have misread and mis-appreciated the pleadings and evidence, particularly written

statement and statement of defendant as DW-1, whereby execution of agreement is admitted unequivocally, thereby rendering the judgment and decree(s) passed against law?

A perusal of the deposition of DW1 before the learned Trial Court demonstrates that he stated in the witness box that he used to work as Labour Supply Mate with the Forest Corporation and that he had supplied labour with regard to Lot No. 13-R/97/Palampur. He stated in the Court that for the purpose of extraction of resin, marking of the trees was to be done by the Department and "Tin, Kupi, Pati and Tejab" were also to be supplied by the Corporation. Transportation of the extracted resin from one place to other was also to be done by the Corporation. He further stated that no target qua extraction of resin was given to him by the Corporation. In his cross examination, though this witness stated that he had seen agreement Ext. PW1/A, on each page of which, his signatures were there, however, he denied that when he appended his signatures on the papers, the said agreement was already filled up. In my considered view, a perusal of the said deposition of DW1 cannot be read so as to infer that defendant had admitted unequivocally with regard to the execution of agreement Ext. PW1/A. This Court cannot ignore the fact that in the written statement filed by the defendant, he had taken a specific stand that no agreement was entered into between him and the plaintiff-Corporation and his signatures were obtained by the Corporation on some blank papers. Be that as it may, as it was the plaintiff's case that document Ext. PW1/A was the agreement entered into between the plaintiff-Corporation and the defendant with regard to the lot in dispute, onus was upon the plaintiff to have had proved the execution of the said agreement, in accordance with law. There are concurrent findings returned by the learned Courts below against the plaintiff-Corporation that the Corporation has not been able to prove the execution of the said agreement, in accordance with law, as neither any officer or official, who prepared said document or who was a witness to the same, entered into the witness box to state that this was the agreement which was entered into between the parties with regard to lot in issue. Therefore, in my considered view, by reading one line of the entire statement of DW1 in isolation, this inference cannot be drawn that defendant had admitted unequivocally about the execution of the agreement Ext. PW1/A. This substantial question of law is answered accordingly.

12. Substantial question of law No. 2:- Whether document exhibit PW-1/A (agreement) is duly proved on the record of the trial court but has been misconstrued by the courts below?"

There are concurrent findings returned by both the learned Courts below that agreement Ext. PW1/A was not duly proved, in accordance with law. Said findings have been returned by the learned Courts below on the ground that neither the scribe of the agreement nor any officer/official who was witness to the execution of the said document was examined by the plaintiff-Corporation. Findings so returned by learned Trial Court and affirmed by learned Appellate

Court are duly borne out from the record of the case. PW-1 Shri D.R. Kaushal, who was examined by the plaintiff-Corporation to prove agreement Ext. PW1/A, clearly and categorically deposed in the Court that neither the said agreement was prepared by him nor the same bears his signatures. Not only this, he has gone to the extent of stating that he was not even signatory to the suit, which stood filed by the plaintiff-Corporation against the defendant. No other witness was examined by the plaintiff-Corporation except PW1 in support of its case. Therefore, in the absence of the plaintiff-Corporation having produced either the scribe of the agreement or any witness in whose presence, said agreement was entered into between the parties, it cannot be said that execution of the agreement Ext. PW1/A was duly proved on record by the plaintiff and findings to the contrary returned by the learned Court below are the result of misreading and mis-appreciation of the evidence of record. This substantial question of law is answered accordingly.

In view of above discussion, as this Court does not finds any merit in the present appeal, the same is dismissed accordingly. Pending miscellaneous application(s), if any, also stand disposed of. No orders as to costs.