
(2014) 12 RAJ CK 0095
In the Rajasthan High Court
Case No : Civil First Appeal No. 48/1991

Kothari Rollers

APPELLANT

Vs

Heer Singh

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Citation : (2015) 2 WLN 428

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : D.R. Bhandari, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J. The appellant/plaintiff, a proprietorship firm, filed the suit for recovery of rent of Rs. 29,400/- against the respondent/defendant, Heer Singh S/o Sh. Bherulal, to whom a Road Roller was given on hire at monthly rent of Rs. 4,200/- per month. The period for which the said Road Roller was given on hire/rent was seven months i.e. from November, 1981 to July, 1982. Since no money was paid by the defendant, the appellant/plaintiff-firm filed the present suit, which suit came to be partly decreed by the learned Additional District Judge No. 1, Udaipur, vide judgment and decree dt. 02.08.1989 passed in Civil Original Suit No. 203/1985- Kothari Rollers v. Heer Singh but the decree was only for Rs. 2,980/-while observing that the plaintiff failed to prove that Road Roller was in a working condition for all these seven months; and since the defendant had shown that the said Road Roller was in working condition for only 57 days. So far as the interest part is concerned, the said issue/prayer was already waived of by the plaintiff in the suit itself. Nobody, has appeared on behalf of respondent/defendant despite service.

2. Mr. D.R. Bhandari, learned counsel appearing for the appellants/plaintiffs vehemently argued that the learned trial Court had erred in putting the burden on the plaintiff to prove that the Road Roller was in good working condition for all

the period for which it was given on hire charge basis for the said period of seven months @ Rs. 4,200/- per month. He has also shown before this Court the Exhibit 1 and Exhibit 4 to show and prove that the said evidence was clearly admissible evidence, however, the said evidence has wrongly been discarded by the learned trial Court and putting a negative burden on the plaintiffs, the said decree has been granted only to the extent of working 57 days for Rs. 2980/- whereas the Road Roller was given on hire charge basis on a monthly rent of Rs. 4200/- per month for a period of seven months and without there being any evidence led by the defendant in this regard that the Road Roller was only used for only 57 days and there being any agreement that rental would be payable only for actual number of days of user, there was no occasion for the learned Court below to have calculated the amount of rent at Rs. 2,980/- only. The learned Court below in the impugned judgment and decree dt. 02.08.1989 has observed as under:--

3. This is clearly erroneous assumption taken by the learned trial Court that the plaintiff was required to prove that rental would be proportionate to the extent of working days of the Road Roller whereas the Road Roller was taken on rent by the defendant for a period of seven months @ Rs. 4,200/- per months. The learned trial Court has, therefore, obviously erred in only partly decreeing the suit. Neither the defendant nor any counsel has appeared on his behalf to contest this appeal before this Court. Having heard the learned counsel for the appellant/plaintiff and upon perusal of the judgment and the record, this Court is satisfied that the decree for recovery of rent of full amount of Rs. 29,400/- deserves to be made in favour of appellant/plaintiff. The appeal thus filed by the appellant deserves to be allowed and the same is accordingly allowed. The decree may be accordingly made of the entire sum of Rs. 29,400/- in favour of appellant/plaintiff. No costs. A copy of this order be sent to the concerned parties forthwith.