
(2005) 07 UK CK 0059

In the Uttarakhand High Court

Case No : First Appeal No's. 1072 and 1073 of 2001

Krishi Utpadan Mandi Samiti

APPELLANT

Vs

Pagia Enterprises

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 2, 25

Citation : AIR 2005 Utt 68 : (2005) 3 AWC 2535 : (2005) 3 UC 2049 : (2005) 2 UPLBEC 57

Hon'ble Judges : Prafulla C. Pant, J; P.C. Verma, J

Bench : Division Bench

Advocate : J.C. Belwal, for the Appellant; Jagdish Prasad, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—These two appeals, preferred u/s 96 of Code of Civil Procedure, 1908, are directed against the judgment and decree, dated 24.7.2001 and 25.7.2001, passed by learned Civil Judge (Senior Division), Nainital, in Civil Suit No. 115 of 1998 and Civil Suit No. 114 of 1998, respectively.

2. Brief facts of the case are that the plaintiffs (present respondents) instituted the aforementioned suits, with the pleading that the plaintiffs are the licensed dealer of seeds. They are registered under U.P. Scheduled Commodities Dealers Order, 1989. They have also alleged that Mandi fee under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, can be levied only on the agricultural produce and not on the seeds, as the seeds do not come under the definition of agricultural produces as these undergo certain chemical processes. It is also alleged that Allahabad High Court in Writ Petition No. 13795 of 1988 has held on 31.8.1988, that the seeds are not covered under the definition of agricultural produce. On the aforesaid ground, the plaintiffs (respondents) have challenged the imposed fee, by filing the aforesaid suits. Demand notices of defendant (appellant), for realizing the Mandi fee on the aforesaid seeds, has been questioned and an

injunction has been sought not to recover the Mandi fee, as mentioned in the impugned demand notices. The defendant (appellant), contested the suits before the trial court and filed the written statements in which it has been stated that it is only the processed seeds which are exempted from the Mandi fee. Admitting the principle of law held in Writ Petition No. 13795 of 1988 by the Allahabad High Court, it is pleaded by the defendant (appellant) that the Supreme Court while dismissing the leave to appeal, against said order dated 31.8.1988 of the Allahabad High Court, clarified that the un- processed seeds, cannot be kept under the category of the processed seeds. The Mandi Samiti, in their written statement, alleged that it is only the un-processed seeds, on which the Mandi fee has been levied. It is also pleaded that since the plaintiffs failed to file a revision against the demand notices, as provided u/s 25 of U.P. Krishi Utpadan Samiti Adhiniyam, 1964, as such the suits are not maintainable. Learned trial court, framed the necessary issues, arising out of the pleadings and came to the conclusion that the seeds in which the plaintiffs deal are not subject-matter of levy under the aforesaid Act of 1964 and accordingly decreed the suits for injunction, directing the defendant, not to realize Mandi fee, as mentioned in the demand notices In question. Aggrieved by said judgments and decrees, passed in Civil Suit No. 114 of 1998 and Civil Suit No. 115 of 1998, these two appeals have been filed by the defendants.

3. We heard learned counsel for the parties and perused the entire record.

4. Learned counsel for the appellant, argued before us that the learned trial court has committed an error in not noticing the fact that Mandi fee was demanded from the plaintiffs on the purchase of foodgrains from the farmers for processing the same into the seeds and not on the sale of the processed seeds. In the circumstances, the burden lies on the plaintiffs to prove that he was dealing with processed seeds and not other grains. P.W. 1 Ram Narayan Agarwal, in Civil Suit No. 114 of 1998 and P.W. 1 Pramod Kumar Agarwal, in Civil Suit No. 115 of 1998, have stated that they are dealing in the certified seeds. On the other hand, D.W. 1 Maya Dutt Joshi, on behalf of the defendant, in both the suits, have stated that the Mandi fee is being levied on the plaintiffs only on those agricultural produces, which the plaintiffs purchase for preparing the seeds and not the processed seeds. The plaintiffs, if they purchase the agricultural produce, get the grading done after the germination tests and those grain, which are rejected in the test, such agricultural produce resold in the market and not the seeds which pass the germination tests and go through the chemical process. According to the appellant, the Mandi Samiti fee is exempted only on the processed seeds.

5. Before going further, it is pertinent to mention here the relevant provisions of law. Section 2 (a) of U.P. Krishi Utpadan Mandi Adhiniyam, 1964, defines the agricultural produce as under :

"Agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry, or forest as are

specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakkar, khandsari and jaggary.

From the Schedule of the aforesaid Act, it is also clear that the following cereals find place within the caption "Agriculture" :

A. Agriculture

I. Cereals :

- (1) Wheat.
- (2) Barley.
- (3) Paddy.
- (4) Rice.
- (5) Jowar.
- (6) Bajra.
- (7) Maize.
- (8) Bejhar.
- (9) Manduwa.
- (10) Oats.
- (11) Kakun.
- (12) Kodon.
- (13) Kutki.
- (14) Sawan.

6. Paper No. 7C/3 in the lower court record, shows that un-processed seeds are the raw material for the processed seeds. In said paper, which is the copy of the minutes of the meeting of Secretary-Agriculture, Government of U. P. with Director Mandi Parishad, shows that on the processed seeds, no Mandi fee can be levied as the processed seeds, after getting processed, with the chemical, cannot be used for the human consumption. In the present case, defendants-appellant's stand is that no Mandi fee has been levied on processed seeds, rather it is only cereals purchased by the plaintiffs from the agriculturists, which at that stage, cannot be said to be processed article. Statement of plaintiffs witness, in both the cases, do not show if they are not purchasing the cereals from agriculturist or market, for germinating or processing them. Though it has been stated by witnesses of the plaintiffs, in both the cases that the unused cereals are returned to the sellers but it does not appear to be true from the evidence on record. When the cereals are purchased from someone, which fail germination test, it

must have been sold in the market. Learned trial court has erred in law by holding that Mandi fee cannot be imposed on the dealers, dealing with the certified seeds, for the reason that there is no provision which exempts levy of Mandi fee in the purchase of foodgrains by the plaintiffs, out of which after germination test, they process the seeds. What is exempted is dealing with the processed seeds.

7. Therefore, we are of the view that the learned trial court, has wrongly decreed the suits for injunction, restraining the defendants from realizing Mandi fee from the plaintiffs on unprocessed seeds. Had the impugned fee been imposed, after the seeds are processed, it would have been a different story. But that is not the case here, as such the appeals deserves to be allowed.

8. Accordingly, both the appeals are allowed. The impugned judgments and decree, passed in Civil Suit Nos. 114 of 1998 and 115 of 1998, are set aside. Both the suits shall stand dismissed. No order as to costs.