(1999) 11 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 533 of 1987

Market Committee — APPELLANT

Vs

Dhanna Mal Sehaj Ram — RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 31

Citation : (2000) 125 PLR 145 : (2000) 1 RCR(Civil) 250

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Ajay Tiwari, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—This is a defendant''s appeal and has been directed against the judgment and decree dated 11.9.1980 passed by Additional District Judge, Ludhiana, who affirmed the judgment and decree dated 11.12.1978 passed by Sub-Judge, 1st Class, Jagraon, who granted a money decree for a sum of Rs. 11,400/- in favour of plaintiff M/s Dhanna Mal Sehaj Ram.

2. The facts of the case are that plaintiff firm carries on business in Raikot notified market area within the jurisdiction of the defendant-Committee and has licence for the sale and purchase of agricultural produce and other merchandise. The plaintiff-firm has to pay market fee as prescribed by the defendant-Committee. The fee prescribed by the defendant-committee was Rs. 1.50 per hundred rupees on the purchase of the agricultural produce within the market area. But an unauthorised amendment in the Act vide Amendment Act No. 13 of 1974, the defendant-Committee raised the sale of fee from Rs. 1.50 to Rs. 2.25 per hundred rupees w.e.f. 30.4.1974. The notification and the resultant amended Act No. 13 of 1974 were struck down as illegal being beyond the jurisdiction of the legislature for the State of Punjab to enact such an Act by the Hon''ble High court in Civil Writ Petition No. 3274 of 1974 and Civil Misc. No. 9010 of 1974 vide order dated 8.11.1974. The plaintiff-firm thereafter sued for the refund of the

excess amount and the interest thereupon from the Market Committee.

3. The suit was contested on behalf of the Committee and it was alleged and pleaded that the plaintiff-firm had no locus standi to the file the suit, since it was not the "person concerned" under the Punjab Agricultural Produce Market Act and Rules, it was further averred that the plaintiff-firm acted as commission agents and purchased the produce on behalf of the other persons and as such the plaintiff-firm was not entitled to ask for the refund of the alleged payment. The suit was also resisted on the ground that the plaintiff firm voluntarily deposited the market fee after collecting the same from the purchasers of the produce and as such he plaintiff-firm was estopped to claim and refund of the same. On merits, it was admitted that the plaintiff-firm is the licensee and had obtained a licence from the Market Committee. It was also admitted that the plaintiff-firm deposited the amount regarding the market fee after collecting the same from the purchasers under the provisions of the ordinance which was in force at that time. However, the right of the plaintiff to ask for the refund of the amount was contested on the ground that the amount of market fee was deposited voluntarily after collecting from the different purchasers and did not deposit any amount from its own account.

4. From the above pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether the plaintiff has the locus standi to file the present suit? OPP

2. Whether the plaintiff-firm is a registered partnership firm? If so whether plaintiff is its registered partner? OPP

3. If issue No. 2 is not proved, whether the registration was necessary for filing the present suit? OPD

4. Whether the suit is beyond limitation? OPD

5. Whether plaintiff is estopped to bring the present suit as alleged by the defendant? OPD

6. To what amount, if any, the plaintiff is entitled including interest, if any? OPP

7. Whether any notice was necessary to be served upon the defendant? If so its effect? OPP

8. Whether the suit is bad for non-joinder of necessary parties? OPD

9. What is affect of Act No. 34 of 1976 on the fresh suit? OPD

10. Relief.

5. The parties led oral and documentary evidence in support of their respective cases and on the conclusion of the trial, the suit of the plaintiff was decreed.

6. Aggrieved by the judgment and decree of the trial court, the defendant-

Committee filed the first appeal before the Court of Additional District Judge, Ludhiana, which vide impugned judgment and decree dismissed the appeal for the reasons given in para Nos. 5 to 11 of the judgment, which are quoted as under:-

"5. The finding of the lower court on issues Nos. 1, 4 and 8 has been seriously contested before me. The finding of the lower court on issues No. 2, 3 and 5 has not been contested before me and, as such, I need not go into any discussion to decide these issues. The learned counsel for the defendant appellant, however, argued that the plaintiff-firm had no locus standi to file the present suit. His contention is that the respondent-firm acted as commission agents and purchased the produce on behalf of the other persons. The respondent firm had collected the market fee from the third party, who had purchased the produce and, as such, the respondent-firm was not entitled to ask for the refund of the alleged excess payment by the respondent. The counsel for the appellant also canvassed that the respondent-firm was not the "person concerned" under the Punjab Agricultural Produce Market Act, and has thus no locus standi to file the suit. The facts of the case are mostly not disputed. The fee prescribed by the appellant market committee was Rs. 1.50 per hundred rupees on the purchase of the agricultural produce. As a result of the amendment in the Act vide amended Act No. 13 of 1974, which was subsequently declared illegal, being beyond the jurisdiction of the legislature for the State of Punjab, the market fee was raised from Rs. 1.50 to 22.25. The assessed amount was deposited by the respondent firm with the appellant-Market Committee. It was the responsibility of the respondent firm to make payment of the market fee. So, in such circumstances of the case, I am not inclined to subscribe to the view that the respondent firm was not the "person concerned", under the Punjab Agricultural Produce Market Act and Rules and had thus no locus standi to sue. In my opinion rather the respondent firm having paid the excess market fee was entitled to ask for the refund of the same and as such the respondent firm had locus standi to sue. The finding of the lower Court on issue No. 1 is hereby affirmed.

6. The finding of the lower Court on issue No. 4 has also been challenged before me. Shri S.K. Singhal, counsel for the appellant, argued that the suit of the respondent was barred by time. He argued that the trial Court failed to interpret Section 31 of the Punjab Agricultural Produce Market Act, 1961 properly and the finding of the lower court was against the statutory provisions of law. The counsel for the appellant contended that the trial court wrongly held that Article 113 of the Limitation Act was applicable to the facts of the present case.

7. I have given my anxious thought to the entire facts of the case. It is not disputed between the parties that vide amended Act No. 13 of 1974 the rate of market fee was enhanced from Rs. 1.50 to Rs. 2.25 per hundred rupees with effect from 30.5.74. It is further not disputed before me that the amended Act vide which the rate of market fee was enhanced was ultimately struck down by the Hon''ble High Court for Punjab and Haryana at Chandigarh in Civil Writ

Petitions vide its order dated 8.11.74. The counsel for the appellant, however, relied on Section 31 of the Punjab Agricultural Produce Market Act, 1961 and argued that u/s 31 of the Act, the period of limitation for bringing a suit was six months. He, therefore, argued that the present suit as having been instituted on 3.11.1977 was barred by time. Shri Shanti Sarup Sehgal, counsel for the respondent, on the other hand, argued that the suit was governed by Article 113 of the Limitation Act. He suggested that under Article 113 of the Limitation Act, the period of limitation was three years and the right to sue accrued after the amended Act, was set aside by the Hon''ble High Court. The learned trial court also reached the conclusion that the suit of the respondent was governed by Article 113 of the Limitation Act and not by Section 31 of the Punjab Agricultural Produce Market Act.

8. In the case in hand, the amended Act was declared null and void. The respondent had sued for the refund of the amount which was paid in excess as a result of the amended Act and Rules. A suit u/s 31 is required to be instituted within six months, where the suit was instituted against any officer or servant of the State Government in respect of any act purporting to have been done under the said Act. In my opinion, the period of limitation laid down u/s 31 of the Punjab Agricultural Produce Market Act is not applicable. I am inclined to agree with the learned counsel for the respondent that the period of limitation prescribed u/s 31 of the Act would not apply to the facts of the present case. The present case has not been filed under the provisions of the said Act against the Market Committee. In the case in hand, the suit, had been filed not attracting the provisions of the said Act. Nor any relief has been sought for anything done or purporting to have been done under the said Act. The amended Act was declared to be null and void on 8.11.1974. So suit having been instituted within three years i.e. on 3.11.77 as such was within time. The finding of the lower Court on issue No. 4 as such is hereby affirmed.

9. The finding on issue No. 5 requires no interference. The respondent was not estopped by his act and conduct from bringing the suit. The respondent firm is a licencee of the appellant-Market Committee. The respondent was bound to deposit fee raise under the amended Act, though the amended Act was declared null and void subsequently by the Hon''ble High Court. I am not inclined to subscribe to the view that the deposit on the part of the respondent firm was voluntarily but rather the respondent-firm was bound to pay under the rules the enhanced market fee and as such it could not be said that the respondent firm was estopped by its act and conduct to sue. The finding of the lower Court on issue No. 8 has been challenged before me though it appears that in the lower Court this issue was not pressed. The contention of the counsel for the appellant is that the fee was not paid by the respondent-firm. He suggested that the market fee was collected from the purchasers and thereafter it was deposited with the Market Committee. The counsel for the appellant canvassed that the respondent firm did not pay any market fee from its own account and the persons on whose behalf the market fee was to be paid were necessary party to

the suit and as such the suit was bad for non-joinder of parties. I am not in agreement with this suggestion. The fee was collected by the respondent firm and deposited with the appellant committee and as such the respondent firm was entitled to ask for the refund of the same. The purchasers may be having separate cause of action against the respondent firm to realise the excess market fee paid by them through the respondent firm.

10. The learned counsel for the appellant also argued that the present suit was not maintainable in view of the Punjab Agricultural Produce (Validation) Act, 1976 (Act No. 34 of 1976). He contended that Section 6 of the amended Act (34 of 1976) enjoins that no suit or other proceedings shall be instituted or continued in any court for the refund of any such fees. He also relied on Sub-clause (b) which lays down that no Court shall enforce a decree or order directing the refund of any such fees. The counsel for the appellant, therefore, suggested that because of the coming into force of the amended Act No. 34 of 1976, the plaintiff respondent firm was barred from instituting any suit and jurisdiction of the civil court was also ousted. In the case in hand, in my opinion, Section 6 of the Amended Act is no bar to the refund of the excess fee paid under the amended Act, which was subsequently declared null and void under the order of the Hon''ble High Court.

11. In the case in hand, the fee so realised by the appellant-committee was in excess of the amount which was not due to it and as such, in my opinion Section 6 of the Act No. 34 of 1976 would not oust the jurisdiction of the Civil Court for bringing of the present suit. The learned counsel for the respondent also placed reliance on Rulia Ram Bhavishan Kumar petitioners v. The State of Punjab and Anr. respondents, 1976 P.L.J. 428 in support of the contention that even the Punjab Agricultural Produce Markets (Validation) Act, 1976 was struck down as unconstitutional. The finding of the lower court on issue No. 9 as such also requires no interference."

7. I have heard the counsel for the appellant. Nobody appeared on behalf of the respondent. With the assistance rendered by the learned counsel for the appellant I have also been able to go through the records of this case.

8. The point for determination would be whether the plaintiff has the locus standi to file the suit or not. In this regard we have to see the activity of the plaintiff firm. The plaintiff-firm is a commission agents which is called as Arhtias and they are running the shop of commission agents in grain market, Raikot within the jurisdiction of Market Committee. Under the Punjab Agricultural Produce market Act the Committee used to charge fee from the Arhtias @ Rs. 1.50 against a transaction of Rs. 100/-. Subsequently, it was decided by the Committee to charge Rs. 2.25. The amendment was made in the Act which was challenged in the High Court on the ground hat the Punjab State has no jurisdiction to pass the amendment in the parent Act. That writ was allowed on 8.11.1974. The Pacca Arhtia only procures the produce and then further sells to the shopkeepers, who further sell the commodity to the consumers. If the plaintiff has paid any excess

amount, it must have charged the same from its buyers and the buyers must have charged it from the consumers. In that eventuality it was the consumer ultimately who was affected by the excess market fee which was collected by the Committee, though the plaintiff-firm was the first person, who paid the enhanced market fee to the Committee. In such a situation, the cause of action, if any, arose to the consumer and not to the plaintiff-firm. By granting a decree in favour of the plaintiff-firm, it will make it unnecessary rich because the plaintiff-firm must have received that amount from the buyer of the goods and further the buyer must have realised the same from its buyers, who are the ultimately consumers. The Courts below have decreed the suit mainly on the ground on this issue that the assessed amount has been deposited by the plaintiff-firm. Therefore, it is the responsibility of the committee to refund the enhanced market fee to the plaintiff. The reasons advanced by the Courts below cannot be sustained for the reason that if the plaintiff firm is to be considered as a "person concerned", it would mean that the plaintiff-firm had not suffered any loss with the payment of the enhanced market fee and still the same is being awarded the amount. In this view of the matter, I hold under issue No. 1 that the plaintiff has no locus standi to file the present suit and it is also estopped to file the present suit in the competent Court of jurisdiction.

9. No other point was urged before me.

In this view of the matter, I allow this appeal, set aside the judgments and decrees of the Courts below and dismiss the suit of the plaintiff-respondent with no order as to costs.

