

(2001) 08 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2028 of 1980

Market Committee, Mandi Mullanpur

APPELLANT

Vs

Ram Kumar Tilak Ram

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Citation : (2001) 4 RCR(Civil) 481

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

Bench : Single Bench

Advocate : K.S. Gill, for the Appellant;

Final Decision : Allowed

Judgement

R.L. Anand, J.—The Market Committee Mandi Mullanpur has filed the present regular second appeal and it has been directed against the judgment and decree dated 22.2.1980 passed by the Court of Additional District Judge, Ludhiana who dismissed the appeal of the Market Committee by affirming the Judgment and decree dated 4.8.1979 passed by the Sub Judge 2nd Class, Ludhiana, who granted the money decree for a sum of Rs. 1368.09.

2. The brief facts of the case are that plaintiff is a partnership firm doing its business of sale and purchase of agricultural produce within the market area of Mandi Mullanpur under licence from defendant No. 1. The defendant increased the levy of market fee from Rs. 1.50 to Rs. 2.25 on the purchase and sale of agricultural produce worth Rs. 100 w.e.f. 30.4.1974. The plaintiff-firm deposited the enhanced rate from 30.4.1974 to 9.11.1974. The Hon'ble High Court vide its decision dated 8.11.1974 struck down the raising of the market fee. Therefore, the plaintiff requested defendant No. 1 for refund of the enhanced market fee deposited by it. In spite of the repeated reminders, the request for refund of the enhanced market fee has not been accepted. Hence the suit.

3. Notice of the suit was given to the defendants who filed the written statements and denied the allegations. It was pleaded that since the plaintiff-firm

is a commission agent of the sale and purchase of agricultural produce on behalf of other person and get commission. It has not paid any amount from its funds and the market committee collects the market fee from the producers which sells and purchases the produce in the market area. In these circumstances, the plaintiff-firm had no locus standi to file the suit. It is also pleaded by the defendants that the plaintiff-firm is estopped from filing any suit because it has voluntarily deposited the market fee and that the suit was also time barred; no valid notice as required under the Punjab Agricultural Produce Market Act, 1961 was served; that the plaintiff has no cause of action; that the plaintiff is not entitled to claim any interest and the suit is also barred by the principles of res judicata.

4. From the pleadings of the parties, the following issues were framed by the trial Court :

1. Whether the defendant No. 1 has accepted the amount vide letter dated 23.6.1975 ? OPP.

2. Whether the defendants have arbitrarily increased the market fee ? OPP.

3. Whether proper notice was served on the defendants ? OPP.

4. Whether the suit of the plaintiff is within limitation ? OPP.

5. Whether the plaintiff firm is registered under the partnership of firms Act ? OPP.

6. Whether the plaintiff is entitled to recover the amount claimed in the plaint with interest ? if so, to what extent ? OPP.

7. Whether the suit of the plaintiff is bad for nonjoinder of the parties ? OPP.

8. Whether the plaintiff firm has no locus standi to file the suit? OPP.

9. Whether the plaintiff is estopped from filing the present suit ? OPP.

10. Whether the suit is barred u/s 33(3) of the Punjab Produce Agriculture Market Act (General Rules) 1962 ? OPP.

11. Whether the suit is barred by res judicata ? OPP.

12. Relief.

5. The parties were given opportunities to lead their evidence and on the conclusion of the proceedings, the trial Court granted a money decree for Rs. 1368.09 with proportionate costs. Not satisfied with the judgment and decree of the trial Court the defendant-Market Committee filed a first appeal before the Additional District Judge, Ludhiana who vide judgment and decree dated 22.22.1980 dismissed the appeal. Still not satisfied with the judgment and decree of the Courts below, the present appeal has been filed.

6. I have heard Mr. K.S. Gill Advocate on behalf of the appellant. Nobody has

appeared on behalf of the respondents. So, I dispose of this appeal with the assistance rendered by the learned counsel for the appellant.

7. It was argued by the learned counsel for the appellant that the plaintiff-firm had no locus standi to file the suit as no cause of action had arisen in its favour. He submitted that the plaintiff-firm is a Pacca Arhtia. The enhanced market-fee deposited by it has been realised from the purchasers by the producers, i.e. the shopkeepers and the shopkeepers have also realised the amount of enhanced market fee pro rata from the consumers, who are the actual sufferers, and in these circumstances, the cause of action, if any, survives for the actual consumers and not to the Pacca Arhtia who cannot become doubly rich by filing the present suit. There is merit in the contention raised by the learned counsel for the appellant who has relied on the judgments reported in *Market Committee Raikot v. Messrs Ram Saran Das Medho Ram*, 2000(1) R. C. R 253 and *Market Committee Raikot v. Messrs Perma Nand Sat Narain*, 2000(1) R.C.R. 256. Reliance has also been placed upon a judgment dated 14th July, 1995 passed by the Hon'ble High Court in R.S. A. No. 1708 of 1979. The facts of the cited cases are more or less similar to the facts in hand. The plaintiff firm was a Pacca Arhtia. I only procures the produce and then sells to the shopkeepers who further sell the commodities to the consumers. If the plaintiff-firm had paid any excess amount it must have charged the same from its buyers and the buyers must have charged from its consumers. Therefore, it is the consumers ultimately who are affected by the excessive market fee collected by the Market Committee. In these circumstances, the cause of action, if any, arise to the consumers and not to the plaintiff who cannot be allowed to become doubly rich.

8. Resultantly, 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. Decree-sheet be drawn accordingly.

9. Appeal allowed.