

(2000) 07 P&H CK 0191

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 256 of 1979

Market Committee, Rampura Phul

APPELLANT

Vs

M/s. Nathu Ram Om Parkash

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 3(1)

Citation : (2000) 3 RCR(Civil) 699 : (2000) 3 RCR(Civil) 717 : (2000) 3 RCR(Civil) 700

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

Bench : Single Bench

Advocate : Hemant Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

R.L. Anand, J.—This is a Regular First Appeal and has been directed against the judgment and decree dated 27.10.1978, passed by the Court of Sub Judge 1st Class, Phul, who granted a money decree for a sum of Rs. 25747/- along with future interest at the rate of 6% per annum from the date of the institution of the suit i.e. 5.11.1977 till the date of its payment.

2. The pleading of the parties can be summarised in the following manner.

3. Plaintiff-firm M/s. Nathu Ram Om Parkash of Rampura Phul Mandi has filed a suit for the recovery of Rs. 25747/- against the Market Committee Rampura Phul. It is alleged that the Plaintiff firm is a registered firm and is carrying on its business in the name and style of M/s. Nathu Ram Om Parkash, Rampura Phul. It is further averred that Plaintiff firm is doing the business of purchase and sale of the agricultural produce within the territorial jurisdiction of the Defendant Market Committee and had got a valid licence issued by the Defendant Market Committee. Originally the market fee chargeable from the Plaintiff firm under law was Rs. 1.50% of the price of the produce and later on an Ordinance No. 4 of 1974 dated 30.4.74 and Act No. 13 of 1974 dated 20.8.1974 were promulgated

and market fee was enhanced from 1.50% to 2.25% and the Plaintiff firm started paying the market fee at the enhanced rate. Later on this Ordinance No. 4 of 1974 and Act. No. 13 of 1974 were struck down and declared void and ineffective by the Hon"ble Punjab and Haryana High Court, vide their judgment dated 8.11.1974.

4. The case set up by the Plaintiff is that during the period from. 4.5.1974 to 18.11.1974 it had paid a sum of Rs. 59420.31 as market fee at the rate of 2.25% per hundred rupees of the price of the agricultural produce while at the rate of 1.50% per hundred rupees, the Defendant market committee should have charged only Rs. 39613.31 during this period and thus the Plaintiff firm paid the sum of Rs. 19807/-. In this manner the committee had charged an excess of Rs. 19807/-. The committee is liable to refund the amount of Rs. 25747/- inclusive of the amount of interest at the rate of 12 per cent.

5. The suit was contested by the Defendant-Appellant and it was pleaded that the suit of the Plaintiff is not legally maintainable for want of notice u/s 3(1) of the Punjab Agricultural Produce Markets Act, 1961 and moreover, the Plaintiffs have no locus standi to file the present suit.

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

1. Whether the Plaintiff firm is a registered firm and the suing partner is its registered partner? OPP

2. Whether the Defendant market committee charged the sum of Rs. 19807.00 as market fee in excess from the Plaintiff? OPP

3. Whether the Plaintiff is entitled to recover back the excess charges of Rs. 19807.00? OPP

4. Whether the Plaintiff is entitled to any interest? If so, at what rate and to what amount? OPP

5. Whether the suit is within time? OPP

6. Whether any prior notice u/s 3(1) of the Punjab Agricultural Produce Markets Act. 1961 has been served upon the Defendant? If not its effect? OPP

7. Whether the suit is not maintainable in the present form? OPD

8. Relief.

7. The parties led oral as well as documentary evidence and on the conclusion of the trial a money decree for a sum of Rs. 25747/- was granted in favour of the Plaintiff-Respondent.

8. Aggrieved by the judgment and decree of the trial Court, the present Regular First Appeal has been filed.

9. I have heard Shri Hemant Kumar, Advocate, appearing on behalf of the Appellant. No assistance has been provided to me from the side of the Respondent.

10. The learned Counsel for the Appellant submits that the Plaintiff-firm has no locus-standi to file the suit and it is not the affected party. So-called assessed market fee realised by the Market Committee was on the goods which has already been sold to the consumers. From the consumers the Plaintiff-Respondent firm had taken the price. In these circumstances, if any right accrues to recover the market fee that accrues ultimately to the consumer and not to the Plaintiff-Respondent, which cannot become undue a rich man. In support of his contention, the learned Counsel for the Petitioner relies upon The Market Committee Vs. Amar Nath Surinder Mohan, and, also The Market Committee Vs. Des Raj Mohan Lal, He further submitted that by virtue of the amendment brought in the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called "the Act"), u/s 23-A(2) of the Act, the suit of the Plaintiff-Respondent against the Market Committee for the refund of the whole or any part of the fee retained by a committee, is not legally maintainable. There is a merit in the contention raised by the learned Counsel for the Appellant. The Plaintiff-Respondent cannot become rich under the doctrine of undue rich as it had already passed on the burden to the consumers by the sale of the goods. In these circumstances, the locus standi to file the suit, if any, is to the consumer and not to the Plaintiff firm in view of the above case law relied upon by the counsel for the Appellant. This appeal is hereby allowed and the judgment and decree of the trial Court is hereby set aside and the suit of the Plaintiff stands dismissed with no order as to costs.