
(1988) 03 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 160 of 1988

M/s. Krishna Trading Company

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 10-03-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 2, Order 41 Rule 22, 80

Forest Act, 1927 — Section 82, 83

Himachal Pradesh Land Revenue Act, 1954 — Section 101, 4(10), 68, 70 , 82

Citation : (1998) 2 ShimLC 408

Hon'ble Judges : R.L. Khurana, J;Kamlesh Sharma, J

Bench : Division Bench

Advocate : Bhupender Gupta, for the Appellant; D.C. Pathik, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The Appellant, Messrs Krishna Trading Company a registered partnership firm, hereinafter referred to as the Plaintiff, has directed the present appeal against the judgment and decree dated 29.4.1988 passed in Civil Suit No. 76 of 1984 by a learned Single Judge of this Court, whereby the suit of the Plaintiff for declaration with consequential relief of injunction and for the recovery of Rs. 1,63,231.71 p was dismissed.

The brief facts of the case are these. The Plaintiff is a forest lessee. The Forest Department of the Government of Himachal Pradesh in the month of October 1979 put to auction three different lots of dry, uprooted and fallen pine trees. The Plaintiff gave the highest bids of Rs. 23,98,000 for these three lots. The Forest Department accepted the bids of the Plaintiff. Three lease deeds, Exs. D-35, D-36 and D-38, came to be executed. As per the terms, the Plaintiff agreed to pay sales-tax, termed as "royalty", on the auction amount, and surcharge at the rate of 10% of the amount of such royalty. The total amount payable towards royalty and surcharge was Rs. 6,59,400, which was payable, as

per the terms of the lease deeds, in three instalments, on or before 15.1.1980, 15.2.1980, and 15.3.1980, respectively. The felling of the trees was required to be commenced on 16.11.1979 and was to be completed by 28.2.1980. The work of sawing and extraction of timber was required to be completed by 15.3.1980.

2. The possession of the lots was not delivered to the Plaintiff in time. The possession of different lots was actually handed over to the Plaintiff on different dates as under:

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No.	Date	of	delivery	of	possession	to	the	Plaintiff

	18.12.1979						1.	1/79-80
2.	5/79-80	11.12.1978						
3.			12/79-80					02.01.1980

3. As a result of delay in the delivery of possession of the lots by the Forest Department, the Plaintiff could not complete the work of felling of trees and extraction of timber within the stipulated period. On a representation having been made by the Plaintiff, the Conservator of Forests, Bilaspur, granted extension of time up to 25.9.1980. Further extension beyond 25.9.1980, though applied for by the Plaintiff, was refused. The Plaintiff also failed to deposit the amount of instalments, as per the time schedule. As a result, the Forest Department confiscated the timber and the forest produce and the same was put to auction.

4. A total demand of Rs. 36,10,325.36 p was raised by the Forest Department, against the Plaintiff. After adjusting the amount of Rs. 29,54,410.87 P received from the Plaintiff, the outstanding amount came to Rs. 6,45,914.49 P. Since, the Plaintiff failed to pay the outstanding amount of Rs. 6,45,914.49 P, inspite of demands, the Defendants initiated steps for recovery of the said amount as arrears of land revenue as contemplated u/s 82, Indian Forest Act, 1927, as applicable in Himachal Pradesh, hereinafter referred to as the "Forest Act".

5. Be it stated that the total demand of Rs. 36,10,325.36 P raised by the Defendants, against the Plaintiff included the amount of Rs. 6,61,264.05 P towards royalty and surcharge and the amount of Rs. 1,47,882.15P as interest on the tax amount.

The Plaintiff by way of a civil suit assailed the legality and validity of the abovesaid two amounts totalling Rs. 8,09,146.20P and prayed for the following reliefs:

(a) declaration to the effect that proceedings initiated for recovery of Rs. 6,45,914.49P as arrears of land revenue are illegal, void, without jurisdiction and inoperative as the Defendants had no right to realise the amount of sales-tax,

surcharge and interest thereon;

(b) permanent injunction as a consequential relief for restraining the Defendants from realising the amount of Rs. 6,45,914.49P or enforcing its recovery in any manner whatsoever; and

(c) decree for recovery of the amount of Rs. 1,63,231.71P (Rs. 8,09,146.20P less Rs. 6,45,914.49) with interest at the rate of 18% per annum.

6. The Plaintiff pleaded that since the Defendants had exercised their right of re-auction of the timber and had rescinded the contracts, the amounts payable towards royalty, surcharge and interest were not recoverable. It was also pleaded that the Forest Department was required to proportionately release the timber on payment of royalty amount, which it failed to do. Though an export permit in respect of 3880 quintals of pulp wood was issued in favour of the Plaintiff on 21.4.1981, the same was cancelled without giving any show-cause notice to the Plaintiff. Besides 4000 quintals of pulp wood could not be exported in time due to non-availability of diesel and no extension of time was granted for the export of such pulp wood. There was delay in the handing over of possession of the lots to the Plaintiff which contributed to delay in the completion of the contracts. The Plaintiff further pleaded that in lots No. 5/79-80 and 12/79-80 within District Hamirpur, the residents of adjoining villages had a right to take away the dry trees having the diameter of 18 inches at ground level without permission. This fact was not disclosed to the Plaintiff. Due to exercise of such rights by the residents of the adjoining villages, the Plaintiff was deprived of 2075 marked trees, thereby suffered loss to the extent of about rupees one lakh.

7. The Defendants while resisting the suit pleaded that the demand raised towards royalty, surcharge and interest was absolutely legal and valid. They denied that the Plaintiff suffered any loss due to the alleged acts of omission and commission on the part of the Defendants. In addition, legal objections were raised as to maintainability of the suit, absence of valid notice u/s 80, Code of Civil Procedure, limitation, misjoinder of causes of action, res-judicata and the suit being barred under Order 23, Rule 1, Code of Civil Procedure. It was further pleaded that the Plaintiff could not institute the suit without first depositing the suit amount under protest as provided for u/s 84, H.P. Land Revenue Act, 1953

8. On the basis of pleadings of the parties, the following issues were framed on 2.1.1986:

1. Whether the suit is maintainable without serving notice u/s 80, Code of Civil Procedure? OPP
2. Whether the suit is not maintainable in its present form?OPD
3. Whether the suit is bad for mis-joinder of cause of action?OPD
4. Whether the suit is barred by the provisions of Order 23, Rules 1 and 2, Code of Civil Procedure?OPD

5. Whether the suit is barred by limitation?OPD
6. Whether the suit is not maintainable in view of the provisions of Section 84 of the Himachal Pradesh Land Revenue Act, 1953 due to non-deposit under protest of the amount which is the subject-matter before the recovery officer/authority? OPD
7. Whether the suit is barred by the principles of res judicata?OPD
8. Whether the demand towards sales tax, surcharge and interest thereupon is illegal, void, and without jurisdiction? If so, what is the exact amount on this account? OPP
9. What is the amount of payment made and adjustment done on behalf of the Plaintiff against three lots in question? OPP
10. Whether the Plaintiffs are entitled to refund of Rs. 1,63,231.71 P or any other amount from the Defendants? OPP
11. Whether the order of recovery made under Sections 82 and 83 of the Indian Forest Act to realise the amount from the Plaintiff as arrears of land revenue is illegal, void and without jurisdiction? OPP
12. Whether the Plaintiff has suffered damages to the tune of Rs. 8,09,146.20 P or any other amount on account of acts of omission and commission on the part of Defendants as mentioned in paras 7,8 and 9 of the plaint? OPP.
13. Relief.

Issue Nos. 1 to 5 and 7 were found against the Defendants and in favour of the Plaintiff, since the same were not contested on behalf of the Defendants. While deciding issue No. 6 against the Defendants, the learned single Judge came to the conclusion that the suit was maintainable without the Plaintiff being required to deposit the suit amount. In other words, the provisions of Section 84, HP Land Revenue Act, 1953, hereinafter referred to as the "Land Revenue Act" were held to be not applicable to the present case. The remaining issue Nos. 8 to 12 were decided against the Plaintiff. Consequent upon such findings, the suit of the Plaintiff was dismissed, vide the impugned judgment and decree dated 29.4.1988.

9. The Plaintiff by way of the present appeal has assailed the findings recorded by the learned Single Judge under issue Nos. 8 and 12 only, since the findings on issue Nos. 10 and 11 are dependent upon the findings on these issues. It has been contended that the findings returned by the learned single Judge, under issue Nos. 8 and 12, are not only unjust and illegal but are also against the material coming on record. It has further been contended that the evidence led by the Plaintiff has not been appreciated in the right perspective. Once the contract of sale in favour of the Plaintiff was rescinded, there was no sale in favour of the Plaintiff and as such, the Plaintiff was not liable towards royalty, surcharge and interest.

10. The learned Additional Advocate-General on the other hand while supporting the findings of the learned single Judge, under issue Nos. 8 and 12, on the grounds and for the reasons recorded in the impugned judgment by taking recourse to the provisions contained in Rule 22, Order 41, Code of Civil Procedure, has assailed the findings of the learned single Judge recorded under issue No. 6. It was contended that once the amount due under the Forest Act became recoverable as arrears of land revenue u/s 84 of the Land Revenue Act would become applicable and the suit filed by the Plaintiff without first depositing the amount claimed would not be maintainable.

11. We have heard the learned Counsel for the parties and have also gone through the record of the case.

12. Section 82 of the Forest Act, as substituted vide Himachal Pradesh Act 25 of 1968, for its application in the State of Himachal Pradesh, insofar as it is relevant for the purpose of present case, reads:

82. Recovery of money due to Government.-(1) All money payable to the State Government under this Act, or under any rule made under this Act, or on account of the price of timber, or other produce, or of expenses incurred in execution of this Act in respect of timber and other forest produce, or under any contract relating to timber and other forest produce including any sum recoverable thereunder for breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest produce by auction or by invitation of tenders, issued by or under the authority of a Forest Officer and all compensation awarded to the State Government under this Act may, if not paid when due, be recovered under the law for the time being in force, as if it were an arrear of land revenue.

13. Chapter VI, which contains Sections 68-101, of the Land Revenue Act, deals with the collection of land revenue and the mode and procedure for recovery thereof in the event of non-payment. Section 84, which is relevant for the purpose of the present case, reads:

84. Remedies open to person denying his liability for an arrear - (1) Notwithstanding anything in Section 73 when proceedings are taken under this Act for the recovery of an arrear the person against whom the proceedings are taken may if he denies his liability for the arrear or any part thereof and pays the same under protest made in writing at the time of a payment and signed by him or his agent, institute a suit in a Civil Court for the recovery of the amount so paid.

(2) A suit under Sub-section (1) must be instituted in a Court having jurisdiction in the place where the office of the Collector of the District in which the arrear or some part thereof accrued is situate.

14. The learned single Judge in coming to the conclusion that Section 84 of the Land Revenue Act is not applicable to the present case, held that the said section

would come into play only in respect of arrears of land revenue as defined u/s 4(10) of the Land Revenue Act. The conclusion was arrived at by the learned Single Judge by a conjoint reading of the provisions contained in Sections 73 and 84 of the Land Revenue Act.

15. It is significant to note that Section 84, Land Revenue Act, begins with a non-obstante clause "Notwithstanding anything in Section 73." It is well settled that such a non-obstante clause is sometimes appended to a section in the beginning with a view to give the enacting part of the section in case of conflict, an overriding effect over the provision mentioned in such non-obstante clause. It is equivalent to saying that inspite of the provision mentioned in the non-obstante clause, the provisions following it will have its full operation.

16. Though Section 73, Land Revenue Act, speaks of arrears of revenue in respect of land, the said provisions cannot be read into and conjointly with the provisions contained in Section 84, Land Revenue Act, in view of the non-obstante clause "Notwithstanding anything in Section 73." used in the beginning of Section 84, Land Revenue Act.

17. It is also significant to note that the framers of law have not used the words "arrears of land revenue", while enacting the provisions as contained in Section 84 of the Act. The words used in the section are "recovery of an arrear". The omission of the words "arrears of land revenue" and the non-obstante clause appended in the beginning of Section 84 lead to the only interpretation that Section 84, Land Revenue Act in its application is not restricted to the cases where arrears of revenue in respect of the land payable under the Land Revenue Act are sought to be assailed. The section would be applicable to all cases of arrears of Government dues which are sought to be recovered as arrears of land revenue.

In *Punjab State v. Kirpal Singh* 1978 Rev. L.R. 301, arrears of rent payable in respect of public premises were sought to be recovered as arrears of land revenue. The lessee filed a suit disputing the arrears and his liability. An objection was raised on behalf of the Defendant State of Punjab that the suit was not maintainable in view of Section 78, Punjab Land Revenue Act, 1887, since the disputed arrears were not deposited by the Plaintiff prior to the filing of the suit. It was held by the High Court of Punjab and Haryana, that it was incumbent on the Plaintiff to make the payment under protest and then to institute the suit for the recovery of the amount paid. He could not simply sue for obtaining an injunction against the State for restraining it for making the recovery.

We are in absolute agreement with the view taken by the High Court of Punjab and Haryana and hold that once any dues of the State are made recoverable as arrears of land revenue under the relevant law, the provisions contained in Section 84 of the Land Revenue Act would become applicable with full force, since such recoveries can be effected only by following the procedure laid down in Chapter VI of the Land Revenue Act.

18. The findings recorded by the learned single Judge under issue No. 6, as such, are wrong and liable to be set aside. We, therefore, set aside such findings.

19. In view of the fact that the suit of the Plaintiff without his having deposited the disputed arrears under protest before the suit, is not maintainable in view of the specific bar enacted in Section 84, Land Revenue Act, we need not go into the questions involved under issue Nos. 8 and 12 and the resultant findings under issue Nos. 10 and 11.

20. Even otherwise, we are in full agreement with the findings recorded by the learned single Judge, under issue Nos. 8 to 12.

Resultantly, subject to the above modifications of the findings recorded under issue No. 6, the present appeal fails and the same is dismissed with costs.