
(2013) 08 P&H CK 0581

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2415 of 2011

M/s. Ram Murti and Co.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0581

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Advocate : G.C. Shahpuri, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is plaintiffs second appeal challenging the judgments and decrees of the courts below whereby his suit (for prohibitory and mandatory injunction to restrain and forbid the defendant-respondents from interfering into cutting and lifting of the auctioned trees standing at the Military Station, Hisar by him with a further direction to the respondents to supply the auctioned trees to him as per the auction) has been dismissed. As per the averments, the appellant deals in marketing of woods in Haryana and other States. According to him, approximately 7576 trees of various kinds were standing at Military Station, Hisar and they were auctioned on 14.01.2000 by respondent No. 3 The appellant, being the highest bidder for Rs. 11,80,000 which was accepted, deposited 25% of the bid money and the remaining 75% of the amount was ordered to be deposited within ten days from the date of receipt of letter dated 27.01.2000 and the same was also deposited. It is further case of the appellant that as per the record of the respondents, total wood of auctioned trees was 2250.64 meters. Thereafter, he started cutting and lifting the trees from the spot however, he was not allowed to cut the trees from the site and even his request of entry into the Military Station was not acceded to; and thus, the appellant could not cut and lift the entire auctioned wood due to non-cooperative behaviour of the respondents. It is the case of the appellant that he

had cut and lifted wood about 750 meters from the site and the remaining auctioned trees were still standing and he was entitled to remove the same which was not allowed. Thus, necessity arose to file the instant suit.

2. Upon notice, the respondents appeared and filed their joint written statement raising various preliminary objections. On merits, the factum of appellant being the highest bidder and further deposit of the auction money were admitted. It was averred that auction of the trees was on the basis of serial number of the trees and not in the shape of cubical contents of the wood as pleaded by the appellant. As per the terms and conditions, initially the appellant was given three months time to cut and lift the auctioned trees from the site; however, later on 45 days extension was granted on the request of the appellant and thereafter second extension of another 45 days was given to the appellant to remove the auctioned trees. It was denied by the respondents that they ever stopped entry of the appellant. However, his movement was restricted due to security reasons but entry of the labour for cutting the trees was never restricted. It is further case of the respondents that the appellant had removed all the auctioned trees however, he failed to remove the rubbish from the site which was to be removed by him as per the terms and conditions of the auction, and thus, he had committed breach of conditions of the auction for which he was liable to be proceeded against. Remaining averments were denied and dismissal of the suit was prayed for.

3. The appellant did not file any replication to the written statement filed on behalf of the respondents.

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

1. Whether the plaintiff is entitled to the relief of injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi of action to file the present suit? OPD
3. Whether the suit is barred by limitation? OPD
4. Whether the suit is maintainable in the present form? OPD
5. Whether the Civil Court has no jurisdiction to decide his suit? OPD
6. Relief.

5. After hearing learned counsel for the parties and appreciating the evidence led by the parties, the Civil Judge (Junior Division), Hisar, vide impugned judgment and decree dated 26.07.2008, dismissed the suit of the plaintiff-appellant.

6. Aggrieved against the aforesaid judgment and decree of the trial Court, the appellant filed an appeal before the first appellate Court, which was also dismissed vide judgment and decree dated 28.02.2011. The relevant findings of the first appellate Court read thus:

14. During the course of arguments it was not disputed that the plaintiff had

purchased 7576 trees in open auction on 14.1.2000 being highest bidder. The auction had taken place on 14.1.2000 and he was shown the auctioned trees on 13.1.2000.

15. The contention of learned counsel for the plaintiff that 2250.64 meters wood was to be removed by the plaintiff but in fact only 750 meters wood was removed is misconceived. In order to prove this fact, that he was permitted to remove 2250.64 meters of wood from the site, the plaintiff did not produce even iota of evidence. In this way, the plaintiff had concealed material facts from the Court. Auction letter Ex. D6, produced by the defendants, established that 7576 trees were allowed to be removed by the plaintiff from the site in question. Furthermore, as per letter dated 11.2.2000, Ex. D6, the plaintiff was granted three months time to remove the auctioned trees from the site. Thereafter, the plaintiff made request for extension of time vide letters dated 9.5.2000 and 17.6.2000, Ex. D7 and Ex. D8 respectively and on his request, the plaintiff was granted two extensions for 45 days each. In Ex. D7, the plaintiff mentioned that half of the auctioned trees had already been removed by him upto 9.5.2000. Plaintiff further mentioned in Ex. D8 that due to shortage of labour, the remaining trees could not be removed by him and on the basis of his representations, he was allowed extension of time as discussed above. In the above said applications of request Ex. P7 and Ex. P8, the plaintiff had mentioned that 7576 trees were auctioned to him. The plaintiff nowhere mentioned that the wood was auctioned by its cubical size.

16. Regarding the submission of learned counsel for the plaintiff that as per report of Local Commissioner only 3968 pits were there and the plaintiff had removed 3968 trees only, it is observed that in Ex. D7, the plaintiff mentioned that he had removed half of the auctioned trees within the stipulated period of three months. Thereafter the plaintiff was granted 45 days time each on two occasions. Further as per terms and conditions of the auction letter, plaintiff was to remove the rubbish and to fill the pits of the trees. In this view of the matter there was possibility of filling up some of the pits by the plaintiff as per the terms and conditions of auction. Hence, in view of these circumstances, the report of Local Commissioner Ex. P2 does not help the case of the plaintiff in any way. Further after the expiry of three months during which the plaintiff was to remove the auctioned trees from the spot, the plaintiff could not seek extension as a matter of right. However, he was granted extension of 90 days on his request. In the letters for extension of time, Ex. D7 and Ex. D8, it was not mentioned that the officials of the defendants were not allowing the labour of the plaintiff to cut and take away the trees from the site. Hence, the pleadings of the plaintiff that the defendants did not allow him to cut and lift the auctioned trees from the site appears to be an afterthought and the same cannot be accepted. The learned lower Court has elaborately discussed in detail the evidence brought on the file and the law point involved in the matter. I do not find any infirmity or illegality in the well reasoned judgment of the learned lower Court under appeal and the findings recorded by the learned lower Court on all the issues are affirmed.

7. Still not satisfied, the plaintiff has filed the instant appeal before this Court challenging the judgments and decrees of the courts below submitting that the following substantial questions of law arise for consideration of this Court:

i) Whether when the plaintiff-appellant proved the fact that he has removed only 3968 trees out of total 7576 as per the evidence on the record then he is entitled to seek the relief of mandatory injunction?

ii) Whether the reasoning adopted by learned courts below and dismissing the suit of the plaintiff without considering the cogent evidence on the record produced by the plaintiff is totally wrong, illegal and against the law?

iii) Whether the report of Local Commissioner which was given after appointing by the Id. Trial Court which was duly exhibited and proved by way of evidence and further cross-examined by the respondents is admissible in evidence?

iv) Whether there is misreading of the evidence by the both the learned courts below?

v) Whether grave and manifest injustice has been caused to the appellant?

8. In support of his case, learned counsel for the appellant has vehemently argued that the courts below have failed to consider the evidence on record, especially the report of the Local Commissioner from which it stands proved that the appellant has been denied cutting of the auctioned trees which has resulted into failure of justice to him. According to the appellant, as per the report of the Local Commissioner, it has been proved that 108 trees were still standing at the time of his visit and thus, his contention stands proved that the total trees auctioned in his favour have not been allowed to be cut and removed, and therefore, the judgments and decrees of the courts below are liable to be set aside.

9. On the basis of substantial questions of law, as raised, and the arguments raised before this Court, learned counsel for the appellant has submitted that there is misreading of evidence on record which has resulted into perversity of the findings and thus, substantial questions of law, as framed, arise in favour of the appellant.

10. The argument raised on behalf of the appellant is misconceived. Simply because it has been found by the Local Commissioner that some of the auctioned trees were still standing, will not prove the case of the appellant; as admittedly, the appellant was under an obligation to cut and remove the auctioned trees within the stipulated period of three months as per the terms and conditions of the auction. Admittedly, the appellant was granted extension of 45 days twice. Still it has been argued on his behalf that he was not permitted to cut and remove the auctioned trees from the Military Station, Hisar, which cannot be accepted. In fact, it was for the appellant to cut and remove the auctioned trees as per the terms and conditions of the auction. Having failed to do so, the appellant cannot raise any grievance in this regard. In fact, the appellant could

not show any obligation on the part of the respondents to allow him to cut and lift the auctioned trees after the expiry of stipulated period and even after grant of extension of the said period.

11. No other point has been argued.

12. Thus, no substantial question of law, as raised, arises in this appeal. Dismissed.