
(1980) 04 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Second Appeal No. 64 of 1969

Raja Bahadur Shri Chandrases	Vs	APPELLANT
Divisional Officer and Others		RESPONDENT

Date of Decision : 25-04-1980

Acts Referred:

Rajasthan Public Demands Recovery Act, 1952 — Section 20

Citation : (1980) WLN 155

Hon'ble Judges : S.N. Deedwania, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Deedwania, J.—This second appeal is against the judgment & decree dated 19-10-1968 passed by the District Judge, Bhilwara by which the suit of the plaintiff was dismissed.

2. The facts were these. A certificate of demand for Rs. 500/- was issued under the Public Demands Recovery Act for the recovery of Rs. 500/- against the father of the appellant. Rs. 500/- were recovered from the appellant. The appellant therefore, filed a suit for the recovery of Rs. 500/- against the respondent on the ground that to amount of royalty was due against his deceased father Amar Singh as stones and other material were quarried for the construction of a School and a hospital. No notice was given to the plaintiff in respect of the aforesaid proceedings of the recovery. The learned District Judge held that the suit of the plaintiff was not maintainable without a prayer for cancellation or modification of the certificate u/s 20 of the Rajasthan Public Demands Recovery Act, 1952 (here-in after referred to as the Act). In this view of the matter the suit of the plaintiff was dismissed.

3. I have Heard the learned Counsel for the appellant and the learned Assistant Government Advocate for the respondents and perused the record if the case carefully. It was argued by the learned Counsel for the appellant that as the

certificate of recovery was per se illegal and therefore it was not necessary to seek a relief for its cancellation or modification of the certificate in a suit filed for the refund of Rs. 500/- which were recovery from him in the absence of any notice. I have considered the argument carefully. It appears from the judgment of the lower court that a notice of recovery proceedings was given to the appellant. The learned Counsel for the appellant could not point out that how the certificate dated 1-4-1963 was illegal. Section 20 of the Act reads as follows:

Section 20 Suits for cancellation or modification of certificates (1) A defaulter may bring a suit to have a certificate cancelled or modified and for any further consequential relief to which he may be entitled.

(2) Such a suit may be brought At any time within 6 months

(a) from the service upon the defaulter of the notice required by Section 6, or

(b) from the date of the determination of a petition denying liability, u/s 8 (x x x), or

(c) from the date of protest lodged by him u/s 15 (or)

(d) from the date of the decision of an appeal filed by him u/s 23 A).

Provided (x x x) that notwithstanding anything contained in this Act and in any other law for the time being in force the defaulter may in a suit Instituted, under this Section prove that nothing was due from him on account of the public demand or that the amount due was less than the amount stated in the certificate.

It Is evident from a bare perusal of the Section that the defaulter will bring a suit to have a certificate cancelled or modified and for any further consequential relief and therefore, implies that before the plaintiff can claim the consequential relief of the refund of Rs. 500/- he has to challenge the validity of a certificate of demand and make a prayer for its cancellation or modification. In this view of the matter I am of the opinion that the learned District Judge rightly accepted the appeal and dismissed the suit of the plaintiff. Thus the appeal being devoid of any force is hereby dismissed.