

(1995) 07 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 172 of 1989

State of H.P. and Another

APPELLANT

Vs

Wariam Singh and Others

RESPONDENT

Date of Decision : 03-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Himachal Pradesh Land Revenue Act, 1954 — Section 84

Citation : (1995) 3 ILR HP 1740

Hon'ble Judges : A.L. Vaidya, J

Bench : Single Bench

Advocate : Shyama Dogra, Dy. Advocate General, for the Appellant; Varinder Verma and K.D. Shridhar, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Vaidya, J.—The present Respondent Sh. Waryam Singh filed a suit for recovery of Rs. 48,500/- as compensation for damages caused to him by the Defendants. The other prayer submitted in the plaint was for the grant of permanent injunction restraining the Defendants from claiming and realising Rs. 54,639.25p as arrears of land revenue.

2. As per case of the Plaintiff, it has been pleaded by him that he was a Contractor and was engaged in the manufacture of Katha and he purchased Khair and other trees by auction in Lot No. 45/78-79,UP/22 Chhatroli, C-8, Nurpur Range for manufacturing of Katha and other trees for firewood at the cost of Rs. 1,50,100/- and also purchased Khair trees from the owners of village Dhasoli, Takwal, Mauza Fatehpur, Village Makher Mehar, Lhoh, Mauza Bagroli and village Rajgir, Tehsil Nurpur. Thereafter the Plaintiff obtained permit to set up Bhathies one Pehla and one Tehla to manufacture Katha from Khair trees purchased from individual land owners from their proprietary holdings and also for manufacturing of Katha from the khair trees obtained from the auctioned forest referred to earlier.

3. Plaintiff's further case has been that he engaged labourers and other persons to construct Bhathies and to manufacture Katha and for cutting of trees and for other work connected with felling of trees, transporting them to the Bhathies and doing other necessary work for the manufacturing of Katha. According to him, he spent nearly Rs. 39,000/- for this purpose. It was also pleaded that the Defendants with the help of their subordinates in the forest department interfered and obstructed the manufacturing work of katha from privately owned trees without any right or justification and consequently, the Plaintiff alongwith other contractors had to file a writ petition challenging the action of the forest officials in interfering with manufacture of Katha from the trees owned by the proprietors individually owned holdings in which the Himachal Pradesh Government and Forest Department took up the position that they had nothing to do with the trees owned by the proprietors and that they were not in any manner interfering with the rights of the contractors with respect to the trees purchased from the proprietors. Consequently, as per the case of the Plaintiff, in view of the reply of the government, the writ petition became infructuous and was withdrawn on 26.2.1979.

4. According to Plaintiff, his action in challenging the authority of the Forest Department and its officers annoyed the Defendants and they with a view to harm the interests of the Plaintiff, adopted aggressive attitude and indulged in demolishing the Bhaties constructed by the Plaintiff and removed 10 Quintals of manufactured katha and approximately 1/2 Quintal of Katha which was being manufactured and was in process of manufacture and was in the Handies. Plaintiff very specifically pleaded that on 3.4.79 in the afternoon, Defendants No. 3, 4 and 5 with the help of their subordinates raided the Jhallas (Kullies) situated in village Ghanderi, Mauza Hatali, Teh. Nurpur in which Bhaties were set up and tress-passed into the Kullies in which the Bhaties were set up for the manufacture of Katha. The Plaintiff also averred that Bhaties were destroyed and 75 Handies alongwith the Katha in manufacturing process were removed and part of the semi-manufactured Katha was destroyed in the process of removal and part of it was removed alongwith the Handies. It was also alleged by the Plaintiff that 50 Quintals of processed Khair wood collected there for manufacturing of Katha were also forcibly captured and removed from near the Bhaties. According to the assessment of the Plaintiff, the Katha removed and destroyed was worth Rs. 42,000/and the Khair wood valued about Rs. 8,000/-. This action has been assailed on behalf of the Plaintiff being without any authority was illegal and without any justification.

5. Plaintiff further pleaded that at the time of destruction of Bhathies, removal of Handies and manufactured Katha, there was about 8 Quintals of Katha, which was in pits known; as Path, which was devised to convert newly prepared liquid Katha in solid pieces in order to make it marketable. This Katha could not be removed by the Defendants and the same remained lying in the huts in which Bhathies were installed. This Katha was worth about Rs. 32,000/- and the Plaintiff was not allowed to remove it and to market it, somuch so that the Forest

Guards were put on duty to guard the Bhathies and stop the Plaintiff from removing the same under orders of Defendant No. 3. Plaintiff also averred that approximately 4000 Quintals of fire-wood was lying in the forest Lot No. 45/78-79 which was also not allowed to be removed illegally from the forest. The value of that fire-wood, according to Plaintiff, was worth Rs. 50,000/-.

6. Plaintiff on the basis of the aforesaid circumstances, averred that Defendants No. 3,4 and 5, who happened to be the Divisional Officer and Forest dangers was malafide and was result of retributive attitude of the forest officials apparently adopted by them to punish and seek vengeance for the action of the Plaintiff in joining the contractors to file a Writ Petition challenging the action of the Forest Officers and their subordinates in interfering with the Katha extraction work from the Khair trees belonging to the proprietors, purchased by the Plaintiff from the areas in exclusive ownership and possession of the proprietors. According to Plaintiff, before he cut the Khair trees purchased from the private owners, a registered intimation dated 10.3.79 was sent to the Divisional Forest Officer, Nurgur (Defendant No. 3) intimating that according to the position taken up by the government in the Writ Petition, the Plaintiff had decided to cut the Khair trees after satisfying himself that the Khair trees purchased by the Plaintiff from the private owners were their exclusive property and the Plaintiff had satisfied himself that the forest authorities had nothing to do with it. It has also been averred in the plaint that the Plaintiff had requested Defendants No. 2 and 3 to satisfy himself if he doubted the statement of the Plaintiff regarding the aforesaid trees.

7. Plaintiff's further case has been that under the terms and conditions of the agreement, permit was to continue extraction of Katha work upto 15.4.1979, but the destruction of Bhathies on 3.4.79 rendered the Plaintiff helpless and no Katha extraction work could be continued after the aforesaid illegal action of the Defendants, and the result of the same was that the labourers of the Plaintiff who were engaged under a contract to work in Bhathies up to 15.4.79 remained idle and the Plaintiff had to pay their wages under the contract for the period 3.4.79 to 15.4.79. The Plaintiff in this base (sic) suffered a loss of Rs. 7,000/-.

8. It was also pleaded by the Plaintiff that due to unauthorised acts of the forest officials, the Plaintiff could not pay the government dues to the extent of Rs. 94,000/-. It was pleaded that the Plaintiff has suffered a heavy loss amounting to Rs. 1,70,000/- and other loss of Rs. 32,000/- were also sustained due to the illegal interference by which the labour engaged by the Plaintiff remained idle due to illegal acts of forest officials.

9. It was also averred that the Defendants took unauthorised possession of 18-1/2 Quintals of manufactured Katha valued Rs. 74,000/-, 50 Quintals of processed Khair wood, valued Rs. 8,000/- and 4000 Quintals of fire-wood valued Rs. 50,000/- which has not been restored to the Plaintiff inspite of the notice. The Plaintiff was also not granted permits to take the articles out of the possession of the Defendants and to sell the same in proper markets. According

to Plaintiff, the Defendants ought to have adjusted the price of illegally captured goods towards the payment of outstanding amount of purchase money of lot No. 45/78-79 and in any case, the Plaintiff was entitled to claim that the amount of Rs. 1,12,575/- due to be paid to the government according to contract before 31.5.79 had been received by the government in the form of price of goods illegally removed. It was also averred that the action of the Defendants under the circumstances in claiming and releasing Rs. 54,639.25 P as arrears of land revenue was absolutely unjustified, wrongful, illegal and without any authority. Defendant No. 1, as per Plaintiff, has taken out proceedings to realise the amount and was keen to adopt the proceedings to realise the amount as arrears of land revenue, and in this behalf, the land of the Plaintiff was attached and was liable to be sold without any legal justification and otherwise too the amount was not legally recoverable as arrears of land revenue. The Plaintiff, as such, was entitled for the relief of permanent injunction, referred to above.

10. On the basis of the aforesaid pleas submitted in the suit, the Plaintiff has asked for the relief already described above.

11. The Defendants took preliminary objections in their written statement that no valid notice u/s 80 CPC was served upon the Defendants, that the suit was not maintainable under the H.P. Land Preservation Act, 1978 and Punjab Land Revenue Act and H.P. Land Revenue Act, and that the suit was bad for non-joinder of necessary parties. On merit, it was pleaded that no khair trees were purchased by the Plaintiff from the private land owners during 1978-79, who are the necessary parties to the suit. It was admitted that the Plaintiff was allowed to start Katha Bhatti, one Pehla and one Tehla for the manufacture of Katha from the trees sold to him from the government lot No. 45/78-79, but no separate permission was given for the installation of Katha Bhatti for the trees of private land. It was further pleaded that the alleged Writ Petition had been filed pertaining to areas falling in Bilaspur District, where provisions of Punjab Land Preservation Act, 1900 was not applicable and the said Writ Petition and decision thereon had got no bearing on the merits of the present suit. It was very specifically averred that the act of the Defendants in restraining the Plaintiff from unauthorised felling of trees as described, was very much justified, as the same was in conformity with the provision of Punjab Land Preservation Act, 1900 and the notification issued under the said Act and also under H.P. Land Preservation Act, 1978 (hereinafter to be referred as H.P.L.P.A). It was also submitted that the notification issued under Punjab Land Preservation Act, 1900 (hereinafter to be referred as the Punjab L.P.A.) continued to be in force till 27.8.80, on which date a fresh notification was issued under H.P.L.P.A. by the Governor of H.P. and any action taken by the Defendants was perfect and legal. According to Defendants, a surprise raid was made on 3.4.79 on the side of Bhatti situated in Ghandiri Khad with the help of forest field staff and direction was given to stop the Bhatti and seized cut khair material approximately 25 Quintals, 74 No. Handies, one Thentha and one big size saw. It was averred that no manufactured katha was removed and destroyed as alleged by the Plaintiff. According to Defendants, a

F.I.R. was lodged with S.H.O., Indora and the seized material was handed to him and this action was necessitated because the Plaintiff indulged in unauthorised and illicit felling of khair trees from the private areas and government forests as well. It was also pleaded that since Plaintiff had not applied for export of fuel wood nor he paid any dues of captioned lot. The action of Defendants in restraining the Plaintiffs from exporting the fuel wood of lot No. 45/78-79 was very much justified and legal. It was further submitted that a registered intimation without date was received in the office of Defendant No. 3 on 13.3.79 from the Plaintiff, which was replied to vide D.F.O. office No. 20611 dated 30.3.79 asking the Plaintiff to get the areas demarcated according to government's orders and then to obtain regular permission for felling of trees from the private lands, as the rules made under the Punjab L.P.A., 1900 were still in force in Nurpur Tehsil of Kangra District. It was also pleaded that as the Plaintiff started in indulging in unauthorised and illicit felling of khair trees from private/government forests, the Defendant had to take action against the Plaintiff as provided under the law. It was, however, admitted that the Plaintiff was "allowed to extract katha upto 15.4.79 only from 152 khair trees allowed for felling from private areas during 1978-79. However, on surprise raid made on 3.4.79, it was found that cut material of 152 khair trees had since been consumed for manufacturing of katha and further manufacturing of katha was stopped as the Plaintiff started unauthorised/illicit felling of khair trees from the private lands and government forests. It was pleaded that Defendants No. 3 to 5 acted in accordance with law and the suit against them was barred by law. According to Defendants, Plaintiff did not pay the dues of lot No. 45/78-79 within the contract period and subsequently he was issued registered letters vide their office No. 3639 dated 7.7.79, dated 2.8.79 and 13.11.79 thereby reminding him that in case the balance dues were not paid immediately, the action to recover the same would be taken as per terms and conditions of agreement-deed. In spite of this, as per Defendants, Plaintiff did not pay the dues and thus the indenture was cancelled and the produce was taken in possession and put to public auction, as provided in Clause No. 15 of the agreement-deed executed with the Plaintiff. The confiscated forest produce was thus sold for Rs. 5p,755.75 P as detailed under:

1. Price of 15 Qtls. Rs. 1650.00 khair logs and 4 Qtls. khair chips. 2. Amount received by Rs. 19095.75 auction of katha 6.76 Qtls. (gross weight) 3. Amount received by Rs. 30010.00 auction of fuel wood (68 90 Qtls. when green). Total: ----- Rs. 50755.75

12. The Defendants further pleaded that after selling the confiscated property as referred to above, a sum of Rs. 54,639.25P were due by the Plaintiff to the government, which was being recovered as arrears of land revenue through Collector Kangra District as per Clauses 24 and 29 of the agreement-deed. The other averments made in the plaint were not admitted.

13. Parties were put to trial on the following issues by the trial court:

1. Whether the Defendants illegally and un-authorisedly captured the goods of the Plaintiff, as alleged? if so when and to what amount? O.P.P.
2. Whether the Defendants/State committed the breach of the contract between the parties and, therefore, is not entitled to realise the contract amount, as alleged? O.P.P.
3. Whether the Defendants/State cannot realise the amount as arrears of land revenue as alleged? OPP
4. Whether the price of the seized goods from the Plaintiff has been adjusted by the Defendant, if so, its effect? O.P.D.
5. Whether the suit is not maintainable under the Land Revenue Act? OPD
6. Whether the suit is not maintainable as alleged? OPD
7. Whether the notice issued by the Plaintiff is not valid? OPD
8. Relief.

14. Issues No. 1 to 3 were decided in the affirmative, while issues No. 4 to 7 were decided in the negative. The suit of the Plaintiff was decreed for recovery of Rs. 48,5007- and it was held that the Defendants were not entitled to recover any amount from the Plaintiff as arrears of land revenue on account of purchase money of Lot No. 45/78-79 purchased by the Plaintiff.

15. The aforesaid Judgment and decree were assailed on behalf of the present Appellants before the First Appellate Court on various grounds. After hearing the parties, the first Appellate Court dismissed the appeal with costs and maintained the Judgment and decree passed by the trial court.

16. The aforesaid judgment and decree have been assailed in the present appeal on various pleas.

17. I have heard the learned Counsel for the parties and have also scrutinised the entire records.

18. The main point stressed on behalf of the Appellants before this Court pertains to the findings given by the courts below regarding the recovery of the decretal amount. In this behalf, it has been submitted before this Court that the two Courts below have not discussed the evidence and considered the legal evidence in order to arrive at the aforesaid amount of Rs. 48,500/-. The learned Deputy Advocate General's line of arguments in this behalf has been that the judgments of the two courts below passing such a decree without there being any evidence to support the same were liable to be set aside. It is not so simple a matter as contended on behalf of the Appellants.

19. It may be very specifically referred here at this stage that the concurrent findings of fact given by two courts below has ordinarily to be accepted unless and until it can be assailed to be without any basis whatsoever. In order to

appreciate this aspect of the matter, the evidence examined during the trial has to be appreciated.

20. The learned District Judge in the judgment dated 3rd January, 1989 has observed that so far as the amount of damages was concerned, the learned A.D.A had not said anything about it. But, however, it was clear from the evidence of Plaintiff Waryam Singh (PW.1), Ajit Singh (PW. 3), Parkash Chand (PW. 5), Indar Singh (PW. 6), Jagdish Chand (PW. 7), Khushi Ram (PW. 8), Saran Dass (PW. 9) and Ram Lai. (PW. 10) that Bhatties were destroyed by Defendants No. 3 to 5 and the manufactured katha and other Katha under the process of Handies was seized and removed. The trial court also observed that Head Constable Kashmir Singh (PW. 4) also admitted taking into possession of Katha and according to Plaintiff, 10 quintals of manufactured Katha half quintal of semi-manufactured Katha was taken into possession by the D.F.O. and 75 handies were destroyed and that the material was of the value of Rs. 42,000/-. It was also observed by the trial Judge that 50 quintals of khair wood was removed by the Defendants which valued at Rs. 8,000/- and Plaintiff also speaks about the expenditure incurred on the labour amounting to Rs. 7,000/- and that the fire-wood weighing 4000 quintals was not allowed to be removed by the Defendants, which valued at Rs. 50,000/-. The trial court also observed that in so far as the prices referred by the Plaintiff in the plaint have not been in a way disputed. It may be pointed out here that according to the Defendants whatever was sold by them had been detailed out in the written statement, as referred to above. But the dispute basically was with respect to the quantity of various materials taken into possession and alleged to have been destroyed by the Defendants on 3rd of April, 1979.

21. Similarly, the first Appellate Court has also discussed the evidence regarding the quantum of compensation.

22. This Court has also gone through the record and the witnesses relied upon by the two courts below in this behalf have very specifically made statements to that effect. The Plaintiff while appearing as PW.1 has fully supported his case as pleaded by him in the plaint. PW.3 is one Ajit Singh. He is the eye witness of the occurrence which took place on 3rd April, 1979. He has very specifically stated that the Defendants broke the Bhatties and at that time Katha was being manufactured and they took the entire material in a truck. He further added that at that time at the spot 10 quintals of dry katha was there and the wetted katha which was being dried up was about 8 quintals which was not allowed to be removed and forest guards were put on duty to guard that material. He has named the Defendants to be present there alongwith 30 others-their subordinate. He said that he prevented those persons, but they threatened hire. He also said that about 50 quintals of khair wood was also ready for manufacturing of katha. According to him, 4000 quintals of fuel wood was also taken into possession by the forest people. According to him, 28 persons were employed by the Plaintiff at that time.

23. Similarly PW.5 Parkash Chand and other witnesses, as detailed out by the two courts below, made statements on oath pertaining to the alleged factum of destruction and taking away of the property from the spot by the Defendants coupled with the damage suffered by the Plaintiff.

24. Thus, it cannot be said that practically there is no evidence examined by the Plaintiff to establish, the damages in terms of money suffered by him. Such findings by the two courts below, that too by appreciation of evidence examined during the trial, even if arrived at, by not properly appreciating the evidence, those findings being concurrent in nature and pertain to the factual side of the matter, under the law cannot be interfered with by this Court.

25. Practically, the other findings of the courts below pertaining to Issues No. 1 to 3 have not been contested in the present proceedings. Those findings again require no interference, especially when they have been arrived at after correctly appreciating the facts and law in this behalf.

26. The first Appellate Court regarding the preliminary objections raised on behalf of the Defendants in their written statement pertaining to the maintainability of the suit and with respect to the notice u/s 80 Code of Civil Procedure, has very specifically observed that the preliminary objections raised in the written statement were not pressed before him and the only contention of the learned Counsel for the Appellants was that Defendant No. 3 Sh. Nanak Chand, the then Divisional Forest Officer, was justified in seizing the goods, as the dues have not been paid and the State was not responsible for the loss, which might have been suffered by the Plaintiff. It was probably on this account that the learned Deputy Advocate General did not seriously contest the following substantial question of law on which the appeal had been admitted:

Whether the suit of the Respondent/Plaintiff was not maintainable in view of bar by Section 84 of the Land Revenue Act.

27. Now, coming to the other aspect of the matter, the lease-deed Ext.P.18 has been brought on record, on the basis of which the Plaintiff could have continued to process Katha upto 31.5.79 in respect of trees purchased from the government forest. As per this deed, Plaintiff was entitled to complete the felling and conversion work of trees by 15th April, 1979 as was apparent from the permit issued by the Divisional Forest Officer, which was Ext.P.2 on record. In so far as the occurrence of 3rd April, 1979 was concerned, it has not been disputed. This Defendant No. 3 Nanak Chand, Divisional Forest Officer, examined himself on oath as DW.5. He stated that he was informed by his Ranger that Plaintiff had felled 274 private trees and 25 trees owned by the government and he has noticed the stumps at the spot. It may be referred here that this aspect of the matter has not been specifically pleaded in the written statement preferred by the Defendants. However, it has been averred that on 3.4.79 the occurrence took place as the Defendants took action against the Plaintiff who was acting in violation of law. This witness has admitted that permission was granted to the

Plaintiff for felling the trees obtained in private sale. It was also stated by him that the operation of manufacturing of katha could be continued upto 15th April, 1979. He also admitted that the weight of processed katha may be 25 quintals.

28. It is in Ext.P.18 (Clause-6 of the agreement) that lessee shall not purchase trees from the owners of private lands during the lease period within the limits of the same forest division without the approval of the Forest Officer in writing. In the present case, as referred above, the Plaintiff had applied for the purchase of khair trees from the private owners and the permission was accorded on 26.2.79 and this permission allowed the Plaintiff to purchase 152 trees from the private areas as detailed in permit Ext.P.2. In this permit which pertained to the sale of khair trees from the private areas for felling and conversion work of trees was allowed to be completed by 15.4.79 and this was issued in the name of Plaintiff. This permit was dated 26.2.79. The plea of the Defendants that private trees were purchased in violation of agreement does not hold good at all. This Ext.P.2 was given by none-else than Defendant No. 3 Sh. Nanak Chand, the then D.F.O.

29. The Defendants and other officials of the forest department stopped the work on 3.4.79, much before the stipulated time, as referred to above.

30. There is absolutely no evidence examined during the trial, which could show that Plaintiff felled any tree from the government forest except a general statement made by the Defendants in this behalf. There is no doubt that some damage report Ext.D.1 dated 6.6.79 has been given by Longu Ram, Forest Guard, who found that 18 quintals 24 Kgs. katha has been exported without any permit. It is really very strange to note that this damage report came into being at the very later stage. The katha as well as semi-manufactured katha was taken into possession on 3.4.79 when the damage report was dated 6.6.79. There is nothing in the damage report whether any material was taken into possession. It has been referred in the damage report that it was found at the spot that 18 Quintals 24 Kgs. of katha was exported without permission and at the spot 6 quintals 76 Kgs. katha was confiscated which was given to the sapurdar as referred earlier. The sapurdari memo at the reverse of this damage report is quite blank. Names of certain persons have been mentioned and similarly the alleged confessional statement of the alleged accused was blank and it was referred that he was not at the spot. Any way, this damage report does not help the case of the Plaintiff in so far as the occurrence of 3rd April, 1979 was concerned.

31. It has been the case of the Defendants that Plaintiff had failed to pay the dues to the government in respect of the lot sold to him by the stipulated agreement, therefore, the D.F.O. was justified in taking into possession the processed katha and other articles. Clause-15 of the agreement deals with this aspect of the case, which runs as under:

That if the lessee fails to pay any instalment of purchase money or any part thereof on the due date he shall be liable to pay interest at 10% per annum with

in the contract period after the lapse of three days grace which payment alongwith the royalty will be realisable from his security money herein before mentioned and by seizure and detention of his produce extracted from the forests as may be lying in the forests, on the roadside, Katha Bhatties or lying in any other place. If such failure extends to 30 days without written permission of the Conservator of Forests Dharamsala Circle, the lessee shall be liable to lose all claims to the trees and produce and to the retention by the Forest Officer of all money already paid by the lessee or on his behalf under the terms of this indenture as liquidated damages and the Forest Officer subject to the approval of the Conservator of Forests Dharamsala Circle may cancel this indenture. However, the Conservator of Forests may for special reasons condone the delay beyond 30 days but not exceeding 60 days on charging the penal interest & 15% per annum in case no written permission is sought within the said period of 30 days by the lessee. It is, however, understood that no removal/export of timber by road whatsoever will be permitted without payment of royalty dues as per Clause 14 above.

32. The contract period had to come to an end on 31st May, 1979, but the Bhatties were destroyed and the produce was taken into possession on 3.4.79. This clause stipulates that in case the Plaintiff fails to pay the contract money after the lapse of 3 days of the contract period, then the amount would be realised from the security and also by seizure and detention of the produce extracted from the forest as may be lying there. The Conservator of Forest was competent to extend the period of payment by 30 days. It has also been referred that till such time the government dues were cleared, the removal or export of the produce was not to be permitted by the forest department.

33. In the present case, as per agreement Ext.P.18 on record, the first instalment of Rs. 37,525/- was to be paid by 31st of March, 1979; and the remaining amount of Rs. 1,12,575/- was to be paid on or before 31.5.79. In case, three days, as per Clause 15 of the agreement, were to be added in 31st March, 1979, the period comes to 3rd of April, 1979 and the amount could be so paid, by the contractor on or before 3rd of April, 1979, but the occurrence took place on 3.4.79 itself. This conduct on the part of the Divisional Forest Officer and other officials was not only illegal and without any authority, but against the terms and intention of agreement Ext.P.18.

34. On the basis of the aforesaid circumstances which are reflected from the evidence examined by the parties, the findings of the two courts below cannot be said to be illegal and unwarranted.

35. No other point has been stressed.

36. In view of the foregoing reasons, I do not find any reasons whatsoever to differ with the findings arrived at by the two courts below after correctly appreciating the law and evidence in this behalf. The present appeal fails and is dismissed with costs. The judgment and decree passed by the two courts below

are maintained.