

(2016) 12 OHC CK 0023
In the Orissa High Court
Case No : S.A. No.243 of 1994

State of Orissa

APPELLANT

Vs

Sri Dwarika Das Agarwalla

RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Article 113, Article 22

Citation : (2017) 171 AIC 347

Hon'ble Judges : A.K. Rath, J.

Bench : Single Bench

Advocate : Mr. P.C. Panda, Additional Govt. Advocate, for the Appellants; Mr. Kishore Kumar Jena, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J.—This is an appeal against the judgment and decree dated 15.7.1994 and 27.7.1994 respectively passed by the learned District Judge, Mayurbhanj, Baripada in Money Appeal No.4 of 1990 reversing the judgment and decree dated 31.8.1990 and 14.9.1990 respectively passed by the learned Subordinate Judge, Baripada in Money Suit No.48 of 1988.

2. The respondent no.1 as plaintiff instituted the suit for realization of money of Rs.7500/- from defendant no.1 with interest. The case of the plaintiff is that he was working as a forest contractor. The defendants were the owner of Sabai Grass Plantation area at Jamsola. He was the highest bidder. Accordingly, the lease was granted, commencing from 1.10.1968 to 30.9.1974, for an amount of Rs.3,91,600/-. He deposited an amount of Rs.10,160/- towards security deposit. The same was to be refunded to him on completion of the contract period. After the contractual period was over, he requested the D.F.O. to refund his security amount in February, 1975 and another in November, 1975. While the matter stood thus, the D.F.O. intimated him that Rs.7500/- was to be deducted from the security amount because of the irregularities committed during lease period. An

amount of Rs.4785/- was refunded by the D.F.O.

3. Pursuant to issuance of summons, the D.F.O., Baripada, defendant no.2, filed a written statement. The case of the defendant no.2 was that the suit amount was deducted from the security deposit for the irregularities in the work. Furthermore, the claim was barred by limitation.

4. Stemming on the pleadings of the parties, learned trial court struck five issues, issue no.3 is pivotal one. The same is quoted hereunder.

"(3) Is the suit barred by law of limitation ?"

5. To substantiate the case, the plaintiff had examined one witness and on his behalf four documents had been exhibited. No oral or documentary evidence had been adduced by the defendants.

6. Learned trial court came to hold that the security amount of the forest contractor is just a deposit like any other deposit and the same cannot be termed as trust. The security deposit is a deposit kept with the D.F.O. for adjustment against anticipatory loss. The case of the plaintiff comes under Article 22 of the Limitation Act. The period of limitation is three years and as such the suit is barred by limitation. Held so, learned trial court dismissed the suit.

7. Aggrieved by and dissatisfied with the judgment and decree of the learned trial court, the plaintiff filed Money Appeal No.4 of 1990 before the learned District Judge, Mayurbhanj, Baripada. Learned appellate court came to hold that the security money was deposited for due performance of contract. The said amount was kept in deposit in favour of the depositor. The defendants were not allowed to use that money to make profit out of the same. They had not paid interest over the same to the plaintiff. The security deposit made by the plaintiff was in shape of trust and as such residuary Article 113 would apply. It provides the period of limitation of three years from the date when the right to sue accrues. After the contractual period was over, the plaintiff had requested the D.F.O. to refund the security amount. Neither the security amount was refunded nor any order was passed. On 2.10.1985 under memo no.9444, the D.F.O. intimated the plaintiff to receive the remaining security deposit of Rs.4785/-. So his right to sue accrues in October, 1985. The suit was filed within the period of limitation. Held so, learned appellate court set aside the judgment and decree of the learned trial court.

8. The second appeal was admitted by a Bench of this Court on 13.12.1994 on the following substantial question of law:

"The contractual period having expired on 30.9.74 and the suit for refund of security deposit having been filed long three years thereafter, whether the suit was barred by limitation ?"

9. Heard Mr. P.C. Panda, learned Additional Government Advocate for the appellants and Mr. K.K. Jena, learned counsel for the respondent.

10. Mr. Panda, learned Additional Government Advocate for the appellants submitted that the security deposit was made for due performance of contract. The same was kept with the D.F.O. for adjustment against anticipatory loss. By no stage of imagination, the same can be construed as a trust. The period of limitation is three years for the money deposited under the agreement that it shall be payable on demand and as such Article 22 of the Limitation Act would apply. The suit was grossly barred by limitation. Learned appellate court fell into patent error of law in holding that Article 113 of the Limitation Act would apply in the facts and circumstances of the case.

11. Mr. Jena, learned counsel for the respondent, on the other hand, submitted that the security deposit is in the nature of trust. Learned appellate court has rightly held that Article 113 of the Limitation Act would apply.

12. The sole question hinges for consideration in this appeal is as to whether the security deposit was in the nature of trust and as such Article 113 of the Limitation shall apply or simply money was deposited and for refund of the same, the suit had to be filed within three years under Article 22 of the Limitation Act on demand?

13. In *M/s. Rai Bahadur Seth Jessa Ram Fatehchand v. Om Narain Tankha and another*, AIR 1967 SC 1162, the apex Court had the occasion to consider as to whether the security deposit in a particular case can be said to be impressed with a trust will have to be decided on the basis of the terms of the agreement and the facts and circumstances of each case, without any learning one way or the other on the fact that the money was given as a security deposit. The apex Court held thus:

"?????If the terms of the agreement, if it is in writing, clearly indicate that the deposit was in the nature of a trust, the court will come to that conclusion in spite of the fact that interest is provided for in the agreement. But where the terms of the agreement do not clearly indicate a trust, the court will have to consider the facts and circumstances of each case along with the terms to decide whether in fact something in the nature of a trust was impressed on the security deposit. In such a case the fact whether segregation was provided for or not would be one circumstance to be taken into consideration. Where segregation is provided for the court would lean towards the deposit being in the nature of a trust. But where segregation is not provided for and the deposit is permitted to be mixed up with the funds of the person with whom the deposit is made, the court may come to the conclusion that anything in the nature of trust was not intended, for generally speaking in view of Section 51 of the Indian Trust Act, (No. 2 of 1882), a trustee cannot use or deal with the trust property for his own profit or for any other purpose unconnected with the trust. It is true that where there is a clear trust and the trust deed if any provides that the trustee may use the trust property as he likes, the fact that the trustee can mix the trust property with his own may not make any difference. But where there is no clear indication that a security deposit was impressed with a trust, absence of segregation would

be a circumstance against there being a trust.

Another circumstance which may have to be taken into account in a case where the agreement does not indicate clearly that the security deposit is impressed with a trust is the payment of interest. Where there is no payment of interest provided for an inference may be readily drawn that the deposit was in the nature of a trust. But where the person with whom the deposit is made is to pay interest it may be possible to infer that payment of interest is a pointer towards there being no trust. Further any other provision in the agreement and any other circumstance as to the manner in which the deposit was dealt with may also have to be taken into account in coming to the conclusion whether the security deposit in a particular case was impressed with a trust or not."

14. On the anvil of the decision cited *supra*, the instance case may be examined. The plaintiff deposited an amount of Rs.10,160/- towards security. The contract between the plaintiff and defendant no.2 had been marked as Ext.1. Clause 6 of the contract is as follows:

"6. The forest contractor hereby binds himself to perform all acts and duties required and to abstain by himself and his servants and agents from performing any act forbidden by or under the Indian Forest act, 1927 by the Forest Contract Rules and by this agreement and to pledge as security for the due performance and observance by him of the terms of this agreement the sum of Rs.10,160.00 deposited in favour of the Divisional Forest Officer, Baripada Division."

15. As would be evident from the aforesaid clause, the amount was deposited for due performance of contract in favour of defendant no.2. No interest was payable. The period of contract was from 1.10.1968 to 30.9.1974. After the contractual period was over, the plaintiff requested the defendant no.2 to refund the security deposit on 5.2.75 and 10.5.75. But then no communication was made. The defendant no.2 sent a letter dated 19.11.75 imposing a levy of compensation of Rs.7200/- on the plaintiff for the irregularities committed by him. The plaintiff was directed to pay the dues within fifteen days. He made representation on 7.2.1979 to release the security deposit. The plaintiff was intimated by the defendant no.2 vide letter dated 23.2.1979 that the matter had been referred to the Conservator of Forest, Angul Circle and the security deposit would be released after receiving instructions from the Conservator of Forest. Assailing the action of the defendant no.2 in not refunding the amount, the plaintiff filed O.J.C. No.1980 of 1980 before this Court. The said writ application was disposed of on 7.1.81 with a direction to the Conservator of Forest to adjudicate the present dispute in case the matter has not been disposed of. The matter was not disposed of. On 17.7.84, the plaintiff sent a letter to the Conservator of Forest for refund of the security deposit. Again he filed writ application being O.J.C. No.1257/85 before this Court. Counter affidavit had been filed stating therein that the compensation has been determined in accordance with the terms and conditions of the sale notice and agreement executed between the parties. His security deposit of Rs.4785/- (after deduction of

Rs.7500/-) was laying with the defendant no.2 and it was open to the plaintiff to take refund of the same. The said writ application was dismissed. It was observed that any dispute on the order of the Conservator of Forest can be raised in a suit. On 8.11.85 the defendant no.2 intimated the plaintiff to receive an amount of Rs.4785/-, which was received on 16.11.85.

16. The security money was deposited with the defendant no.2 for due performance of contract. The same was kept in favour of the plaintiff. The defendants were not allowing to use money to make profit out of the same. No interest was payable on the security deposit. In view of the authoritative pronouncement in the case of M/s. Rai Bahadur Seth Jessa Ram Fatehchand (supra), the irresistible conclusion is that the security deposit in the instant case can be said to be impressed with a trust. In view of the same, residuary Article 113 of the Limitation Act will apply. Article 113 of the Limitation Act prescribed the period of limitation when the right to sue accrues. The facts narrated in the preceding paragraphs unerringly show that the right to sue accrues on 16.11.1985 when the defendant no.2 sent the letter. The plaintiff had received an amount of Rs.4785/- on 16.11.1985. The suit was instituted on 7.11.1988. Thus, the suit was filed within the prescribed period of limitation.

17. The plaintiff deposited an amount of Rs.10,160/-. He received an amount of Rs.4785/-. Thus he is entitled to Rs.5375/- only. The decree is accordingly modified.

18. Before parting with the case, this Court observes that for a paltry amount, the plaintiff is running from pillar to post since 1975. He had approached this Court twice earlier. Had the matter been examined with due care and circumspection, then valuable Court time could have been saved. No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. State is a virtuous litigant. About 60 years back in the case of Firm Kaluram Sitaram v. The Dominion of India, AIR 1954 BOMBAY 50, Chief Justice Chagla (as he then was) speaking for the Bench stressed that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent judges, as an honest person. The claim of the plaintiff was denuded on jejune grounds.

19. The logical sequitur of the analysis made in the preceding paragraphs is that the appeal, sans merit, deserves dismissal. Accordingly, the appeal is dismissed with cost of Rs.25,000/- (rupees twenty-five thousand).