

(1972) 04 RAJ CK 0024
In the Rajasthan High Court
Case No : First Appeal No. 9 of 1969

State of Rajasthan

APPELLANT

Vs

Manna Lall

RESPONDENT

Date of Decision : 28-04-1972

Acts Referred:

Rajasthan Forest Act, 1953 — Section 43, 83, 83(3)

Citation : AIR 1972 Raj 257 : (1972) RLW 340 : (1972) WLN 327

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Advocate : M.L. Shrimal, for the Appellant; S.T. Porwal, for the Respondent

Final Decision : Dismissed

Judgement

Kan Singh, J.—This is an appeal by the State and is directed against the judgment and decree of the learned Additional District Judge, Jhalawar dated 22-8-68 awarding a sum of Rs. 3565/- to the plaintiff respondent.

2. The plaintiff respondent filed the suit on 2n3-65 alleging that on 12-7-61 the plaintiff had been given the contract of cutting grajss in the Piplaj forest, Tehsil Khanpur, for an area of 484 acres for the year 1961-62 for an amount of Rs. 2901/-. The one-fourth amount was paid by the plaintiff as earnest money and the remaining amount was paid by him in instalments. The grievance of the plaintiff was that even though an area of 484 acres was given to him, possession was handed over to him only in respect of an area of 400 acres. The plaintiff further averred that there was some delay in depositing the due instalments and for this reason the District Forest Officer had cancelled the contract on 15-2-62. Further 600 stacks of grass which had been cut by the plaintiff were seized. Against the order of the District Forest Officer the plaintiff lodged an appeal to the Chief Conservator of Forest, Raiasthan, who accepted the same and ordered that on the plaintiff's depositing the outstanding amount the grass that was seized be made over to the plaintiff. Accordingly, the plaintiff deposited the outstandings, but was handed over only 284 stacks of grass and 316 stacks were

not returned back to him.

3. Then there was another transaction between the plaintiff and the Forest Department. It was that on 22-1-64, the District Forest Officer, Jhalawar had purchased 300 stacks of grass of range Khan-pur from the plaintiff and the price thereof came to Rs. 3000/-, but only an amount of Rs. 1863/- was paid to the plaintiff. Further in respect of this transaction the plaintiff claimed Rs. 150/- as transportation charges. Thus, an amount of Rs. 738/- was claimed by the plaintiff in respect of this transaction.

4. Then there was a third transaction and it was that on 2-4-62 the plaintiff had taken the contract of collecting forest produce of Gilanda Range, Khanpur for an amount of Rs. 541/-. The grievance of the plaintiff was that although this amount had been paid by him, he was never put in possession of the area.

5. Thus after giving a notice the plaintiff filed a suit for the recovery of an amount of Rs. 4439/- against the State and the District Forest Officer.

6. On behalf of the State the contract dated 12-7-61 was admitted, the payment of the amount of the contract namely, Rs. 2901/- was also admitted. It was further admitted that the District Forest Officer had cancelled the contract and the Chief Conservator of Forest had reversed the order of the District Forest Officer and had ordered that on the plaintiff's paying the remaining dues, he may be put in possession of the 600 stacks of grass that were seized. However, it was denied that all the grass was not returned to the plaintiff. It was asserted that the grass was returned to Mangilal, a servant of the plaintiff. It was also denied that the plaintiff was not put in possession of the whole area. The second transaction was denied altogether and about the third transaction the defendant State took the stand that though the plaintiff had deposited the amount of Rs. 541/-, it was he who had failed to take possession of the area in spite of several notices and to execute the agreement. Some special pleas were also raised. Firstly, it was pleaded that the suit was bad on account of misjoinder of causes of action. Then it was pleaded that the District Forest Officer being not a person, a suit against him would not be maintainable. Then it was urged that the State Government was not responsible as grass might have been embezzled by Mangilal. Then it was pleaded that the Forest Officer had acted under Sections 82 and 83 of the Rajasthan Forest Act, 1953, hereinafter to be referred as the "Act", and, therefore, no suit for damages could lie against the State.

7. The learned Additional District Judge framed the following issues :--

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2? D;k 22&2&64 dks 300 ckxj ?kkl 2?:- eu ds fglkc ls jsUt [kkuiwj dks oknh us dheru nh vkSj D;k gj ckxj esa 5 eu ?kkl Fkk \ &oknh

3? D;k nkos dh en ua- 14 esa of.kZr ?kkl dks bDB~Bk djus dh <qykbZ ljdkj ds ftEes Fkh ftlesa oknh dk 50 iSlS Qh ckxj ls 150 :- [kpZ gq, \ &oknh

4? D;k izfroknhx.k ds ftEes dher ?kkl ds 738 :- cdk;k gS \ \ &oknh

5? D;k oknh nkos dh en ua- 17 of.kZr dkj.kksa ds fcuk; ij fxykns ds Bsds dh jde 542 :- ljdkj ls okil ikus dk eqLrgd gS \ \ &oknh

6? D;k oknh dqy 4439 :- izfroknhx.k ls ikus dk gdnkj gS \ \ &oknh

7?D;k nokok dbZ vk/kkjksa ij yk;k x;k gS blfy;s pyus ;ksX; ugh gS \ \ &izfr

8? D;k ?kkl dh ckhj QkWjsLV% ,DV dh nQk 82 o 83 ds rgr tCr dh xbZ gS ,slh gkyr es izfroknhx.k ij dksbZ m?knkf;Ro ugh gS \ \ &izfr

9? D;k Mh- ,Q- vks- dksbZ O;fDr ugh gS blfy;s ml ij dksbZ nokokugh py ldrk \ \ &izfr

10? D;k uksfVI dkuwuu xyr gS A bldk nkos ij D;k vlj gS \ \

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8. Both the parties led their evidence. Regarding issue No. 1, the learned Additional District Judge held that it has been established from the plaintiffs evidence which was not rebutted that one stack contained about 500 "Poolas" (bundles) of grass and that the price of grass was at the rate of Rs. 30/- per thousand "Poolas". Issues Nos. 2, 3 and 4 were decided against the plaintiff. The learned Judge held that there was no written agreement in respect of this transaction and, therefore, the plaintiff was not entitled to any relief. Regarding issue No. 5, the learned Additional District Judge held that only the earnest money could be forfeited by the State and not the whole amount of the contract, as the same never came to . be executed. In view of his findings oil issues Nos. 1 and 5, the learned Judge came to the conclusion that the plaintiff was entitled to receive an amount of Rs. 3160/- as the price of 316 stacks and Rs. 405/- in respect of the third transaction after deduction of one-fourth amount as earnest money. Issues Nos. 7 and 8 were decided against the State. Issue No. 9 was decided in favour of the State and accordingly the learned Additional District Judge dismissed the suit against the District Forest Officer. In the result, the learned Additional District Judge decreed the plaintiffs suit to the extent already indicated.

9. In assailing the judgment and decree of the learned Additional District Judge, learned Additional Government Advocate contends that the Court below has overlooked the provisions of the Act. He invites attention to Sections 43, 82 and 83 of the Act and argues that both the State Government and the Forest Officers were not liable.

10. Section 43 occurs in Chapter VII of the Act which is captioned "of the control of Timber and other forest produce in transit". This Chapter contains in all 4 Sections. Section 41 empowers the State Government to make rules to regulate transit of forest produce. Sub-section (1) lays down that the control of all rivers and their banks as regards the floating of timber as well as the control of all timber and other forest produce in transit by land or water is vested in the State

Government and it may make rules to regulate the transit of all timber and other Forest produce. Subsection (2) particularises what the rules might govern and this is without prejudice to the generality of the foregoing provision namely, Sub-section (1). Sub-section (2) lays down penalty for breach of rules made u/s 41. Then occurs Section 43 which I may read in full :--

"Section 43. State Government and Forest Officers not liable for damage to Forest produce at depots.-- The State Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest produce while at a depot established under a rule made u/s 41, or while detained elsewhere, for the purposes of this Act, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently,"

The clear meaning of this section is to confer immunity on the State Government for any loss or damage which may occur in respect of any timber or other forest produce while at a depot established under a rule made under this Act, or while detained elsewhere for the purposes of this Act and no Forest Officer shall be responsible for any such loss or damage, unless it causes loss or damage negligently, maliciously or fraudulently. I am afraid, this section will hardly be attracted in the case of any loss occasioned to a party and which arises out of any contract.

11. I may next turn to Sections 82 and 83 of the Act :--

"Section 82. Recovery of money due to State Government: All money, other than fines, payable to the State Government under this Act, or any rules made thereunder, or on account of timber or other forest produce, or of expenses incurred in the execution of this Act in respect of timber or other forest produce, or under any contract relating to timber or forest produce, including any sum recoverable thereunder for the breach thereof or in consequence of its cancellation or under the terms of a notice relating to the sale of timber or forest produce by auction or by . invitation of tenders, issued by or under the authority of Forest Officers and all compensation awarded to 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."

"Section 83. Lien on forest produce for such money.-

(1) When any such money is payable for or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest Officer until such amount has been paid;

(2) If such amount is not paid when due, the Forest Officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within six months from the date of the sale

by the person entitled thereto, shall be forfeited to the State Government."

12. Section 82 is not attracted at all and as there was no question of realisation of the Government dues as an arrear of land revenue learned Additional Government Advocate does not question this position.

13. Section 83 lays down that the Government will have a lien on the forest produce when any money payable for or in respect of any forest produce has not been paid. This provision accords with the general law regarding sale of goods whereunder an unpaid seller has a lien over the goods sold and till such payment is made he has a right to retain the goods. The title in the goods all the same remains with the purchaser of the goods, here the Forest Contractor and that is why out of the sale proceeds after realisation of the Government dues the surplus is payable to the person concerned. In the present case as soon as the Chief Conservator of Forest ordered that the stacks of grass be returned to the plaintiff on his paying the remaining dues and the plaintiff had paid the amount, the lien terminated and the plaintiff was entitled to receive back stock of grass that was seized by the Forest Officer. There is thus no question of the contractor claiming any surplus under Sub-section (3) of Section 83 within a period of 6 months.

14. Since there was no sale of the stock that is yet another reason for holding that Sub-section (3) did not come into play in the present matter.

15. The position of the District Forest Officer was that of a bailee under the general law of contracts and as soon as the Government were paid their dues, as a bailee it was the duty of the Forest Officer as a servant or agent of the Government to make over the stock of grass to the plaintiff-contractor. Here the liability to return the stock of grass seized squarely arose out of a contract and in such a case neither Section 43 nor Section 83 would confer immunity on the State Government. When the Government or its servants were unable to return the stock in full the plaintiff was entitled to get the price of that much quantity of grass that was not returned to the plaintiff.

Now, if one turns to the pleadings there is a clear admission on the side of the State Government that the stock was not returned in full. In para 7 of the plaint the plaintiff averred that on 3-3-62 the District Forest Officer had seized 600 stacks of grass during the absence of the plaintiff. Again in para 9 he had averred that out of 600 stacks of grass that were seized as per para 7 of the plaint on 27-3-62 only 284 stacks of grass were returned and the remaining 316 stacks of grass were not returned or handed over to the plaintiff. The reply paras of the written statement in respect of the above averments may usefully be read in full :--

7&&^^;g fd nkos dsa isjk ua- 7 ds dFku ftl izdkj ls gS Lohdkj ugha gS] ijUrq ;g Lohdkj gS fd oknh dk dVk gqv k ?kkl tIr dj fy;k x;k Fkk] tks vUnktu 600 ckxjs Fkh] vusZLV euh Hkh tIr dh xbZ Fkh] ;g Lohdkj ugh gS fd ;g dk;Z uktk;t fd;k x;k gS A**

9&&^^;g fd nkos dk ikjk ua- 9 ds dFku Lohdkj gS** A

There is, therefore, no controversy that 316 stacks of grass were not returned to the plaintiff. As regards the contents of a stack and the price of grass the plaintiff had examined himself and produced two other witnesses namely, Mool Chand and Mohan Lal. The defendant did not examine any evidence in rebuttal. Accepting their evidence the learned Additional District Judge held that each stack consisted of 500 "Poolas" (bundles) and the price of grass was Rs. 30/- per thousand "Poolas". Thus, the price of 316 stacks would come to Rs. 4740/-. The Additional District Judge has allowed only Rupees 3160/-. Thus there is no good reason for not allowing this amount to the plaintiff. The Additional District Judge is also right in ordering refund of three-fourth of the amount paid by the plaintiff in respect of the third transaction.

16. The appeal has thus no force and accordingly it is hereby dismissed with costs.