

Ram Prasad S/o Prabhu Dayal Mathur Vaishya

Vs

The State of Madhya Pradesh and Another

Civil Appeal No. 2205 of 1966

(J.C. Shah, K.S. Hegde JJ)

07.10.1969

JUDGMENT

HEGDE, J. –

1. This is an appeal by certificate under Article 133 (1)(a) of the Constitution. The appellant is the plaintiff in the suit. In the suit he claimed a sum of Rs. 30,699/1/3 against both the defendants. The suit was decreed by the Trial Court against the defendants in a sum of Rs. 22,634/4/- together with costs and interest from the date of the decree. The State of Madhya Pradesh, the 1st defendant in the suit appealed against the decree. The second defendant did not appeal against that decree. The plaintiff filed cross-objection claiming interest on the principal amount claimed from the date of the suit till decree. The High Court allowed the appeal of the State and set aside the decree against it; but it failed to pass any order on the cross-objection. In this appeal the appellant seeks not only to get restored the trial court's decree against the State of Madhya Pradesh, he also wants that the relief claimed by him in his cross-objection before the High Court should be granted to him.

2. The facts of the case lie within narrow limits. One Hetampal Singh, father of defendant No. 2 was a licence-holder for Gird District in the then State of Gwalior for distribution of grain. He had entered into an agreement with the appellant-plaintiff on October 14, 1942 (Ex-1) whereunder he appointed the appellant as his commission agent. English translation of the said agreement reads thus :

##"H. P. S. Jadhav Naya Bazar, Thakur Sahab Lashkar, Gwalior.##

I, Hetampal Singh Jadhav son of Bhagwan Singh Jadhav, caste Thakur, am a resident of Naya Bazar, Lashkar.

I have taken contract for supplying grain seed in District Gird for which I need money for bringing every kind of grain from different places. Therefore, I appoint Ramprasad son of Prabhudayal, caste Mathur Vaishya, resident of Naya Bazar, Lashkar as my Adhatia (Commission Agent) and settle the following terms -

(1) I shall pay interest at the rate of Re. 1/- per cent on the amount which will be invested by the Seth Sahab for this purpose.

(2) I shall pay commission at the rate of Re. 1/8/- per cent on the goods which will be brought by the Seth Sahab or his man from outside and I shall pay commission at the rate of Re. 1/- per cent on the goods which will be brought by me from outside and

for which the Seth Sahab will have only to get released the railway way bill.

(3) I shall pay the whole expenses of journey, railway fare, allowance, etc. of the person who will go out on behalf of the Seth Sahab for bringing the goods.

(4) The whole of the goods which will be received from outside, shall remain in possession of the Seth Sahab. The account thereof shall also remain with him. The Seth Sahab will have authority to supply only so much goods as I would permit him to supply, i.e. he cannot supply goods to anybody of his own accord. The expenses which will be incurred in keeping account and other expenses of the shop shall be borne by the Seth Sahab. I shall pay only rent of the shop.

(5) I shall be responsible for any increase or decrease in the goods.

(sd.) HETAMPAL SINGH JADHAV (In English) 14-10-42."

3. In pursuance of the said agreement, the appellant purchased considerable stock of grain. He had in possession on January 29, 1943, 4,039 maunds, 35 seers, 4 chhatacks of gram. According to the appellant on that day Hetampal Singh owed him a sum of Rs. 19,228/9/6. The possession of that stock was taken over by the State Government on January 29 and 30, 1949. The State Government paid the price of the said stock to Hetampal Singh. The appellant's case is that the State Government is liable to reimburse him the money due to him from Hetampal Singh. Before the suit came to be filed Hetampal Singh had died and hence the 2nd defendant was impleaded as his legal representative.

4. The plaint filed by the plaintiff is a bald one. It did not set out the right under which the plaintiff was claiming any relief against the State. In the course of the trial, the plaintiff asserted that he was a pledgee of the goods that in question. No such case was pleaded in the plaint nor any issue raised in that regard. The agreement entered into between the plaintiff and Hetampal Singh does not show that the goods in question had been pledged to the plaintiff. The agreement provides that the appellant shall be in possession of the goods purchased and dispose of the same in accordance with the directions given by Hetampal Singh. The finding of the High Court is that the grain was removed by the Government from the possession of the appellant without any force or fraud and the appellant handed over that grain to the Government in response to a communication from the Controller of Foodgrains. At no stage he told the Government that he was a pledgee of the goods. The decision in *Santi Sahu v. Sheogulam Sahu*, relied on by the learned Counsel for the appellant is of no assistance to him because the agreement relied on in that case is materially different from the one before us. On an interpretation of that document the Court came to the conclusion that it constituted a bailment for security and that it is a pledge within the meaning of Section 172, read with Section 148 of the Contract Act. That is not the position here. Therefore the High Court was fully justified in rejecting the claim of the appellant that he was a pledgee of the goods.

5. The claim of the appellant was next tried to be supported on the plea that he had a lien over the goods. No such plea was taken in the plaint. An agent no doubt has a specific lien upon the principal's property in his possession for his compensation and expenses during the course of the agency with reference to that property. Section 221 of the Contract Act provides that in the absence of a contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to him for commission, disbursements and services in respect of the same has been paid or accounted for to

him. An agent who is entitled to be reimbursed from the principal's property for the expenses incurred, advances made or losses sustained during the course of the agency or who is entitled to be compensated for his services has a lien upon the principal's goods or property which comes lawfully in his possession during the course of the agency from which the right to indemnity or compensation arises. A purchasing agent has a lien upon the principal's goods in his possession upon which he has paid money in purchasing. As a general rule in order to have a lien, an agent must have some possession, custody or control or disposing power in or over the subject-matter in which the lien is claimed. The lien does not arise where the possession of the property is acquired by the agent under a contract which expressly or impliedly shows contrary intention, or where it is delivered to him for a particular purpose inconsistent with the existence of lien thereon. The agent has no lien over the property where it is entrusted to him for a special purpose which is inconsistent with the lien claimed. Further the lien of an agent being a mere right to retain possession of the property subject thereto, is lost by parting with the possession of the goods unless at the time of parting with them he reserved expressly or impliedly his right of lien or they are obtained from him by fraud or unlawful means.

6. The question whether an agent can enforce his lien in a particular case is a mixed question of law and facts. Therefore in the absence of any specific plea, that question cannot be gone into. We do not know the conditions under which Hetampal Singh was appointed as a licence holder. From the material on record, it is not clear whether the goods in question were taken possession of by the Government in accordance with the conditions of the licence granted to Hetampal Singh. Therefore it is not possible to decide whether under the circumstances of the present case, the plaintiff could have enforced his lien against the State. It is true that the plaintiff informed the Government that Hetampal Singh owed to him about Rs. 20,000/-. But from that circumstance we cannot come to the conclusion that while voluntarily parting with the possession of the goods, he reserved expressly or by implication his right of lien, if he had any. We do not think that the rule laid down in *Balmukund and Another v. Fagannath* relied on by the learned Council for the appellant bears on the facts of this case. Under these circumstances it is not possible to uphold the appellant's claim against the State. Therefore the appeal fails so far as the State is concerned. It is accordingly dismissed, as against the 1st defendant, the State of Madhya Pradesh.

7. But coming to the cross-objection filed by the appellant before the High Court, the High Court appears to have completely lost sight of the same. It did not deal with that cross-objection while disposing of the appeal. The Trial Court did not give any reason for rejecting the plaintiff's claim for interest on the principal amount from the date of the suit till the date of the decree. The plaintiff was entitled to interest on the principal amount of Rs. 19,228/6/- at 4 1/2 per cent per annum from the date of the suit till the date of the decree. The appeal succeeds to that extent. The decree of The Trial Court as against the second defendant is modified to that extent. In the circumstances of the case we make no order as to costs in this Court.

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