

SUPREME COURT OF INDIA

Haji Mumtaz Hussain (dead) through L.Rs.

Vs.

State of U.P.

C.A.No.2947 of 1982

Dr. A. S. Anand , C.J., S. Rajendra Babu and Doraiswamy Rajuu Raju, JJ.

09.02.2000

ORDER

1. The appellant filed a suit for recovery of Rs. 40,000/- by way of damages on the ground that he had purchased 171 shisham trees in the area lying between the rivers Dhimri and Baur at an auction sale conducted by the Agricultural Officer, Colonization scheme by name Shri J.P. Nathani, D.W. 6, on 25th May, 1952 for a consideration of Rs. 7,500/-. That though the entire sale consideration was deposited and the appellant started cutting the shisham trees within the aforesaid area, he was prevented by the Forest and Colonization department from removing the remaining trees as well as the chattas of fuel wood. After serving a notice under Section 80 of the CPC, claiming damages for illegal detention of the trees, which the appellant had purchased and felled, the suit was filed. The suit was resisted on various grounds including the ground that the suit was barred by Article 299 of the Constitution of India on the plea that the Agricultural Officer under the Colonization scheme did not have the authority to enter into any contract. From the pleadings of the parties as many as 11 issues were framed. The issues were are under:

(1) Whether the plaintiff was given the contract to fell and take away all the Shisham trees in the area situated between Rivers Dhimri and Baur or whether 171 Shisham trees only were sold to him?

(2) Whether the Forest Department of the defendant stopped the plaintiff from working out the

contract given to the plaintiff by Colonization Department and illegally seized and confiscated the timber cut by the plaintiff? If so, how does it affect the transaction in suit?

(3) Whether the plaintiff has suffered a loss of Rs. 40,000/- as alleged by the wrongful and illegal acts of Forest Department?

(4) Whether the plaintiff was obstructed in working out of the contract during the stipulated period. If so, whether the refusal of the Colonization Department to extend the period was mischievous and mala fide. If so, its effect?

(5) Whether the suit is time-barred?

(6) Whether the notice under Section 80, C.P.C. was invalid?

(7) To what relief is the plaintiff entitled?

(8) Whether the plaintiff exported the entire timber of 171 trees purchased by him as alleged?

(9) Whether the plaintiff left behind any timber on 1st December, 1952 of the trees purchased by him? If so, is the plaintiff responsible for it. If not, its extent and value?

(10) Whether the suit was barred by Art, 299 as alleged? If so, to what extent and its effect?

(11) Whether the defendant realised any benefit from the acts of the plaintiff? If so, to what extent and its effect?

2. The trial Court after recording evidence and going through material on the record returned a finding of fact to the effect that only 171 shisham trees standing in the area in question had been sold to the appellant and that he did not cut any tree besides those 171 trees. It was also found as a fact that the Forest and Colonization Department had obstructed the appellant from removing part of the trees felled by him and that the said action was not justified. The trial Court repelled the

argument of the respondent that the contract was hit by Article 299 of the Constitution and held that the plaintiff was entitled to recover compensation from the respondent. The appellant was held entitled to receive compensation for the timber at the average rate of Rs. 3 per cu. ft. and for the fire wood @ Rs. 100/- per stock of fuel wood. Suit was accordingly decreed.

3. The Respondent being aggrieved of the judgment and decree passed by the trial Court took the matter in appeal to the High Court.

4. The High Court agreed with the factual conclusions arrived at by the learned Civil Judge to the effect that 171 shisham trees standing in the trans Dhimri area had been sold to the plaintiff and that he had felled only those 171 shisham trees. The High Court also agreed that the wood which had been seized by the Forest Department and later on sold by it was in fact the property which had been sold to the plaintiff. The High Court, however, non-suited the plaintiff-appellant on the ground that the contract "relied upon by the plaintiff is not in writing and can also not be inferred from any correspondence in which compliance with the provisions of Article 299 of the Constitution could have been made, it is not possible to enforce same against the State and to pass any decree in favour of the plaintiff on its basis." The High Court consequently set aside the judgment and decree of the trial Court. Hence this appeal by special leave.

5. We have heard learned Counsel for the parties.

6. The High Court proceeded on a totally wrong assumption that the appellant was trying to enforce a contract to which provisions of Article 299 of the Constitution were attracted. In the face of findings of fact recorded by the trial Court that 171 shisham trees had been purchased by the appellant from the Colonization and Forest Department and he had paid the entire sale consideration for those trees and that he had not cut or felled any other tree besides those 171 shisham trees nor committed any other default justifying detention of a part of the trees, the High Court was not justified in non-suited the plaintiff-appellant. The plea raised to resist the claim by the State based on Article 299, to say the least, was immoral. The State could not have taken sale proceeds of 171 trees and still appropriated a part of the property sold. The appellant was not enforcing any contract. His simple case was that he was entitled to be compensated for unjustified detention of a part of the property already sold to him for proper consideration. The High Court did not dispute the assertion of the appellant on facts. Appellant could not be deprived of the property purchased by him without payment of compensation. The judgment of the High Court in the admitted facts and circumstances of the case is, therefore, not capable of being sustained.

7. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the trial Court. No costs.