

RAJASTHAN HIGH COURT

Bhuramal

Vs.

State of Rajasthan

Civil Writ Application Nos. 9, 10, 33, 54, 103, 104 and 131 of 1956

(Wanchoo C.J. and Modi, J.)

20.11.1956

JUDGMENT

Wanchoo C.J.

1. These are seven applications under Art. 226 of the Constitution for issue of a writ, direction or order in connection with the Sales Tax Act of Rajasthan (hereinafter called the Act). We propose to decide them by one order as the points raised in them or common.

2. The applicants are building contractors and undertake building work for the Public Works Department and other departments of the State. In connection with their contracts, they supply material as well as labor, and after their work is finished are paid by the State both for the material used by them in the building or road or any other work and for the labor supplied by them. In this connection, notices were issued to the applicants by the Sales Tax officers of various places calling upon them to submit a return of their turnover with respect to their contracts, so that they might be assessed to sales-tax and made to pay it. In some cases, the applicants have already paid the tax. Their contention is that, according to their contracts, they are paid either a lump sum for the work done by them, or according to a schedule of rates after the work done is measured. They, however, do not sell any materials used in the execution of the contract for a stipulated price to the Government had clearly stated that the document Ex. 2 was written in his presence by Gyasi Ram in his own pen. Hiralal P. W. 3 also said that the document, meaning thereby the entire document Ex. 2, was in the handwriting of Gyasi Ram, and he said so because he was acquainted with the handwriting of Gyasi Ram. Two other witnesses Prabhulal P. W. 4 and Khunni Ram P.

W. 6 are, however not so explicit. Prabhulal, for instance, said that the document Ex. 2 appeared to him to be in the handwriting of Gyasi Ram and Khunni Ram said that the writing on Ex. 2 appeared to be like the handwriting of Gyasi Ram. Leaving these two witnesses aside. there is, however, ample evidence to support the finding of the two courts that the document Ex. 2 was written by Gyasi Ram.

3. It was next contended that the evidence as to the writing of the document Ex. 2 by Gyasi Ram does not prove execution by Gyasi Ram for none of the witnesses stated that the signatures on the document were of Gyasi Ram. This criticism is of no value, when the entire document is proved to be in the handwriting of Gyasi Ram and that evidence is sufficient to prove that the signatures appearing on the document as also the rest of the writing was in the handwriting of Gyasi Ram. The finding of the courts below on this point is, therefore; correct.

4. It was next contended that the notice given by the plaintiffs on 19th August, 1945, to vacate the shop on Kanwar Sudi 5, Smt., 2002(11-10-45) was not according to law. It was contended that Ex. 2 disclosed an agreement to pay Rs. 6/- a year by way of rent and not 8/- per month, as mentioned in the plaint. It was urged that the agreement to pay a certain yearly rent implies a contract that the tenancy was from year to year. Section 106 of the Transfer of Property Act, while stating that a tenancy for purposes other than agriculture or manufacture would be deemed to be from month to month, is qualified by the opening words of the section "in the absence of a contract to the contrary". This contract, it was argued, could be explicit or implied, and the reservation of a yearly rent disclosed an implied contract that the tenancy was from year to year. It was argued that the notice, though ending with the month of the tenancy and valid, if the tenancy was from month to month, was not valid if the tenancy were to be held from year to year.

5. The defendant did not take this plea explicitly in his written statement, and contended himself by saying that the necessary notice had not been given. The trial court considered the notice to be valid as being for 15 days ending with the month of the tenancy. Section 107 of the Transfer of Property Act laid down the requirement of registration of leases, which reserved a yearly rent. This document Ex. 2 is not a registered document. It is not even on a stamp. An implied contract would also presuppose a valid contract, and in the absence of a valid contract a yearly tenancy could not come into existence. Reference may be made in this connection to *Ram Kumar*

Das vs. Jagdish Chandra Deo, where a similar argument for presuming the tenancy to be from year to year was negated by reference to section 107 of the Transfer of Property Act.

6. This appeal therefore, has no force, and is accordingly dismissed. No order as to costs as the opposite party has not entered appearance. Learned counsel prays for leave to appeal to a Division Bench. The prayer is rejected.

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