



2022:UHC:14786

IN THE HIGH COURT OF UTTARAKHAND AT

NAINITAL

First Appeal No. 27 of 2010

State of U.P. through Superintending Engineer,
.... Appellant

Versus

Vijay Pal Singh and others
..... Respondents

Presence:-

Mr. I.D. Paliwal, learned Standing Counsel for the State of
U.P./appellant.

Ms. Seema Sah, learned counsel for respondent no.1.

Hon'ble Siddhartha Sah, J. (oral)

This first appeal has been preferred against the judgment and decree dated 10.12.2009 passed by Civil Judge (S.D.) Haridwar in Original Suit No.119 of 1994, 'State of U.P. through Superintending Engineer vs. Sri Vijay Pal Singh and others', by means of which the suit instituted by the plaintiff/appellant against the defendants/respondents for recovery of an amount of Rs. 7,98,309.35/- along with interest at the rate of 18% per annum, has been dismissed.

2. The aforesaid suit was instituted with the pleadings that the Purvi Ganga Nahar Nirman Mandal, Haridwar is a department of the State of Uttar Pradesh and falls under the Irrigation Department of the State of U.P. The Superintending Engineer, Purvi Ganga Nahar Nirman Mandal, Haridwar, is duly authorized to institute



the suit on behalf of the plaintiff/appellant. Defendant No. 1 was working on the post of Storekeeper in Purvi Ganga Nahar Nirman Khand-3, Haridwar, and had been in service since 31.1.1981. He was arrested by the Police Department of Muzaffarnagar on 28.08.82 on certain charges and was later released on bail on 25.10.82 pursuant to an order of the Hon'ble High Court.

3. Due to his arrest and detention during the period from 28.08.82 to 25.10.82, Defendant No. 1 was placed under suspension vide office memorandum dated 05.11.82 issued by the Superintending Engineer, Purvi Ganga Nahar Nirman Mandal, Haridwar. All materials stored in Purvi Ganga Nahar Khand-3, Haridwar were under the custody and charge of Defendant No. 1, who was responsible for issuing the same in accordance with the rules after making proper entries in the records.

4. During the period of suspension of Defendant No. 1, i.e., from November 1982 to May 1984, partial charge of the store was handed over to Shri H.K. Goyal, Assistant Store Superintendent. After taking over the charge, a shortage of store materials amounting to Rs. 28.11 lakhs was detected. Upon further scrutiny of records, the shortage remained of Rs. 22.75 lakhs.

5. Defendant No. 1 was called upon to submit his explanation, which he furnished in March 1986. Upon detailed examination of the records, the shortage was further assessed at Rs. 7,98,309.35/-, as detailed in Annexure No. 1 appended to the plaint.

6. The said shortage of Rs. 7,98,309.35/- is attributable to Defendant No. 1, who is liable to



compensate the same. The matter was also reported to the concerned police station. Despite repeated demands, Defendant No. 1 failed to make good the loss and continued to delay the matter, therefore, the necessity to institute the suit.

7. Accordingly, the suit was filed for recovery of Rs. 7,98,309.35/- along with interest at the rate of 18% per annum, pendente lite, and litigation expenses in the Court of Civil Judge Haridwar, where it was registered as Original Suit No. 119 of 1994, State of U.P. Vs. Shri Vijay Pal Singh & Ors.

8. The defendants contested the suit by filing their written statement, denying the averments made in the plaint. In the additional pleas it was, inter alia, pleaded that the suit was instituted without any cause of action and with a view to hide the irresponsible act and negligence. It was further contended that the suit had not been instituted by a competent person and that the Superintending Engineer had no authority in law to institute the suit on behalf of the State of Uttar Pradesh. It was also denied that Defendant No. 1 had misappropriated or alienated any store material or derived any illegal benefit therefrom. The liability to pay the alleged amount was specifically disputed, and it was contended that the plaintiff is not entitled to recover any amount from the defendants.

9. The defendants, however, admitted that Defendant No. 1 was working as a Storekeeper since August 1982 and that he was arrested by the police and later released on bail. It was further admitted that upon



his return after release, Defendant No. 1 was placed under suspension.

10. It was contended that during the period of custody of Defendant No. 1, departmental officials and employees had removed materials from the store without maintaining any proper record or account thereof. In this regard, Defendant No. 1 had addressed a letter dated 24.08.84 to the Assistant Engineer (Second), Purvi Ganga Nahar, Haridwar, stating that during his judicial custody, Shri Hemant Kumar Goyal had got the material lifted.

11. It was further pleaded that during the period of judicial custody of Defendant No. 1, departmental officials and employees, in collusion, misappropriated substantial quantities of store materials, and that the Superintending Engineer and other concerned officials deliberately committed negligence. The officials ought to have either made a temporary appointment in the storeroom & sealed the storeroom in such a manner that no person may take unauthorized benefit; however, no such steps were taken.

12. It was further contended that from 26.08.82 to 13.10.82, from the entire store, which was under the charge of Defendant No. 1, materials were lifted. Defendant No. 1, vide his letter dated 17.05.83, sought information regarding the quantity of materials removed during his period of custody; however, no response was received. Thereafter, vide letter dated 21.05. 83 addressed to the Assistant Engineer, Purvi Khand, Haridwar, Defendant No. 1 informed that since the stored iron remained unsecured and in the open, he had no control over them. It was also stated that a substantial



quantity of material, which was sought to be shown towards Defendant No. 1, was already with departmental employees from before. Certain examples in this regard were cited. The defendants further pointed out several instances of negligence on the part of the departmental officials. It was specifically contended that Defendant No. 1 had not been negligent, and that the alleged loss was incorrect and falsely attributed. It was denied that there had been any misappropriation on his part or that he had derived any alleged benefit. It was further contended that if any loss occurred during the period of his judicial custody, the liability cannot be fastened upon Defendant No. 1, as he had no control or authority over the store during that period. It was further contended that the alleged cause of action arose during the period from 28.08.82 to 25.10.82, whereas the present suit was instituted by the plaintiff on 15.06.94. Therefore, the suit for recovery is barred by limitation and is not legally maintainable, and on this ground alone, the suit is liable to be dismissed.

13. On the basis of the rival pleadings of the parties, the Trial Court framed the following issues:

1. Whether the plaintiff is entitled to recover an amount of Rs. 7,98,309.35/- along with interest from the defendants? The plaintiff is entitled to recover the said amount for causing loss of material shown in the list of loss by the defendants?

2. Whether the Superintending Engineer had the authority to institute the suit on behalf of the plaintiff?



3. Whether defendant nos. 2 and 3 are unnecessary parties?

4. Whether the suit is barred by the provisions of Order VI Rule 15 CPC?

5. Whether the suit is barred by time?

6. To what relief, if any, is the plaintiff entitled?

14. In support of its case, the plaintiff placed on record documentary evidence, including various registers pertaining to the stock of the store room, a copy of the inquiry report, copies of the Dainik Karwai Register, and a copy of the letter addressed to Kotwali, Haridwar, etc.

15. The defendants, in support of their case also filed documentary evidence, including a copy of the judgment of the CJM, Haridwar dated 06.07.01, and a copy of the judgment dated 06.06.96 passed by the District Judge, Haridwar.

16. The plaintiff examined PW-1: Bhim Singh; PW-2: Gyan Prakash Saxena; PW-3: Yugal Kishore and PW-4: Ramesh Prasad Dixit, whereas the defendants examined a sole witness, DW-1: Vijaypal Singh. Thereafter, the Trial Court, i.e., Civil Judge (Senior Division), Haridwar, after hearing learned counsel for the parties, vide judgment and order dated 10.12.2009, dismissed the suit with costs.

17. Issue nos. 1 and 2 were decided together. While deciding Issue No. 1, the Trial Court held that defendant no. 1 does not have any liability for the payment of amount. In respect of Issue No. 2, the Trial



Court held that the suit cannot be deemed to have been instituted by the State of U.P.

18. On Issue No. 3, the Trial Court held that defendant nos. 2 and 3 are unnecessary parties. Issue No. 4 was decided in favour of the plaintiff and against the defendants.

19. Issue No. 5 was decided to the effect that the suit had been instituted beyond the period of limitation and, accordingly, was decided in favour of the defendants and against the plaintiff.

20. Consequently, the Trial Court concluded that the plaintiff is not entitled to any relief, and the suit was dismissed vide judgment and order dated 10.12.2009.

21. Aggrieved by the aforesaid judgment and order dated 10th December, 2009, whereby the recovery suit instituted by the plaintiff/appellant was dismissed, the present first appeal has been filed by the plaintiff/appellant on the grounds taken in the memo of appeal.

22. Since the present appeal is a first appeal filed under Section 96 of the Code of Civil Procedure, it is required to be decided by formulating points for determination as contemplated under Order XLI Rule 31 CPC. A perusal of the issues framed by the trial court reveals that the relevant issues for determination in the present appeal are Issue Nos. 1, 2, and 5. Accordingly, for proper adjudication of the instant first appeal, the following points for determination are formulated:-



“1. Whether the plaintiff is entitled to recover an amount of Rs. 7,98,309.35/- along with interest from the defendants?

2. Whether the Superintending Engineer, Purvi Ganga Nahar Nirman Mandal Haridwar had the authority to institute the suit on behalf of the plaintiff?

3. Whether the suit is barred by time?”

23. This Court is now called upon to examine the correctness of the findings recorded by the trial court on the aforesaid issues.

Point for Determination No. 1:-

“1. Whether the plaintiff is entitled to recover an amount of Rs. 7,98,309.35/- along with interest from the defendants?

24. A perusal of the trial court’s judgment reveals that Issue Nos. 1 and 2 were decided together. While deciding Issue No. 1, the trial court examined the rival pleadings of the parties. It is the case of the plaintiff-appellant that all the material in the store was under the custody of defendant No. 1, who used to issue the same after due entry in the store records. During the suspension period of defendant No. 1, i.e., from November 1982 to May 1984, the charge of the said storeroom was handed over to Shri H.K. Goyal, Assistant Store Superintendent, by the Superintending Engineer after constituting a committee.



25. Subsequently, in September 1984, shortage of materials against the defending no.1 amounting to Rs. 28,11,000/- came to light, which upon further scrutiny of documents was reduced to Rs. 22,75,000/-. According to the plaintiff, thereafter a committee was constituted, which called upon defendant No. 1 to submit accounts for the period of his suspension. However, the same was not submitted. Upon detailed examination, a shortage amounting to Rs. 7,98,309.35/- was determined, which, according to the plaintiff, is the liability of defendant No. 1. The said shortage was assessed after constitution of the committee and after providing full opportunity of hearing to defendant No. 1.

26. In response, the defendant contended that he was not negligent. It was stated that while some materials in the store were kept under lock, a large quantity of iron material was kept in the open and was not secured. It was further contended that during the period of his judicial custody, several employees and officials of the department had removed substantial quantities of material without maintaining any record thereof. The defendant also stated that he had informed the Assistant Engineer, Purvi Ganga Nahar, that during his judicial custody, Shri H.K. Goyal had taken materials from the store, but no action was taken in that regard. It was further contended that during the period of his judicial custody, the officials and employees of the department had taken away certain materials; however, the concerned officials deliberately acted negligently, and there was no negligence on his part.



27. While considering Issue No. 1, the trial court observed that it was the responsibility of the other employees working under the senior officials of the department to look after the materials in the absence of defendant no. 1. However, the department did not take any action against those employees and, in order to save them, deliberately proceeded only against defendant no. 1. The trial court further considered that in paragraph 5 of the plaint, the plaintiff itself admitted that defendant no. 1 had partially handed over charge and the remaining charge was with Mr. H.K. Goyal, Assistant Store Superintendent, who was in charge of the stock. In such a situation, when defendant no. 1 was in jail, it was Mr. H.K. Goyal who must have been responsible for maintaining the store stock. However, no proper clarification in this regard was provided by the plaintiff before the court, which creates an impression of collusion of other employees. It was also observed that, as per paragraph 6 of the plaint, the shortage was detected in September 1985, whereas, according to the department itself, the charge had been handed over between November 1982 to May 1984 to Mr. H.K. Goyal, Assistant Store Superintendent. The trial court noted that although defendant no. 1 had partially handed over the charge, after his arrest he had no control over the store stock.

28. In such circumstances, the trial court concluded that the department had made defendant no. 1 a scapegoat, while attempting to shield other responsible persons. It was also taken into account that initially the department alleged a shortage of approximately Rs. 28 lakhs; however, the suit was later



filed for Rs. 8,68,009/-, and subsequently amended to Rs. 7,98,309.35/-. This inconsistency further indicated that defendant no. 1 neither misappropriated the material nor was responsible for the alleged shortage, and that the liability had been wrongly fastened upon him due to the negligence of other officials. In this manner, when material worth ₹22 lakhs was allegedly lost, out of which only about ₹8 lakhs was ultimately found to be missing, it appears that the departmental inquiry itself is doubtful. The inquiry does not seem to have been conducted properly and, therefore, loses its significance.

29. The Trial Court further observed that the defendant was reinstated in service and has since retired. If any amount had actually been due against him on account of embezzlement or negligence, the plaintiff could have recovered the same from his salary or other service benefits; however, no such recovery was made. This circumstance indicates that the allegations against the defendant are unjustified and appear to have been made to shift the burden of negligence committed by other officials during the period when the defendant was in judicial custody.

30. Accordingly, upon consideration of these aspects, Issue No. 1 was decided in favour of Defendant No. 1 and against the plaintiff.

31. Assailing the findings of the Trial Court on Issue No. 1, learned Standing Counsel for the State of Uttar Pradesh, Mr. I.D. Paliwal, submitted that upon detecting a shortage of material attributable to the negligence of Defendant No. 1, a departmental inquiry



was conducted in which he was given full opportunity to explain the shortage. It was further contended that the defendant failed to submit adequate documentary evidence, and upon conclusion of the inquiry, the shortage was established against him. Therefore, the recovery suit was rightly instituted to recover the said amount.

32. In reply, learned counsel for Defendant No. 1, Ms. Seema Sah, submitted that during the inquiry proceedings, the defendant had in fact filed his reply and placed relevant registers on record. Based on such material, the alleged liability was substantially reduced. She further argued that the findings of the Trial Court are based on proper appreciation of evidence and the respective cases of both parties, and therefore do not call for any interference.

33. From a perusal of the findings of the Trial Court, it emerges that Defendant No. 1 was not the sole in charge of the material. Another official, Mr. H.K. Goyal, who was working as Assistant Store Superintendent, also shared responsibility. Moreover, during the period when Defendant No. 1 was in judicial custody, the plaintiff did not produce details or register in court, it cannot be presumed that he remained responsible for the shortage of material, particularly when other officials and employees were entrusted with its custody. The plaintiff could not produce any direct evidence to establish that the material shown in the list was, in fact, lost due to the negligence of defendant no. 1 and he could be held liable for it.



34. Thus, considering the overall facts and circumstances, pleadings, and evidence on record, it is evident that the findings of the Trial Court on Issue No. 1 are well-founded. Consequently, the plaintiff is not entitled to recover the amount of ₹7,98,309.35/- from Defendant No. 1. Point for determination no.1 is decided accordingly.

Point for Determination No. 2:-

“2. Whether the Superintending Engineer, Purvi Ganga Nahar Nirman Mandal Haridwar had the authority to institute the suit on behalf of the plaintiff?”

35. With regard to Issue No. 2, it was the pleaded case of the plaintiff/appellant that Purvi Ganga Nahar Nirman Mandal, Haridwar is a department of the State of Uttar Pradesh and falls under the Irrigation Department. It was further pleaded that, for the purpose of instituting suits on behalf of the said department, the Superintending Engineer, Purvi Ganga Nahar Nirman Mandal, Haridwar, is competent and duly authorized to institute and pursue such proceedings.

36. While deciding Issue No. 2, the Trial Court observed that although the Superintending Engineer had instituted the suit in the name of the State of Uttar Pradesh, no authority letter or formal authorization had been produced on record empowering him to file the present suit.

37. The Trial Court further held that, although a suit may be instituted on behalf of the State under the



provisions of Order XXVII of the Code of Civil Procedure, such institution must be by a person duly authorized by the Government. In the present case, the Superintending Engineer does not fall within the category of persons so authorized, nor was any specific authorization produced to establish that he had been empowered by the State of Uttar Pradesh to institute the suit. In this context, paragraph 14 of the written statement assumes considerable significance, wherein a specific plea was raised by the defendants that the suit had not been instituted by a competent person, as the Superintending Engineer lacked the requisite legal authority to do so.

38. On this basis, the trial court concluded that the suit could not be deemed to have been instituted on behalf of the State of Uttar Pradesh. It further held that no valid permission had been granted by the State for instituting the suit. Consequently, Issue No. 2 was decided in favour of the defendants and against the plaintiff.

39. Assailing these findings, learned counsel for the State of U.P., Mr. I.D. Paliwal, submitted that a letter dated 30.11.1992 had been issued by the Law Department of the State of U.P. granting permission to the Superintending Engineer, Purvi Ganga Nahar Nirman Mandal, Haridwar, to institute a civil suit against Vijaypal Singh, Storekeeper, in relation to shortage of store material. He drew the Court's attention to Annexure No. 3A (page 44 of the memo of appeal), which is a photocopy of the said letter, and argued that since the suit was instituted in 1994, the permission granted in 1992 was prior in time. Therefore, the finding of the



trial court was erroneous and unsustainable, and the plaintiff was duly authorised to institute the suit.

40. Per contra, learned counsel for defendant No. 1, Ms. Seema Sah, contended that the said document was never filed before the trial court and does not find mention in the list of documents filed therein, hence, it cannot be considered at the appellate stage. She further argued that the document is merely a photocopy and is inadmissible in evidence in view of Sections 65 and 66 of the Indian Evidence Act, 1872, as the requirements for leading secondary evidence were not complied with.

41. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *H. Siddiqui v. A. Ramalingam*, (2011) 4 SCC 240, wherein the law relating to admissibility of secondary evidence has been settled. Para 12 of the judgment reads as under:-

“12. The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence



does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Vide Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] , State of Rajasthan v. Khemraj [(2000) 9 SCC 241 : AIR 2000 SC 1759] , LIC v. Ram Pal Singh Bisen [(2010) 4 SCC 491 : (2010) 1 SCC (L&S) 1072 : (2010) 2 SCC (Civ) 191] and M. Chandra v. M. Thangamuthu [(2010) 9 SCC 712 : (2010) 3 SCC (Civ) 907] .)”

42. It was also submitted that no application under Order XLI Rule 27 CPC had been filed for bringing additional evidence on record at the appellate stage. Therefore, the said document cannot be taken into consideration for any purpose.

43. Upon consideration of the aforesaid submission of learned counsel for the parties, this Court finds no reason to interfere with the finding of the trial court on issue no.2. Thus, Superintending Engineer did not have authority to file the suit on behalf of State of Uttar Pradesh. Point for determination no.2 is decided accordingly.

Point for Determination No. 3:-

“3 –Whether the suit is barred by time?”

44. The issue of limitation was framed on the basis of the plea taken in Para 29 of the written statement,



wherein it was specifically contended that the suit was barred by limitation.

45. While deciding this issue, the trial court considered that the defendant No. 1 remained in judicial custody from 28.08.1982 to 25.10.1982, and the shortage of material was detected in the year 1985. However, the suit was instituted only in 1994.

46. The plaintiff contended that since the suit had been filed on behalf of the State of U.P., the limitation period would be 30 years under Article 112 of the Limitation Act.

47. However, the trial court, in view of its finding on Issue No. 2, held that the suit had not been validly instituted on behalf of the State. Therefore, the benefit of Article 112 was not available. Instead, the case would fall under Article 113 of the Limitation Act, which prescribes a limitation period of three years from the date when the right to sue accrues.

48. Since the cause of action arose in 1985 and the suit was filed in 1994, after a delay of about nine years, the trial court held the suit to be barred by limitation.

49. Learned counsel for the appellant argued that Article 112 should apply; however, learned counsel for the respondent argued that in the absence of valid authorization from the State, the said provision would not be attracted.



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50. Upon examining the matter, this Court concurs with the findings of the trial court as there was no valid authorization by the State of U.P., the suit cannot be treated as one filed by the Government. Therefore, Article 113 applies, and the limitation period is three years.

51. Admittedly, the cause of action arose in 1985, whereas the suit was filed in 1994. Thus, the suit is clearly barred by limitation. Thus, no error has been committed by the trial court in deciding Issue No. 5. Point for determination no.3 is decided accordingly.

52. Since all the points for determination have been decided against the plaintiff and no illegality or infirmity has been found in the judgment of the trial court, the present first appeal lacks merit and deserves to be dismissed.

53. Accordingly, the appeal is dismissed, and the judgment and decree of the trial court is affirmed.

54. The original record be transmitted back to the court concerned.

(Siddhartha Sah, J.)
24.04.2026

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