

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.112 of 2013

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Raj Narayan Tiwary S/O Late Sumeshwar Tiwary R/O Village- Ramgarah, P.S-
Ramgarah, District- Kaimur Bhabua

..... Plaintiff Appellant

.... Appellant

Versus

1. Sahayk Khanan Padadhikari, Rohtas, At And P.O- Sasaram, P.S- Sasaram,
District- Rohtas.

2. Director Khanan Bibhag, Patna. Null At Mohan Bhawan, East Boaring Road,
Patna.

..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-09-2015

Heard Mr. Radha Mohan Pandey, learned Counsel appearing
for the appellant.

2. The plaintiff is the appellant in this appeal against the
judgment and decree of affirmance.

3. The suit was filed by the plaintiff for declaration that the
certificate case pending before the Certificate officer was illegal and
wrong and also the issuance of warrant in the said case against the
plaintiff was illegal. The relief of passing a restraint order against the
execution of the said certificate and warrant was also prayed.

4. The necessitous facts, for appreciation of the
submissions on behalf of the appellant, on the point of maintainability of
the suit are that the plaintiff was approached by a Police Constable for
execution of a warrant of arrest issued in pursuance of a certificate
proceeding. The plaintiff then approached the Certificate Officer praying

for dropping the proceeding against him, denying his liability on the ground that there was never any agreement with the requisitionist department with the plaintiff and the plaintiff had never run any brick kiln and was not liable for the tax dues which had been sought to be realized by way of the certificate proceeding.

5. Mr. Pandey, the learned Counsel for appellant, in his submission, has emphasized that the entire certificate proceeding against the appellant was a nullity from the very inception as there was no public demand as defined under Section 5 of the Bihar and Orissa Public Demand Recovery Act (hereinafter referred to as 'the Act') and therefore the certificate could not have been drawn and further proceeding in pursuance of that certificate could not have been taken. The learned Counsel has also strenuously submitted that under Section 46 of the Act, fraud against the plaintiff would be presumed to have been done when the certificate proceeding had been drawn against him and therefore the suit was maintainable.

6. From the perusal of the judgments of both the courts below it is manifest that the issues arising in the suit have been decided against the plaintiff including the maintainability of the suit also.

7. Section 43 of the Act reads as follows:-

“43. Suit in Civil Court to have certificate cancelled or modified-

The certificate-debtor may, at any time within six months-

(1) from the service upon him of the notice required by Section 7, or

(2) if he files, in accordance with Section 9, a petition denying liability – from the date of the

determination of the petition, or

(3)if he appeals, in accordance with section 60, from an order passed under section 10 from the date of the decision of such appeal,

bring a suit in a Civil Court to have the certificate cancelled or modified and for any further consequential relief to which he may be entitled:

Provided that no such suit shall be entertained-

(a) in any case, if the certificate-debtor has omitted to file, in accordance with section 9 a petition denying liability, or to state in his petition denying liability the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or

(b) in the case of a certificate for a demand mentioned in Article 1, or Article 2 of Schedule I, if the certificate-debtor has not paid the amount due under the certificate to the Certificate Officer –

- (i) within thirty days from the service of the notice required by section 7, or**
- (ii) if he has filed in accordance with section 9, a petition denying liability – then within thirty days from the date of the determination of the petition, or**
- (iii) if he has appealed in accordance with section 60 – then within thirty days from the decision of the appeal;**

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase money, with such interest (if any) as the Court may allow”



From the conspectus of the aforesaid provisions it is manifest that a suit is maintainable by a certificate debtor only when he would have filed his objection under Section 9 of the Act and after its determination or the appeal thereafter. In the present case, the learned Counsel for the appellant has fairly accepted that there is averment in the plaint that the plaintiff had approached the certificate issuing authority praying for dropping the certificate proceeding against him but has not filed objection as envisaged under Section 9 of the Act before filing the present suit. However, there is complete absence of any explanation for not filing the objection under Section 9 as required under the proviso to Section 43 of the above Act before filing the suit.

8. The courts below while holding the suit to be not maintainable have also found that there has been no specific pleading of fraud in the plaint. In this regard the submission by the learned Counsel for the appellant is that the fraud can be presumed to have been committed against the plaintiff from the facts and circumstances of the case and, therefore, absence of specific pleading in that regard is not warranted and the suit is maintainable under Section 46 of the Act. This Court, however, is not inclined to accept this submission in view of Order 6 Rule 4 CPC requiring the pleading of the fraud to be given in detail vitiating the alleged action against the plaintiff. The principle is perfectly settled that general allegations, howsoever strong, are insufficient even to amount to an averment of fraud which any court will take notice. In *Gyatri Devi Vs. Sashipal Singh*, (2005) 5 SCC 527, the Apex Court has reiterated the same principle.

9. For the aforesaid reason and discussions, this Court does

not find any illegality or perversity in the conclusion of the courts below dismissing the suit as not maintainable, and comes to the conclusion that there is no substantial question of law arising for consideration in this appeal. This appeal is accordingly dismissed. However, dismissal of this appeal shall not prejudice the entitlement of the plaintiff in accordance with law for redressal of his grievances against the certificate proceeding.

(V. Nath, J.)

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