

THE HIGH COURT OF TRIPURA AGARTALA

RFA NO.02 OF 2008

1. Manu Valley Tea Company Ltd.,
Having its registered office at 6 Mango Lane,
Kolkata, 700001.

... Appellant

- Vs -

1. Shri Nitish Rn. Deb Roy.
2. Shri Nirmalendu Deb Roy.
3. Smt. Sumita Deb Roy.
4. Smt. Sampa Ghosh.

(Sons and daughters of Lt. Shri Nishi Rn. Deb Roy,
Kailashahar Town, P.S.-Kailashahar, North Tripura.)

5. Musstt. Shakila Khatun,
W/o Lt. Amar Hazi Sukkur.

6. Baby Sukkur,
D/o Lt. Amar Hazi Sukkur.

7. Sabi Sukkur,
D/o Lt. Amar Hazi Sukkur.

8. Islam Hazi Sukkur,
S/o Lt. Amar Hazi Sukkur.

9. Minaz Hazi Sukkur,
S/o Lt. Amar Hazi Sukkur.

All of 'Nich' Halaicherra Tea Estate, P.O.- Kalisasan,
P.S. -Kailashahar, North Tripura, Pin -799277.

...Respondents

BEFORE THE HON'BLE MR. JUSTICE S.C. DAS

For the appellant : Mr. D.K. Biswas, Advocate.
Mr. G.K. Nama, Advocate

For the respondent No. 1 to 4 : Mr. A.K Bhowmik,
Sr. Advocate

For the respondent No.9 : Mr. D.C. Roy, Advocate,

Date of hearing : 29.07.2015 & 14.08.2015.

Date of delivery of Judgment & order. : **01/10/2015.**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER

This appeal under Section 96 of the Code of Civil Procedure 1908 is directed against the judgment and decree of dismissal dated 05.02.2008 passed by learned Civil Judge, (Senior Division) North Tripura, Kailashahar in Title Suit No. 13 of 1983.

2. Heard learned counsel, Mr. D.K. Biswas for the appellant and learned senior counsel, Mr. A.K. Bhowmik for respondent No.1 to 4 and learned counsel, Mr. D.C. Roy for respondent No.9. There was no representation on behalf of the other respondents.

3. The appellant as plaintiff (hereinafter mentioned as plaintiff) instituted Title Suit No. 13 of 1983, *inter alia*, seeking specific performance of an agreement dated 04.02.1983 entered between the plaintiff and Nishi Ranjan Deb Roy, since deceased, the defendant No.1, the predecessor of present respondent Nos.1 to 4 (hereinafter mentioned as 'defendant No.1') and also seeking recovery of dues of an amount of Rs.80,887.49 paisa and damage to the extent of an amount of Rs.4,65,000/- and also for mandatory and permanent injunction etc. against all the defendants.

4. The plaintiff, *inter alia*, contended that the plaintiff is a company carrying on the business of tea in the name and style, 'Manu Valley Tea Company Limited' and is the owner of Manu Valley Tea Estate. The defendant No.1, Nishi Ranjan Deb Roy was the owner in exclusive possession of Halaicherra Tea Estate and used to produce green tea leaves. Both Manu Valley Tea Estate and Halaicherra Tea Estate were located at Kailasahar, North Tripura, District. The plaintiff and defendant No.1 entered into an agreement on 4th February, 1983 contending that the defendant No.1 shall sell the green tea leafs of Halaicherra Tea Estate to the plaintiff company. The plaintiff learnt that by a registered instrument dated 11.08.1983 executed between the defendant No.1 and defendant No.2, the defendant No.2 to 6 were admitted as co-owners of Halaicheera Tea Estate having six anna share in the property and, therefore, defendant Nos.2 to 6 were also arrayed as defendants in the suit. It is also contended that defendant No. 3 to 6 were minors and were represented by defendant No.2. The plaintiff contended that the agreement dated 04.02.1983 was binding on all the defendants.

5. In terms of the agreement, the plaintiff contended that the defendant No. 1 supplied green tea leaves to the plaintiff company from March, 1983 to September, 1983 during the crop season of 1983-1984. As per the terms of the agreement dated 04.02.1983 the defendants were bound to sell entire crops of Halaicherra Tea estate to the plaintiff company. During the period from March, 1983 to September, 1983 the defendants supplied 2,21,182 Kilograms of green tea leaves to the plaintiff. During the

period from March, 1983 to 26th of September, 1983 the plaintiff paid to the defendants a total sum of Rs.2,90,500/-. The plaintiff contended that an excess amount of Rs 79,150.64/- was paid to the defendants than that of the price of the green tea leaves supplied by the defendants. The plaintiff further, contended that another sum of Rs.1,736.85 was also due to be paid to the plaintiff by the defendant for supply of fertilizer and chemicals and as such a total sum of Rs.80,887.49 was due to be paid by the defendants to the plaintiff.

6. In view of the agreement dated 04.02.1983, since the plaintiff got the assurance of supply of the green tea leaves, the plaintiff installed additional machinery expending an amount of Rs.6,00,000/-. In view of the agreement, the plaintiff also entered into further agreement with tea brokers and took advance of Rs. 3,00,000/- from the brokers assuring supply of tea but for the failure of the defendants the plaintiff had to pay interest at bank rate to the said brokers.

7. In terms of the agreement the defendants supplied to the plaintiff entire crops of green tea leaves from March, 1983 to 1st week of September, 1983 and from 8th September, 1983, the defendants in violation of the terms of agreement failed/neglected to deliver the green tea leaves to the plaintiff company and ultimately from 27.09.1983 the defendants stopped the supply of green tea leaves to the plaintiff company. The defendant were bound to supply the green tea leaves for the seasons 1983 -1984 and 1984-1985 and because of failure of the defendants to supply

the crops of Halaicherra Tea Estate to the plaintiff company in terms of agreement, the plaintiff suffered an damage of Rs.4,65,000/-.

8. It is alleged by the plaintiff that the cause of action arose on 27.09.1983 when the defendant stopped supply of the green tea leaves. The plaintiff therefore, instituted the suit seeking specific performance of agreement dated 04.02.1983 and also claiming the amount of Rs.80,887.49 towards amount due to be paid by the defendants to the plaintiff, Rs.4,65,000/- towards loss and damage suffered by the plaintiff and Rs.1000/- towards consequential relief, totaling Rs.5,76,887.49 and further prayed for mandatory as well as perpetual injunction.

9. The defendant No.1 Nishi Ranjan Deb Roy i.e. the predecessor of respondent Nos.1 to 4 submitted written statement *inter alia* contending that the suit instituted by the plaintiff is not maintainable and that the claim made by the plaintiff in the suit was false. The deed of agreement dated 04.02.1983 was illegal and is a product of conspiracy. The crops season of 1983-1984 commenced from March, 1983 and it expired in month of January, 1984 and after expiry of that period the plaintiff had no right to claim the green tea leaves of Halaicheera Tea Estate. It is further contended by the defendant that the plaintiff suppressed and withheld the original agreement which was typed by the plaintiff Tea Estate on a stamp paper of Rs.2 and 6/7 semi papers attached with it which was executed between the manager of plaintiff namely B. Maulik and defendant No. 1. The defendant No.1 and the manager of the plaintiff-company signed that agreement in every page but the said original agreement has been suppressed by the plaintiff and in its

place a false and collusive agreement containing some terms and condition which were quit contrary to the term and condition incorporated in the original agreement submitted by the plaintiff which is not genuine one. The agreement was signed because of some financial distress. It is contended by the defendant that except the last page of the deed of agreement the other pages were removed by the plaintiff and a false deed of agreement has been submitted by the plaintiff. The defendants therefore, prayed for dismissal of the suit.

10. The defendant No.6 Minaz Hazi Sukkur also contested the suit by filing written statement *inter alia* contending that Hazi Abdul Sukkur Mussa was the original owner of Halaicheera Tea Estate. He acquired the ownership of the tea estate in terms of a seha No.52 dated 14.1.38 T.E. from the Government of Swadhin Tripura. Hazi Abdul Sukkur Mussa died about 40 years ago leaving behind his sons, Noor Mohammed Hazi Sukkur, Umar Hazi Sukkur, Habib Hazi Sukkur, Hazi Rakmat Ullah. Umar Hazi Sukkur died on 02.03.1976 leaving behind the defendant Nos.2 to 6 as his legal heirs. There were some litigation in respect of the Halaicherra Tea Estate vide Title Suit 10 of 1984 and Title Suit No.6 of 1986 and both the suits were decided by the learned Civil Judge, Senior Division wherein the share of the defendant No.6 in the tea estate was decided. On 04.02.1983 the defendant No.6 was minor and so there was no scope for him to enter into an agreement. After the death of his father, his mother never maintained him and as such she has no authority to represent him as a natural guardian. He did

not enter into any agreement with the plaintiff and so, the suit was bound to be dismissed.

11. It appears that issues were framed on different dates and ultimately re-casted issues were framed on 01.02.1995 and admittedly those issues were :-

“1. Whether the suit is maintainable in its present form?

2. Whether there was any agreement between the plaintiff and the defendants for supplying of green tea leaf for the season 1983-84, and if so, whether the defendants complied with the terms and conditions of the said agreement?

3. Whether the plaintiff is entitled to any relief, and if so, upto what extent?”

12. In course of trial, on behalf of the plaintiff three witnesses were examined, namely PW.1 Sri B. Maulik he was manager of Manu Valley Tea Estate at the relevant point of time, PW.2 Jagadish Ch. Das, the General Manger of Manu Valley Tea Estate and PW.3, Saradendu Purukayastha, a clerk of the Tea Estate.

13. The plaintiff also proved following documents:-

Exbt-1 - A Deed of Agreements dated 04.02.1983 containing 6(six) sheets.

Exbt-02 - A Statement of payment and recovery of advance.

Exbt-03 - A bunch of receipts.

Exbt-04 - 36 Nos. Letters written in English and Bengali.

Exbt-05 - Counter foil of cheque books.

Exbt-06 - A bunch of money receipts issued by the Manager Manu valley Tea Estate to Halaicherra Tea Estate.

Exbt-07 - A peon book.

14. Defendants No.6 i.e. the respondent No.9 herein examined himself as the DW.1 and in support of his case he proved the following documents:-

Exhibit-A series - certified copy of judgment and decree passed in T.S. 10 of 1984 and T.S 6 of 1986 and certified copy of order passed by the learned District Judge in connection with case No.6(GC) 80.

Exhibit-B series - Khatian No. 55 of Mouja Halaicheera, Khatian No. 200/2 of Mouja Jarailtali and khatian No.200 JER 384 of Mouja Jarailtali.

Exhibit-C - certified copy of alleged deed.

The other defendant did not adduce any oral or documentary evidence.

15. Learned counsel, Mr. Biswas appearing for the appellant has submitted that agreement dated 04.02.1983 i.e. exhibit-1 has been substantially proved since the defendant No.1 by filing written statement has admitted his signature in the last page of the agreement. The defendant No.1 simply disputed that he and the manager of the plaintiff company signed in all pages of the original agreement and that the pages of exhibit-1, except the last page, which was subsequently typed out and further that the original deed was signed in two rupees stamp paper. To substantiate that pleading the defendant No.1 or his successors did not adduce any evidence. So, the agreement should be presumed to have proved. He has also contended that the plaintiff by adducing evidence further proved that there was monetary transaction between the plaintiff and defendant No.1 and defendant No.1 represented that he was the sole proprietor of Halaicherra Tea Estate. Under such circumstances, the presumption should be drawn considering the

totality of the evidence that there was an agreement between the plaintiff and defendant No.1 for supply of green tea leaves of Halaicherra Tea Estate to the plaintiff company and pursuant to that agreement the defendant No.1 supplied the green tea leaves to the plaintiff company. In support of his contention he has referred a decision of the Apex Court in the case of **Limbaji & ors. Vs. State of Maharashtra reported in (2001) 10 SCC 340.**

16. Learned senior counsel, Mr. A.K. Bhowmik for the respondent Nos.1 to 4 and learned counsel, Mr. D.C Roy for the respondent No.9 submitted that burden lies on the plaintiff to prove its own case. Since the defendant No.1 did not adduce any evidence, the pleadings of defendant No.1 has no value. The plaintiff has to prove that there was an agreement signed between the plaintiff and the defendant No.1 and that defendant No.1 was the proprietor of Halaicherra Tea Estate.

17. Exhibit 1, as I find, is an agreement in six page and last page contains the signature of both the parties to the agreement and the signature of two witnesses. None of those two witnesses was examined. PW.1, Sri B. Maulik, alleged to have signed the agreement but he has not proved his signature and the signature was not marked as exhibit. Defendant. No.1 did not adduce any evidence. However, Defendant No.1 by filing written statement stated that the last page of the agreement contains signature of both the parties which means he admitted execution of the last page of the agreement and it may be presumed that there was an agreement signed between the plaintiff and defendant No.1.

18. It is an admitted position that page 1 to page 5 of the exhibit 1 contains no signature of the parties. Burden definitely lies on the plaintiff to prove the document as a genuine one. Mere signature of the party on the last page, even if presumed to have proved, since the other pages do not contain signature of the parties to the agreement, the trial Court rightly held that the plaintiff has failed to prove agreement dated 04.02.1983 i.e. exhibit 1 which is the basis of the claim of the plaintiff-company. Further the trial Court has held that no evidence adduced to show that Nishi Ranjan Deb Roy (Defendant No.1) was entitled to enter into an agreement to sell the produces of Halaicherra Tea Estate. The plaintiff in his pleadings stated that Nishi Ranjan Deb Roy represented himself as the owner of Halaicheera Tea Estate and the plaintiff also contended that there was a registered document between the plaintiff and defendant No.1 in respect of the ownership of the Halaicherra Tea Estate. In support of that the plaintiff adduced no evidence that the defendant No.1 Nishi Ranjan Deb Roy was the owner of Halaicherra Tea Estate. PWs.1, 2 and 3 simply stated about the execution of the deed and that of the damage suffered by the plaintiff. The exhibited documents of the plaintiff do not show that Nishi Ranjan Deb Roy was the proprietor of Haliacherra Tea Estate in full or in part and had the authority to enter into an agreement. The defendant No.1 by adducing evidence proved the fact that the Halaicherra Tea Estate originally belonged to one Abdul Sukkur Mussa and that defendant No.6 inherited certain share of the said tea estate in view of judgment in T.S. 10 of 1984 and T.S. 6 of 1986 copies of those judgment have been placed in the evidence by the defendant No.6 and the copy of the khatian

also produced by the defendant No.6 which does not show that the defendant No.1 Nishi Ranjan Deb Roy was the owner of the Halaicherra Tea Estate to enter into an agreement with plaintiff assuring sell of the produce of the Halaicherra Tea Estate.

19. No doubt the plaintiff proved some documents which shows that in the year 1983-1984 defendant No.1 supplied certain quantity of green tea leaves to the plaintiff company but since the agreement itself has not been proved properly by plaintiff and since the ownership of Nishi Ranjan Deb Roy, the defendant No.1 in the Halaicherra Tea Estate has not been proved with clear evidence, I find nothing to accept the argument of learned counsel, Mr. D.K. Biswas that the agreement dated 04.02.1983 (exhibit -1) was enforceable by law. The ratio of the decision referred by learned counsel, Mr. Biswas, is not applicable in the present case since the plaintiff has failed to prove the basic facts on the basis of which the plaintiff set his claim.

20. In view of the discussions made above, I find no infirmity in the judgment and decree of dismissal passed by the Courts below and the appeal, therefore, is found to be devoid of any merit and hence, stands dismissed.

21. Send back the L.C. records along with a copy of this judgment.

22. Parties to bear their own costs.

JUDGE

Sohanjit