IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.297 of 2012
(Sou. Vidya Dhanaji Patil v. Shri Ramganga Adat Dukan and another)

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders

Shri Chetan G. Patil, Advocate for Appellant.
Shri G.K. Jadhav, Advocate for Respondents.

Coram : R.K. Deshpande, J.
Dated : 16th June, 2015

The Trial Court passed a decree for an amount of Rs.1,00,284.46 along with the notices charges and the interest at the rate of 9% per annum for supply of goods by the plaintiff to the defendants. The Appellate Court has reversed this decree and dismissed the suit. Hence, the original plaintiff is before this Court in this second appeal.

The only evidence relied upon by the Trial Court in respect of supply of goods is the income tax returns of the defendants. The Appellate Court has considered this aspect of the matter in paras 6 and 7 of its judgments, which are reproduced below :

"06. From the tenor of the pleadings in the plaint, it is clear that plaintiff filed this suit for recovery of the price of goods i.e. jaggery sold to defendant no.1. In plaint it is contended that plaintiff sold jaggery worth Rs.35,000/- as per Account No.98 and jaggery worth of Rs.65,284.46 ps. as per Account No.352. It is the contention of plaintiff that the aforesaid outstanding

amount has been acknowledged by defendants in their income-tax returns and the list of agriculturist association annexed with the income tax return. Except the aforesaid contentions, plaint is devoid of the necessary particulars as to the date on which the jaggery was sold to defendant no.1. It is to be borne in mind that the defendant has specifically denied the entire transaction and denied to have purchased jaggery from plaintiff. It is denied that the plaintiff is agriculturist, plaintiff took sugarcane crop and manufactured jaggery. In this background, it was incumbent upon the plaintiff to establish the fact that the plaintiff had supplied and sold jaggery to defendant no.1. The date on which the jaggery was sold gives cause of action to plaintiff to file the suit. The plaintiff is not adduced any evidence about the transaction of Account No.98 and Account no.352. During the cross-examination, P.W.1/Hindurao the power of attorney admitted that whenever the jaggery is sold a receipt to that effect is issued with description of the date and weight of goods sold. P.W.1/Hindurao categorically admitted that he has not produce the receipt of selling the goods. Plaintiff has not assign any cogent evidence as to why the receipts in respect of sell of jaggery are not produced on record. The P.W.1/Hindurao admitted that the plaintiff is not having any agricultural land and she is not manufacturing any jaggery. During the cross-examination, P.W.1/Hindurao admitted that the list of agriculturist association has been prepared by Advocate S.R. Patil and the aforesaid admissions goes to the root of the case of plaintiff. Under these circumstances, the defence of the defendants appears to be more probable."

"07. P.W.2/Satappa an employee from Agricultural

> *Produce Committee has tried to produce correspondence and the documents filed alongwith list Exh.29 at Sr.No.1 to 7. The aforesaid document with list Exh.29 at Sr.No.1 to 7. The aforesaid document with list Exh.29 have not been exhibited by the Trial Court. All these documents are certified copies issued by the Agricultural Produce Market Committee. The signatures on these documents are proved by P.W.2/Satappa. Even if these documents with list Exh.29 are considered still these documents are not beneficial to plaintiff to establish the fact that plaintiff had in fact supplied jaggery to defendant no.1. It is significant to notice that P.W.1/Hindurao the power of attorney of plaintiff has not deposed that he has personal knowledge of the transaction and the fact that jaggery was in fact supplied to defendant No.1. In view of the aforesaid discussion, it is clear that plaintiff has failed to establish that the jaggery was supplied to defendant no.1."*

The Appellate Court has categorically held that there is no evidence placed on record showing that the goods have been supplied. The finding is based upon the evidence available on record.

Thus, no substantial question of law arises in this second appeal. The second appeal is dismissed.

Judge.

Lanjewar