IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.04.2017

1. RSA No.82 of 1991 (O&M)

Market Committee, Kaithal

... Appellant

Vs.

M/s Miglani Rice and General Mills

... Respondent

2. RSA No.83 of 1991 (O&M)

Market Committee, Kaithal

... Appellant

Vs.

M/s Lekh Raj Narinder Kumar Rice Mills

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Raghav Kapur, Advocate
for the appellant.

None for the respondent.

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RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical Regular Second Appeals bearing RSA No.82 of 1991 (Market Committee Vs. M/s Miglani Rice and General Mills) and RSA No.83 of 1991 (Market Committee Vs. M/s Lekh Raj Narinder Kumar Rice Mills), are being decided vide this common order, with the consent of learned counsel for the appellant in both these cases, as both these appeals are arising out of similar set of facts and against similar impugned judgments and decrees passed by the learned Courts below. However, for the facility of reference, facts are being culled out from RSA No.82 of 1991 (Market Committee Vs. M/s Miglani Rice and General Mills).

Unsuccessful defendant, in both these identical suits for permanent injunction, is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby two similar suits filed by different plaintiffs for permanent injunction against the same defendant, were decreed by the learned trial Court vide its impugned judgment and decree dated 20.07.1989 and two similar appeals filed by the defendant were dismissed by the learned first appellate Court vide its impugned judgments and decrees dated 24.08.1990.

Brief facts of the case, as noticed by learned trial Court in paras 1 and 2 of its impugned judgment, are that the plaintiff Miglani Rice and General Mills had filed the present suit through its registered partner Shri Amar Lal, for permanent injunction against the defendant Market Committee with the averments that the plaintiff firm deals in the selling of rice at Kaithal and in pursuance of its abovesaid business, the plaintiff firm purchased paddy from the area administered by the defendant Market Committee. During the period of 17.10.1978 to 06.12.1978, as usual, the plaintiff firm purchased paddy from Kaithal Mandi and market fee legally levied at that time was duly paid by the plaintiff to the defendant Market Committee.

The plaintiff firm has also pleaded that whatever market fee was paid by the plaintiff firm to the defendant Market Committee, the burden of the same was duly passed to the purchaser of the rice after adding the same towards the cost of goods (rice) produced/manufactured out of paddy suddenly, after lapse of 8 years, the defendant Market Committee served with notice bearing reference No.1437 dated 19.08.1986 by virtue of which the plaintiff firm was asked to deposit a sum of Rs.1,01,841.50 paise on account of increase in the market fee from 2% to 3% for the period 17.10.1978 to 06.12.1978, as upheld by the Hon'ble Supreme Court of India vide its judgment dated 03.12.1985 with threat to recover the same as arrears of land revenue in case the said amount was not deposited with stipulated period. The plaintiff firm by way of the present suit had challenged the legality of the notice dated 19.08.1986 on the following grounds: -

(a) That as the plaintiff did not pass the burden of the enhanced amount of market fee i.e. 2% to 3% to the purchase of rice, processed/manufactured by plaintiff by including it in the price/cost of goods (rice) so now after a lapse of about 8 years, it is beyond the competence of plaintiff to recover/include the enhanced amount of market fees from the purchase of rice, processed/manufactured by the plaintiff from the paddy purchased by the plaintiff during the period 17.10.1978 to 06.12.1978. No purchaser of rice is going to oblige the plaintiff when the plaintiff did not pay the burden of increase in fees i.e. to the tune of 10% then how could the plaintiff be asked to make payment of the same to the defendant.

(b) That Hon'ble Supreme Court merely upheld the validity of Punjab Agriculture Produce Markets (Haryana 2nd Amendment and Validation) Act, 1980 and left open the challenge to the notice issued by the plaintiff.

(c) That the limitation act clearly debars the Act from claiming the market fees beyond the span of 3 years from the date of issuance of notice. Only legally recoverable market fees can be recovered as arrears of land revenue act. Arrears beyond 3 years are not legally recoverable.

(d) That the amount on its very face is exorbitant one. The same is based upon wrong calculations.

(e) That the impugned notice is not at all within the ambit of Produce Market Act. The same has been in abuse of the powers of the defendant.

The plaintiff firm requested the defendant Market Committee not to recover this illegal amount, but as the defendant Market Committee was adamant, so this necessitated the filing of the present suit.

Upon service, defendant put appearance and filed its contesting written statement, raising more than one preliminary objections. Plaintiff filed its replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the alleged notice of recovery is not binding on the plaintiff on the grounds mentioned in para No.7 of the plaint? OPP

2. Whether the Civil Court has got no jurisdiction to entertain the present suit? OPP

3. Whether the suit is malafide? OPD

4. Whether the suit is not competent because of non-service of

the notice under Section 31 of the Punjab Agricultural Produce Market Action. OPD

5. Whether the plaintiff has suppressed true and material facts from the Court and is not entitled for any relief? OPD

6. Relief.

It is pertinent to note here that in the second case also, exactly the same issues were framed. In order to prove their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that the plaintiffs in both these cases have duly proved their case, by leading cogent and convincing evidence. Accordingly, both the suits were decreed by learned trial Court, vide impugned judgment and decree dated 20.07.1989.

Feeling aggrieved, defendant filed its first appeal, which also came to be dismissed by learned first appellate Court, by passing identical impugned judgments of even date i.e. 24.08.1990. Hence these two identical regular second appeals at the hands of unsuccessful defendant. Both these appeals were admitted for regular hearing vide order dated 06.03.1991 passed by this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the appellant in both these cases.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below would make it crystal clear that the defendant-appellant had no case either on facts or in law. At the very outset, when learned counsel for the appellant was confronted with the peculiar facts and circumstances of the case, coupled with the law laid down by the Hon'ble

Supreme Court in **Kewal Krishan Puri Vs. State of Punjab, 1980 (1) SCC 416** and **M/s Amar Nath Om Parkash Vs. State of Punjab, 1985 (1) SCC 345,** he had no answer and rightly so, it being a matter of record.

The entire case of the defendant-appellant was based on demand notice dated 19.08.1986, which was found by both the learned Courts below to be patently illegal and it was held that the defendant-appellant Market Committee had no right of recovering the alleged market fee, by validating the illegal levy under Section 23A of the Punjab Agriculture Produce Markets Act, 1961. In fact, the case was rightly found squarely covered in favour of the plaintiff by the learned trial Court, in view of the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove.

A perusal of the impugned judgment passed by the learned trial Court would make it crystal clear that each and every relevant aspect of the matter was rightly considered and appreciated. Categoric findings recorded by the learned trial Court in later part of para 11 of its impugned judgment, which deserve to be noticed here, read as under: -

> *"The legality and validity of Section 23(a) was also challenged before the Hon'ble High Court of Punjab and Haryana and subsequently before Hon'ble Supreme Court of India, submitting that in fact Section 23(a) was a blatant attempt to validate levy which had been declared invalid by this Court and this was not permissible. The Hon'ble Supreme Court of India in authority AIR 1985 page 218 titled as M/s Amar Nath Om Parkash and others Vs. M/s The Food Corporation of India and others upheld the validity and legality of Section 23(a) and it was held that: -*

"Section 23-A does not permit any recovery of fee @Rs.3/- per 100 in respect of any sales of agricultural produce before or after the coming into force of that provision. There is no attempt at retrospective validation of excess collection nor any attempt at providing for future collection at the rate of Rs. 3/- per 100. All that Section 23-A does is to prevent unjust enrichment by those dealers who have already passed on the burden of the fee to the next purchaser and so reimbursed themselves by also claiming a refund from the Market Committees."

From these observations now it is crystal clear that at no time the defendant Market Committee was authorised to demand the recovery from the plaintiff firm at the rate of 3/- per 100 in respect of any sales of Agricultural produce before or after coming into force of the provisions of Section 23-A."

The appeal filed before the learned first appellate Court was not even filed by an authorized person as there was no resolution of the Market Committee, authorizing the concerned officer to file the appeal. Although the learned first appellate Court emphasized more on this aspect of the matter that the appeal was not filed by a competent officer and he was not authorized to file the appeal dismissing the same on maintainability, yet it is pertinent to note here that since the appellant had no case either on facts or in law, in view of the abovesaid categoric findings recorded by the learned trial Court, the learned first appellate Court was also well within its jurisdiction to pass the impugned judgment and the same deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant could not point out any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these appeals having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both these regular second appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.04.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No