

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05-09-2017

DELIVERED ON : 18.01.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

S. A. No.445 of 2007

M/s. Pasumpon Wattle Extraction
(P) Ltd., by its Managing Director,
Having Office at
No.427, K.K. Nagar, Madurai

... Appellant/Respondent/Plaintiff

Versus

1. The Government of Tamil Nadu
Rep. by its Secretary,
Environment and Forest Department,
Fort St. George,
Chennai-600 009.

2. The Principal Chief
Conservator of Forests,
Jennis Road, Saidapet,
Chennai-600 015.

3. The District Forest Officer,
Nilgiris South Division,
Udhagamandalam.

... Respondents/Appellants/Defendants

For Appellant .. M/s. M. Balasubramanian

For Respondent... M/s. M. Santhanaraman,
Addl. Govt. Pleader (Forest) for R3

(R1 & R2 - Dismissal vide order
dt.10-12-2009)

JUDGMENT

The Second Appeal has been filed by the defendants against the Judgment and decree dated 12.12.2006 passed in A.S.No.22 of 2006 by the learned Subordinate Judge, Nilgiris at Uthagamandalam, reversing the judgment and decree dated 28.02.2005 passed in O.S.No.44 of 2004 by the learned District Munsif, Uthagamandalam.

2. The plaintiff filed a suit seeking the relief of declaration and consequential permanent injunction and mandatory injunction against the defendants.

3. For sake of convenience, the parties will hereinafter referred to as per the ranking before the trial Court.

4. The Plaintiff is the Appellant in this Second Appeal. The Plaintiff filed a Suit before the District Munsif Court, Uthagamandalam in O.S.No.44 of 2004 praying relief of declaration that the communication dated 31-01-2000 is illegal, improper and not in accordance with law and equity and consequently for a permanent injunction restraining the Defendants their men and agents from in any way taking distraint proceedings against the Plaintiff for recovery of the alleged balance amount mentioned in the said communication or from forfeiting the amount payable to the Plaintiffs by the Defendants and mandatory injunction directing the defendants to refund a sum of Rs.95,805/- to the Plaintiff and other reliefs. The learned trial Judge decreed the Suit as prayed for without cost, against which appeal in A.S.No.22 of 2006 was preferred on the file of Subordinate Judge of Nilgiris at Otacamund and on re-appreciate of entire materials on record, the first appellate Court allowed the appeal by setting aside the judgment and decree of the trial Court and granted a decree in favour of the Defendants that the Plaintiff Company should be ordered to pay a sum of Rs.91,071/- to the Defendant within one month, failing which the amount should be realized from the Plaintiff Company with 6% interest till realization. Aggrieved over the judgment and decree of the 1st Appellate Court, the Plaintiff preferred this present second appeal.

5. The Fact of the Plaintiff's case in brief is as follows:

The Plaintiff company have entered into an agreement dated 07-10-1994 with the 3rd defendant for the supply of 300 metric tons of wattle barks for the manufacture of wattle extracts and the Plaintiff company paid a sum of Rs.1,60,933/- on various date as Security Deposit and advance under the above said agreement. Thereafter, in view of unforeseen circumstances and natural calamity, the Plaintiff company was not able to complete the removal of wattle barks to the tune of 300 M.T. Even though the 3rd Defendant agreed to refund a sum of Rs.95,805/- to the Plaintiff, they failed to do so and after a period of 5 years, the 3rd Defendant sent a letter dated 31-01-2000, demanding the Plaintiff Company to pay a sum of Rs.2,90,876/- towards the compensation for not removing the barks amounting to 79.995 MT. The Defendants cannot recover the royalty from the

Plaintiff for the wattle barks, which has not been appropriated by the Plaintiff Company and so, the communication dated 31-01-2000 is illegal.

6. The case of the Defendants in brief is as follows:

The Plaintiff Company entered into an agreement with the 3rd Defendant for removal of 300 MT of wattle barks, but had removed only upto 225.216 MT till 31-03-1995, the two time extended period expired and for the same, a sum of Rs.65,128/- had been deducted from the advance payment of Rs.1,60,933/- and the balance amount of Rs.95,810/- was kept with the Defendant. Based on the proposal made by the Plaintiff Company, the 3rd Defendant sent a proposal to the 2nd Defendant to release the amount vested with the 1st Defendant. But, the 1st Defendant refused to release the same, since as per the condition of the agreement, the Plaintiff Company had to pay a sum of Rs.2,90,870/- towards cost of the a value of unremoved quantity of wattle barks of 79.985 MT with 5% Administrative Charge plus 13% penal interest and though the Plaintiff was informed, the Plaintiff failed to remit the same and the advance payment of Rs.95,805/- would be forfeited to the Government and necessary action would be taken to recover the balance amount of Rs.1,95,071/-. After analyzing all the factors of the rules and regulations, the 3rd Defendant had taken penal action against the Plaintiff for non-removal of 79.985 MT of wattle barks within the time allotted to the Plaintiff Company. Since the Plaintiff failed to settle the penal amount of Rs.1,95,071/-, the Defendant will recover the same under RR Act and this Court has no jurisdiction under RR Act and the Suit is hit by Resjudicata and the Suit is to be dismissed.

7. In support of the plaintiff's case, the plaintiff was examined himself as P.W.1 and Exs.A1 to A13 were marked and on the side of the defendants, D.W.1 was examined and documents Ex.B1 to B5 were marked. At the time of admission of the Second Appeal, the following substantial question of law were formulated for consideration:-

(i). Whether the learned First Appellate Judge is correct in law in travelling beyond the scope of the pleadings, material documents and evidences available on record, to reverse the well reasoned findings of the trial Court? And

(ii). Has not the first appellate Judge erred in basing his findings by deviating from the clinching materials and the clear admissions made by the defendant's witness and also in granting a money decree unasked for, even without a counter claim or payment of Court Fee, etc?

8. Admitted facts:

The Plaintiff Company and the 3rd Defendant entered into an agreement in Ex.A1 on 07-10-1994 for removal of 300 MT wattle barks and the Plaintiff was able to remove only to an extent of total quantity of 220.015 MT till the two time extended period and the final period extended on 31-03-1995, and 79.985 MT wattle barks remain unremoved and the Plaintiff Company paid a sum of Rs.1,60,933/- as an advance payment and also deposited a sum of Rs.50,000/- as a Security Deposit in the Post Office as per Ex.A2 and for the removal of wattle barks by the Plaintiff Company a sum of Rs.65,128/- was adjusted towards the cost of the materials appropriated by the Plaintiff Company and the balance amount of Rs.95,805/- was in the hands of the 3rd Defendant and the Plaintiff Company was allowed to receive Rs.50,000/- which was deposited under Ex.A2.

9. The learned Counsel for the Appellant argued that the 1st Appellate Court has grossly erred in granting a money decree in favour of the Defendants without any counter claim, court fees etc., for a sum of Rs.91,071/- with interest at 6% per annum and the 1st Appellate Court failed to consider the representations made under Ex.A3 and A4 to refund the amount due to the Plaintiff, for which, 3rd Defendant sent a reply Ex.A5 recommending to refund or transfer the due amount to the Appellant Company to its Kodaikanal Division intimating the same to the 2nd Defendant and also the 1st Appellate Court failed to consider a letter sent to the Post Master, Head Post Office, Udhagai for withdrawal of deposit amount under Ex.A6 and the 3rd Respondent also sent no objection letter to the Head Postmaster under Ex.A7 and also the Trial Court ignored the letter Ex.A10 informed the Plaintiff Company by the 3rd Defendant that he would refund the amount after receiving the same from the 2nd Respondent. It is further argued that as per the evidence of DW1, there is no loss caused to the Defendant for non-removal of wattle bark and on the other hand he has clearly stated that non-removal of wattle bark would cause gain because of further growth of wattle barks, no question of claiming compensation would arise. Further, it is admitted fact that due to natural calamities, the work could not be completed within the stipulated time as per the agreement and further grant of time extension twice would go to show that it could not be completed due to natural calamities. In the circumstances, claiming compensation is totally unwarranted and is against law. He further argued that when the 3rd Defendant in his communications clearly stated that he would refund the balance amount after deducting the amount for the appropriation of wattle barks by the Plaintiff Company and also recommended the same, he cannot

turn around and say that the Plaintiff Company is liable to pay compensation and he is a staff from the Principle Promissory Estoppels and so the Judgment and Decree of the 1st Appellate Court are not sustainable under law and the well discussed and arrived just decision of the Trial Court is well sustainable and this appeal may be allowed setting aside judgment decree of the 1st Appellate Court by restoring the trial court judgment and decree.

10. Per contra, the learned Counsel for the Respondents contended that when there is a specific clause in Ex.A1 agreement to the effect that the Plaintiff's company is liable to pay compensation for the quantity not removed. The Plaintiff cannot come forward to say that there was no actual loss caused and so damages cannot be claimed. He further contended that the Plaintiff is liable to pay the amount claimed by the Respondents and in respect of communications Ex.A2 to A10 is concerned, the Plaintiff cannot take advantage of Ex.A11, which was issued after scrutinizing all the records. In the circumstances, though the Plaintiff has not completed the work allotted (i.e.) the removal of 300 MT quantity of wattle barks, though two time extension was granted, he is liable to pay the sum as claimed by the Respondents for the unremoved wattle barks to the quantity of 79.985 MT and the 1st Appellate Court has correctly discussed, appreciated the evidence and came to the correct conclusion and this Court being the 2nd Appellate Court cannot go into the question of fact and this appeal is to be dismissed.

11. The 1st Appellate Court relied upon the decision in Muthukrishna vs. Sankaralinga (1912) 36 Madras 229, based on the principles of where the contract contains a penal provision against default, some compensation must be given irrespective of whether damages has been actually suffered or not and the 1st Appellate Court came to a conclusion that the Plaintiff Company liable to pay damages and the Defendants already admitted that a sum of Rs.1,04,000/- was deducted from the amount of the Plaintiff, which was deposited with the Defendants and a sum of Rs.95,085/- was deposited with the Defendants by the Plaintiff and after deducting the above said two sums from the claimed amount of Rs.2,90,876/-, the Plaintiff is liable to pay a sum of Rs.91,071/- to the Defendant within one month failing which interest at the rate of 6% also imposed and to that effect, decree in favour of Defendants was passed by the 1st Appellate Court.

12. The Defendants have not come forward by way of counter claim and the Defendants have not paid any court fee and in

these circumstances, granting a decree in favour of the Defendants is totally unsustainable under law and the same is to be set aside.

13. As per Ex.A1 agreement, there is a default clause to the effect that the Plaintiff's company shall pay damages for the wattle barks unremoved within the stipulated time mentioned in the Ex.A1 agreement. It is admitted fact that two times, the period was extended. For the extension of time, it is stated by the Plaintiff side that due to natural calamities, they could not complete the work. The extension of time was granted due to natural calamities and other reason has not been disputed by the Defendants. After the extended period was over, the Plaintiff claimed the balance advance amount of Rs.95,805/- from the 3rd Defendant and also claimed the refund of the Security amount of Rs.50,000/- deposited in the Post Officer as per Ex.A2 and the same was allowed to refund and the same was withdrawn by the Plaintiff Company. As per the communication between the parties from Ex-A3 to A-10 would reveal that the 3rd Defendant agreed to refund the amount claimed by the Plaintiff and he made assurance that after getting approval from the 2nd Defendant, he would pay the same. Of course, there is a default clause in Ex.A1 agreement, nothing is stated whether actual damage is caused or not. That would go to show that the Defendants are entitled to claim damages. But at the same time, the circumstances, other aspects, conduct of parties are to be taken into consideration. As per the evidence of DW1, he has clearly stated that no damage was caused because of non-removal of balance of 79.985 MT. On the other hand, he has stated that further growth of wattle barks would be resulted and thereby, the Defendants would get gain. Two times period was extended, after the 2nd extended period was over, the Plaintiff started to claim refund of his balance advance amount in the hands of the Defendants, for which, assurances were given can be revealed from the communications and the reply given by the 3rd Defendant under Ex.A3 to A10. For five year period from the date of expiry of extended time limit, no claim for damages was made by the Defendants. Only on 31-01-2000 as per Ex.A11 for the first time, the Defendants made claim for damages. The above conducts would go to show that they were not claiming damages and he was willing to repay the amount claimed by the Plaintiff and so, it is a clear case of promissory estoppels would apply against the defendants. When the Defendants have been estopped by their own conduct, he cannot revert and claim damages. Under the circumstances, the 1st Appellate Court's finding that the Plaintiff is liable to pay damages is totally unsustainable under law and so for the reasons stated above, the findings of the 1st Appellate Court is to be set aside.

14. The trial Court decreed the suit as prayed for by the plaintiff granting declaratory relief and also mandatory injunction directing the defendants to refund a sum of Rs.95,805/- to the plaintiff. In view of the said discussion, the plaintiff is entitled for declaratory relief and consequential permanent injunction as sought for by them granted by the trial Court. However, as for as the relief of mandatory injunction is concerned, it is nothing but claim for money, the plaintiff in the considered view of this Court is not entitled to seek the refund of money from the defendant by way of mandatory injunction, In the suit, the plaintiff ought to have come forward with money claim by paying appropriate court fee under Section 22 of the TamilNadu Court Fee and Suit Valuation Act. In such circumstances, the plea of the plaintiff seeking mandatory injunction to direct the defendants to repay the amount as sought for in the plaint is unsustainable and the same is liable to be negative. Hence, the finding of the trial Court in respect of the relief of mandatory injunction is to be set aside and the judgment and decree of the trial Court dated 28.02.2005 in other aspects is to be restored.

15. In the light of the above said discussions, the substantial question of law formulated in the second appeal are answered in favour of the plaintiff and against the defendants.

16. With the aforesaid observations, the Second Appeal is allowed and the Judgment and Decree of the Subordinate Court, Nilgiris at Uthagamandalam in A.S.No.22 of 2006 dated 12.12.2006 is set aside and the judgment and decree passed in O.S.No.44 of 2004 dated 28.02.2005 by the learned District Munsif Court, Uthagamandalam is restored partly, granting declaratory relief and permanent injunction as sought for by the plaintiff. In respect of relief of mandatory injunction, the conclusion of the trial Court is set aside and the suit is dismissed in that regard. Considering the circumstances of the case, the parties are directed to bear their own costs and Connected Miscellaneous petition closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Nilgiris at Uthagamandalam.

2.The District Munsif Court,
Uthagamandalam.

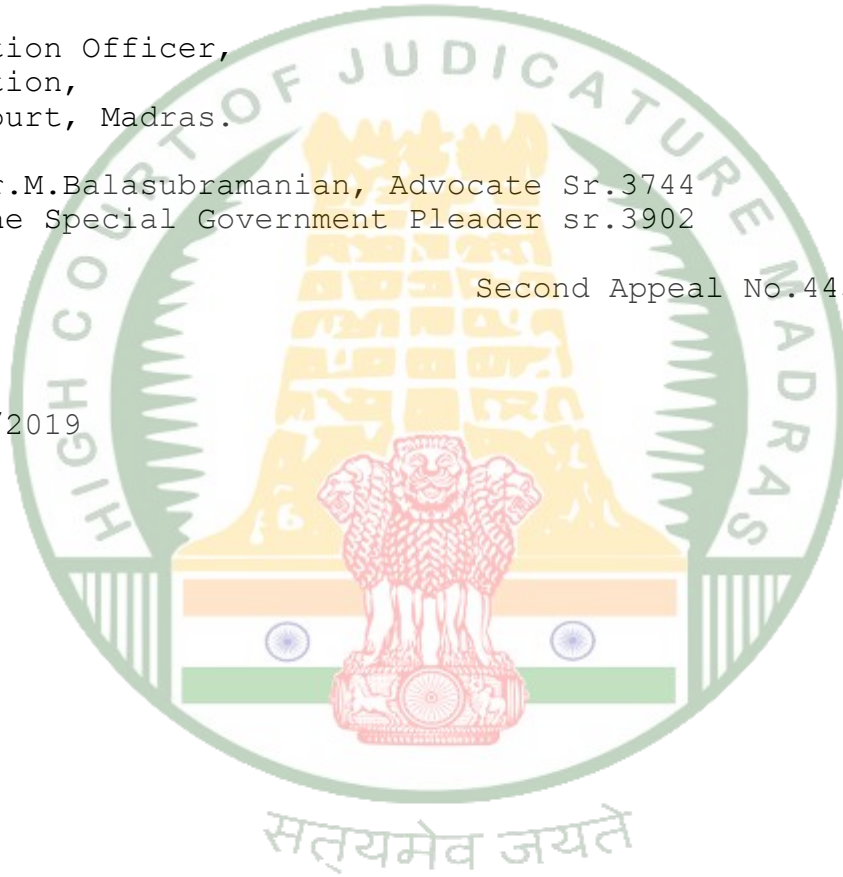
3.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.M.Balasubramanian, Advocate Sr.3744

+lcc to the Special Government Pleader sr.3902

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