

2024:PHHC:070604



RSA-1877-1995

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

207

RSA-1877-1995 (O&M)
Reserved on : 14.05.2024
Pronounced on : 20.05.2024

STATE OF HARYANA AND OTHERS ...Appellants

VERSUS

HARI SINGH (SINCE DECEASED) THR LRS ...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Saurabh Girdhar, AAG Haryana for the appellants.

Mr. Rajinder Goel, Advocate for the respondents.

ALKA SARIN, J.

1. The present appeal has been preferred by the State aggrieved by the judgment and decree 07.08.1991 passed by the Trial Court and the judgment and decree dated 20.04.1995 passed by the First Appellate Court.
2. The brief facts relevant to the present case are that the plaintiff-respondent herein entered into a contract for quarrying stones in the area of Village Gudiani, Tehsil Kosli, District Rewari. The contract amount was ₹50,000 per annum and the period of the contract was for 5 years commencing from 04.05.1984 to 31.03.1989. It was averred that a sum of ₹25,000 was deposited by the contractor with the defendant-appellants on 14.05.1984. Half of the amount was towards installment for the first quarter and the remaining half towards security. It was further the case set up that the defendant-appellants failed to perform their part of the agreement since they could not provide a passage to the plaintiff-respondent for carrying out

2024:PHHC:070604



RSA-1877-1995

the quarrying operations despite his request. The defendant-appellants cancelled the contract on 21.03.1985 and forfeited the amount of ₹25,000 deposited by the plaintiff-respondent on 14.05.1984. The plaintiff-respondent filed the present suit impugning the order dated 21.03.1985 as illegal, null and void and not binding upon his rights and also prayed for grant of permanent injunction restraining the defendant-appellants from recovering the sum of ₹45,997 from him. The defendant-appellants contested the suit by relying on the provisions of Clause 27 of the agreement under which the plaintiff-respondent was required to take possession of the land himself after paying compensation to the owners of the land. It was the case set up by the defendant-appellants that the plaintiff-respondent never deposited the tentative amount of compensation with the Collector and hence he was not entitled to passage for access to the quarry.

3. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff was the contractor of quarry (minerals) as alleged in the plaint ? OPP
2. If issue No.1 is proved, whether plaintiff is entitled for decree of injunction, as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the plaintiff has no locus standi to file the present suit ? OPD
5. Relief.

2024:PHHC:070604



RSA-1877-1995

4. The Trial Court vide judgment and decree dated 07.08.1991 decreed the suit for permanent injunction restraining the defendant-appellants from effecting recovery of ₹45,997 regarding the minor mineral contract as also for refund of ₹25,000 already deposited. Aggrieved by the same, an appeal was preferred by the defendant-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 20.04.1995.

5. The learned counsel for the defendant-appellants would contend that both the Courts have erred in decreeing the suit of the plaintiff-respondent. It is argued that Clause 27 of the agreement clearly laid down that the contractor had to offer to pay compensation to the owner or occupier of the land required for access to the quarry and the same had to be deposited by the contractor himself and since the same was not deposited by the plaintiff-respondent there was no question of providing him the passage and that the defendant-appellants had performed their part of the contract, however, it was the plaintiff-respondent who had failed to perform his part of the contract.

6. Heard.

7. Both the Courts below have concurrently found that as per Clause 27 of the agreement, in case the occupier of the land was not willing to oblige for giving access to the quarry then in that eventuality the contractor was required to report the matter to the Government which in terms was required to ask the Collector of the District concerned to direct the occupier to allow the contractor to enter the said land and to carry out the

2024:PHHC:070604



RSA-1877-1995

mining quarry operations. However, the access was to be allowed by the occupier on deposit with the Collector of advance tentative compensation amount to be paid to the occupier. It was held by both the Courts below that a letter (Ex.P-5) was written by the plaintiff-respondent stating therein that Sh. Sewa Ram was in illegal possession of the land and that he had closed the passage leading to the quarry. There is nothing on the record to show that the plaintiff-respondent was ever asked to deposit the tentative amount in terms of Clause 27. In view of the failure of the defendant-appellants to have acted in accordance with Clause 27, which is so heavily been relied upon by the counsel for the defendant-appellants, no fault can be found with the judgments and decrees passed by both the Courts below. Nothing has been pointed out to show that the defendant-appellants ever assessed the tentative compensation amount and then calling upon the plaintiff-respondent to deposit the same.

8. In view of the above, no question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.05.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO