

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.
ORDER.

(1) S.B. Civil Second Appeal No.54/1983
The State of Raj. vs. Sunder Lal & ors.

(2) S.B. Civil Second Appeal No.55/1983
The State of Raj. vs. Allabux

under Section 100 C.P.C. against the judgment and decree dated 6.12.1982 passed by the District Judge, Udaipur in Civil Cases No.30/1981 and 29/1981 respectively.

Date of Judgment: December 19,2005.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. O.P. Rathi, Deputy Govt. Advocate.

BY THE COURT:

Heard learned counsel for the appellant and perused the record also.

By this common judgment, both the appeals are being decided because of the simple reason that the facts of both the case are entirely identical except the quantity of the goods and the amount paid by the plaintiff to the defendant, therefore, the facts of the case of State vs. Sunder Lal and ors. will serve the purpose for deciding appeal no.55/1983.

Brief facts of the case are that the plaintiff-respondent gave bid to purchase 'kattha' and he was the highest bidder, therefore, the

contract was awarded to the respondent at the rate of Rs.1605/- per quintal. The plaintiff deposited Rs.11,350/- on 8.6.1973, Rs.16,000/- on 2.7.1973, Rs.25,000/- on 23.8.1973, Rs. 25,000/- on 10.10.1973 and Rs.20,000/-on 18.10.1973. According to the plaintiff, the plaintiff deposited all the amounts in time but the respondent-defendant-department was not in position to weigh and deliver the said '*kattha*' to *the plaintiff because the 'kattha' was wet and it could have been delivered to the plaintiff only after it is dried up by giving air*. Despite the fact that the respondents were not in position to deliver the goods to the plaintiff and delayed the matter but charged the rent of the store from the plaintiff on the ground that the goods were not lifted by the plaintiff. However, the plaintiff had no option at that time, therefore, he deposited the go-down rent. The plaintiff thereafter filed suit for recovery of total Rs.4193/-, which according to the plaintiff was recovered from the plaintiff illegally by the respondent. The appellant-defendant contested the suit of the plaintiff. The trial court held that the defendant could not have delivered the goods to the plaintiff without making the said commodity '*kattha*' dried up and there was no fault of the plaintiff in taking delivery, therefore, the defendants have no right to recover amount from the plaintiff. The trial court, therefore, decreed the suit of the plaintiff on 2.2.1981 for as sum of Rs.3907.35 along with interest. The present appellant preferred appeal which was

also dismissed by the first appellate court on 6.12.1982. Hence this second appeal.

Following substantial questions of law were framed by this Court while admitting second appeal on 24.10.1983:-

“(1) Whether the findings of the courts below that the plaintiff was to obtain possession of the katha only when it was dry and, therefore, he was not liable to go-down rent and interest, is based on mis-interpretation of the contract?

(2) Whether there could be an oral agreement regarding the delivery of the katha only when it was dry in contravention of the written agreement?

(3) Whether the letter Ex.2 is not binding on the State?”

The learned counsel for the appellant submits that in the light of the written contract, the plaintiff-respondent could not have took the plea that the defendant-appellant agreed to sell the dried 'kattha' to the plaintiff. It is also submitted that the plaintiff's plea could not have been entertained which contradicted the written agreement and the Ex.2 relied upon by the plaintiff is not binding on the State as it is a letter written by the officer of the State whereas the terms of the agreement are reduced in writing and the letter Ex.2 contradicts the written agreement between the parties.

I considered the submissions of the learned counsel for the appellant and perused the record also.

It may be noticed that in the agreement it is nowhere mentioned that whether the *'kattha'* is being sold as it is available only or it will be first dried up and thereafter the commodity will be delivered to the successful bidder. Therefore, it cannot be said that there was a written agreement between the parties that the only *'kattha'* as is in existence, may it be wet or dried, is being sold. Any fact which supplements the facts to the agreement Ex.A.1 and which was found in consonance with the events taken place, cannot be said to be a fact contradicting the written agreement. The letter relied upon by the two courts below clearly reveals that the plaintiff was informed that now the *'kattha'* is dried and he may take delivery. In view of the above, it cannot be said that Ex.2 is not binding or the plaintiff wanted to contradict the written agreement by oral agreement. Hence the substantial questions no.2 and 3 are decided against the appellant. Since the plaintiff successfully proved that delay was not caused by the plaintiff in taking delivery but delay was caused because the appellant-defendant was not in position to deliver the goods to the plaintiff, therefore, the appellant-defendant have no right to claim go-down rent from the plaintiff.

In view of the above, I do not find any merit in these appeals and hence the appeals of the appellant are dismissed.

mlt.

(PRAKASH TATIA),J.

