

PETITIONER:
RAMPRASAD S/O PRABHUDAYAL MATHUR VAISHYA

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ANR.

DATE OF JUDGMENT:
07/10/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C.

CITATION:
1970 AIR 1818 1970 SCR (2) 677
1970 SCC (3) 24

ACT:
Contract Act (9 of 1872), ss. 148, 172 and 221-Pledge, when can be inferred-Agent's lien on goods-When arises-Practice and Procedure-Decreeing interest from date of suit till date of decree.

HEADNOTE:

A licence holder from the State for distribution of grain, appointed the appellant as his commission agent for the sale of the grain. The agreement provided that the appellant should be in possession of the grain purchased and dispose: it of in accordance with the directions given by the licence holder. Later the State Government paid to the licence holder, the price of the stock then in the possession of the appellant and took over the stock. The appellant, while handing over the grain, informed the Government that the licence holder owed him money tender the agreement. He filed a suit to recover the amount from the State Government and the son of the licence holder (the father having died meanwhile). Though the plaint did not set out the basis of the claim against the State the trial court decreed the suit, against both defendants, but did not give any interest from the date of suit till date of decree. In appeal by the State, and cross-objections by the appellant claiming the interest, the High Court set aside the decree against the State, but did not pass any order on the cross-objections. In appeal to this Court, the appellant claimed to be pledgee of the goods and that he had a lien over the goods.

HELD : (1) The agreement does not show that the goods had been pledged to the appellant.

The question whether an agent can enforce his lien in a particular case is a mixed question of law and facts. As a general rule, in order to have a lien an agent must have some possession, custody or control or disposing power in or over the subject-matter in which lien is claimed. The lien does not arise where the possession of the property is acquired by the, 'agent under a contract which expressly or impliedly shows a contrary intention or where it is delivered to him for a particular purpose inconsistent with the existence of a lien. Further, the lien is lost by parting with the possession, unless at the time of parting

he expressly or impliedly reserved his right of lien, or the goods were obtained from him by fraud or unlawful means. In the present case, from the mere fact that the appellant informed the Government that his principal owed him money, while voluntarily parting possession with the goods, it could not be said that he reserved expressly or by implication his right of lien against the State, if any. [680 E-H; 681 B-D]

Santi Sahu v. Seogulam Sahu A.I.R. 1958 Pat. 174 and Balmukand v. Jagannath, I.L.R. XIII Raj. 579, held not applicable.

(2) As against the second respondent, the appellant was entitled to the principal amount decreed and the lower courts should have also decreed interest from date of suit till date of decree. [681 F-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2205 of 1966.

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Appeal from the judgment and decree dated September 12, 1962 of the Madhya Pradesh High Court, Gwalior Bench in First Appeal No. 9 of 1959.

J. P. Goyal and S. N. Singh, for the appellant.

I. N. Shroff, for respondent No. 1.

The Judgment of the Court was delivered by Hegde, J. This is an appeal by certificate under Art. 133(1) (a) of the Constitution. The appellant is the plaintiff in the suit. In the suit he claimed a sum of Rs. 30,699/1/3 against both the defendants. The suit was decreed by the trial court against the defendants in a sum of Rs. 22,634/4/- together with costs and interest from the date of the decree. The State of Madhya Pradesh, the 1st defendant in the suit appealed against the decree. The second defendant did not appeal against that decree. The plaintiff filed cross-objection claiming interest on the principal amount claimed from the date of the suit till decree. The High Court allowed the appeal of the State and set aside the decree against it; but it failed to pass any order on the cross-objection. In this appeal the appellant seeks not only to get restored the trial court's decree against the State of Madhya Pradesh, he also wants that the relief claimed by him in his cross-objection before the High Court should be granted to him.

The facts of the case lie within narrow limits. One Hetampal Singh, father of defendant No. 2 was a licence holder for Gird District in the then State of Gwalior for distribution of grain. He had entered into an agreement with the appellant-plaintiff on October 14, 1942 (Ex. 1), whereunder he appointed the appellant as his commission agent. English translation of the said agreement reads thus :

"H. P. S. Jadhav

Thakur Sahab

Naya Bazar

Lashkar, Gwalior.

Hetampalsingh Jadhav son of Bhagwansingh Jadhav caste Thakur, am a resident of Naya Bazar, Lashkar.

I have taken contract for supplying grain seed in District Gird for which I need money for bringing every kind of grain from different places. Therefore I appoint Ramprasad s/o

Prabhudayal caste Mathur Vaishya resident of Naya Bazar, Lashkar as my adhatia (Commission Agent) and settle the following terms

(1) I shall pay interest at the rate, of Re. 1/ p.c. on the amount which will be invested by the Seth Sahab for this purpose.

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(2) I shall pay commission at the rate of Rs. 1/8/per cent on the goods which will be brought by the Seth Sahab or his man from outside and I shall pay commission at the rate of Re. 1/- per cent on the goods which will be brought by me from outside and for which the Seth Sahab will have only to get released the railway way bill.

(3) I shall pay the whole expenses of journey, railway fare, allowance etc. of the person who will go out on behalf of the Seth Sahab for bringing the goods.

(4) The whole of the goods which will be received from outside, shall remain in possession of the Seth Sahab. The account thereof shall also remain with him. the, Seth Sahab will have authority to supply only so much goods as I would permit him to supply i.e. he cannot supply goods to anybody of his own accord. The expenses which will be incurred in keeping account and other expenses of the shop shall be borne by the Seth Sahab. I shall pay only rent of the shop.

(5) I shall be responsible for any increase or decrease in the goods.

Sd./- HETAMPALSINGH JADHAV

(In English)

14-10-42."

In pursuance of the said agreement, the appellant purchased considerable stock of grain. He had in possession on January 29, 1943. 4039 maunds 35 seers 4 chhatacks of gram. According to the appellant on that day Hetampal Singh owed him a sum of Rs. 19,228/9/6. The possession of that stock was taken over by the State Government on January 29 and 30, 1949. The State Government paid the price of the said stock to Hetampal Singh. The appellant's case is that the State Government is liable to reimburse him the money due to him from Hetampal Singh. Before the suit came to be filed Hetampal Singh had died and hence 'he 2nd defendant was impleaded as his legal representative.

The plaint filed by the plaintiff is a bald one. It did not set out the right under which the plaintiff was claiming any relief against the State. In the course of the trial, the plaintiff asserted that he was a pledgee of the goods in question. No such case was pleaded in the plaint nor any issue raised in that regard. The agreement entered into between the plaintiff and Hetampal Singh does not show that the goods in question had been pledged to the plaintiff. The agreement provides that the appellant shall be in possession of the goods purchased and dispose of the same in accordance with the directions given by Hetampal Singh. The finding,

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of the High Court is that the grain was removed by the Government from the possession of the appellant without any force or fraud and the appellant handed over that grain to the Government in response to a communication from the Controller of Foodgrains. At no stage he told the

Government that he was a pledgee of the goods. The decision in *Santi Sahu vs. Sheogulam Sahu*(1); relied on by the learned Counsel for the appellant is of no assistance to him because the agreement relied on in that case is materially different from the one before us. On an interpretation of that document the court came to the conclusion that it constituted a bailment for security and that it is a pledge within the meaning of s. 172 read with s. 148 of the Contract Act. That is not the position here. Therefore the High Court was fully justified in rejecting the claim of the appellant that he was a pledgee of the goods.

The claim of the appellant was next tried to be supported on the plea that he had a lien over the goods. No such plea was taken in the plaint. An Agent no doubt has a specific lien upon the principal's property in his possession for his compensation and expenses during the course of the agency with reference to that property. Section 221 of the Contract Act provides that in the absence of a contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to him for commission, disbursements and services in respect of the same has been paid or accounted for to him. An agent who is entitled to be reimbursed from the principal's property for the expenses incurred, advances made or losses sustained during the course of the agency or who is entitled to be compensated for his services has a lien upon the principal's goods or property which comes lawfully in his possession during the course of the agency from which the right to indemnity or compensation arises. A purchasing agent has a lien upon the principal's goods in his possession upon which he has paid money in purchasing. As a general rule in order to have a lien, an agent must have some possession, custody or control or disposing power in or over the subject matter in which the lien is claimed. The lien does not arise where the possession of the property is acquired by the agent under a contract which expressly or impliedly shows contrary intention, or where it is delivered to him for a particular purpose inconsistent with the existence of lien thereon. The agent has no lien over the property where it is entrusted to him for a special purpose which is inconsistent with the lien claimed. Further the lien of 'an agent being a mere right to retain possession of the property subject thereto, is lost by parting with the possession of the goods unless at the time of parting with them he reserved expressly or impliedly his right of lien or they are obtained from him by fraud or unlawful means.

(1) A.I.R. 1958 Pat 174

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The question whether an agent can enforce his lien in a particular case is a mixed question of law and facts. Therefore in the absence of any specific plea, that question cannot be gone into. We do not know the conditions under which Hetampal Singh was appointed as a licence holder. From the material on record, it is not clear whether the goods in question were taken possession of by the Government in accordance with the conditions of the licence granted to Hetampal Singh. Therefore it is not possible to decide whether under the circumstances of the present case, the plaintiff could have enforced his lien against the State. It is true that the plaintiff informed the Government that Hetampal Singh owed to him about Rs. 20,000/-. But from that circumstance we cannot come to the conclusion that while voluntarily parting with the possession of the goods, he reserved expressly or by implication his right of lien, if

he had any. We do not think that the rule laid down in Balmukund and anr. vs. Jagannath(1) relied on by the learned Counsel for the appellant bears on the facts of this case. Under these circumstances it is not possible to uphold the appellant's claim against the State. Therefore the appeal fails so far as the State is concerned. It is accordingly dismissed, as against the 1st defendant, the State of Madhya Pradesh.

But coming to the cross-objection filed by the appellant before the High Court, the High Court appears to have completely lost sight of the same. It did not deal with that cross-objection while disposing of the appeal. The trial court did not give any reason for rejecting the plaintiff's claim for interest on the principal amount from the date of the suit till the date of the decree. The plaintiff was entitled to interest on the principal amount of Rs. 19,228/6/- at 4 1/2- per cent per annum from the date of the suit till the date of the decree. The appeal succeeds to that extent. The decree of the trial court as against the second defendant is modified to that extent. In the circumstances of the case we make no order as to costs in this Court.

V.P.S.

Appeal allowed.

(1) I.L.R. XIII Raj. 579.

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