Supreme Court of India
Attilli Swamy And Anr. vs State Of Hyderabad (Now Andhra ... on 13 February, 1979
Equivalent citations: AIR 1979 SC 1779, (1979) 4 SCC 682, 1979 (11) UJ 350 SC
Author: O C Reddy
Bench: O C Reddy, R Sarkaria
JUDGMENT O. Chinnappa Reddy, J.

1. The plaintiffs in Original Suit No. 12 of 1958 in the Court of the Additional Chief Judge, City Civil Court, Hyderabad, are the appellants in this appeal filed pursuant to a Certificate granted under Article 133(1)(a) of the Constitution of India (as it stood prior to the 30th Amendment). They were the Contractors of the Marredpally and Balamrai Sendhi and Toddy shops for the Abkari year 1951-52. They all edged in the plaint that though they had complied with all the terms of the contract they were not put in possession of the number of trees ear marked for the two shops at the time of the question. In particular it was alleged that 1600 trees in Shengram village and 710 trees in Ibrahimnagar which were ear-marked for the shops never given to the plaintiffs but, instead they were allotted to other contractOrs. As a result of the failure of the Excise authorities to give the allotted threes to the plaintiffs they suffered losses and were unable to pay the instalments. Despite the representations of the plaintiffs the contract in their favour was terminated and the shops were reauctioned on 19th May 1952. The Government of Hyderabad demanded from the plaintiffs a sum of Rs. 79,379 15-8 said to be the Abkari arrears due by the plaintiffs to the Government. Notice was served on the plaintiff's by affixture on 22nd October, 1952. Thereafter on 3rd June, 1954, the suit out of which the appeal arises was filed to recover a sum of Rs. 1,54,628-9-2 said to be the damages suffered by the plaintiffs on account of breach of contract committed by the Government and for an injunction restraining the Government of Hyderabad from Abkari contract relating to the Merradpelly and Ballamrai shops for the year 1951-52.

2. The suit was contested by the Government of Hyderabad. The allegation that the agreed number of trees were not given to the plaintiffs was denied. With regard to the trees in Ibrahimnagar village; it was stated that the trees were never taken away from the plaintiff and that they had not been allotted to anyone else. It was stated in regard to the trees in Shengaram village that the trees had been wrongly allotted to the plaintiffs and therefore on the request of the plaintiffs they were allowed to purchase toddy from the Government Depot, equal to the yield of 1250 trees, as a special concession. It was pleaded that the suit was barred by the provisions of Section 41(1) of the Hyderabad Abkari Act and that in any case the suit was barred by 1 limitation under Section 41(2) of the Hyderabad Abkari Act.

3. The learned Additional Chief Judge held that the suit was barred by limitation under Section 41(2) of the Hyderabad Abkari Act. On merits, the learned Additional Chief Judge held that there was no shortage of allotment of trees in regard to Baliamrai shop either with regard to Quararded or Talmmilla quota. In regard to the Marredpally shop, the learned Additional Chief Judge found that 1600 trees in Sbengaram village were taken away from the so shop's quota as they had already been allotted to the shop of some other contractor. The learned Judge also found that in lieu of the Shengaram trees, the plaintiff asked for and were granted permission to purchase toddy from the Government Depot, the quantity so permitted representing the yield of 1250. trees. On that basis the

learned Judge came to the conclusion that there was shortage of 350 Sendhi trees out of the quota of trees ear-marked for the Marredpally shops. It was held that there was no shortage of Takmilla trees. The learned Judge found that there was no breach of contract on the part of the Government and that the Government was entitled to terminate the contract of the plaintiffs and reauction the shops when the plaintiffs failed to pay the instalments. On those findings the learned Additional Chief Judge dismissed the suit.

4. The plaintiffs referred an appeal to the High Court. On merits the High Court upheld the findings of the Trial Judge. The High Court also held that the suit was barred by both Sub-sections (1) and (2) of Section 41 in regard to the claim for damages. It was, however, held that the relief of in junction was not so barred and that the Government was not entitled to claim Rs. 1042/- of the monthly rental for twelve months, in view of the fact that there was a shortage of 350 trees in respect of the Marredpally shop. Since there was a variation of the decree of the Trial Court, though in favour of the plaintiffs and though of an insubstantial nature, the plaintiff sought and obtained a certificate under Article 133(1)(a) of the Constitution. They have filed the present appeal.

5. Shri Vasudev Pillaiy learned Counsel for the appellants argued that the suit was barred neither under Sub-section (1) no under Sub-section (2) of the Hyderabad Abkari Act. According to the learned Counsel the bar under Section 41 was only in regard to suite for damages against tortious acts and not invegard to suits for damages against breaches of contract. On merits the learned Counsel argued that the Trial Court and the High Court had not properly appreciated the evidence and had failed to consider certain documentary evidence. He particularly drew our attention to Exhibit P. 39, the copy of a report submitted by the Superintendent of Excise of the Commissioner of Excise, Exhibit p. 38, copy of a Panchnama and Exhibit p. 12, copy of an order of the Excise Minister dated 25th March, 1952.

6. On the merits, we are unable to see any ground for disturbing the concurrent finding of fact arrived at by the Trial Court and the High Court. It is true that the High Court has not specifically referred to the particular documents to which the learned Counsel for the appellant drew our attention. The learned judges of the High Court did not refer to the documents probably be cause no reliance was placed upon those documents before them. The Trial Judge, however, did refer to those documents for what they were worth. We do lot think that these documents make any difference to the concurrent finding of fact arrived at by the Courts below. As indicated by us at the outset the express complaint of the plaintiff of in regard to the non-allotment of trees was only in respect of 710 trees in Ibrahimnagar and 1600 trees in Shengaram. There was no reference in the plaint to the alleged non-availability of 1675 trees in Nalgonda District. In the evidence of PW 2, (the first plaintiff) and PW 3 (the agent of the plaintiffs) it was stated that these 1675 trees became unavailable because of 'communist trouble'. It was not alleged that the trees were not infact in existence. However, in Exhibit p. 39, it was stated that the contractor was saying that 1675 trees in Nalgonda district were dried up and scorched. The plaintiffs were obviously taking different stands at different times to suit their own purposes. The fact, however, remains that, in the plaint, there was no complaint of any shortage of trees in regard to the Balamrai shop. The only shortage alleged, as mentioned by us, was in regard to the trees in Ibrahimnagar and Shengaram villages included in the Marredpally shops quota. In so far as the trees in Ibrahimnagar village were concerned, the first

plaintiff as PW 2 stated in his chief examination that 710 trees in Ibrahimnagar village were allotted to local contractors by the Excise authori ties. In cross-examination he admitted that even this so called allotment of trees to local people was about four or five months after he took up the con tract. He also admitted that trees could not be tapped unless they were num bered and they could not be numbered unless tree tax was paid. It was not Ms came that he had paid trees tax and yet the trees were not numbered, and given to him. As pointed out by the High Court, the plaintiffs could not reasonably except trees to be reserved for them without paying tree tax. Again as observed by the High Court, the evidence does not show that despite other contractors being allowed to tap trees at Ibrahimnagar, a balance of 710 trees was not avai lable if the plaintiffs) required them. In fact the case of the plaintiffs was that they wanted to utilise the Ibrahimnagar trees later and not at the beginning. We are, therefore, unable to say that there was any shortage in the allotment of trees in Ibrahimnagar village. The government expressly admitted that 1600 trees in Shengaram village had been wrongly included in the Marred pally shops quota and, therefore, they had to be deleted. To compensate, the plaintiffs were allowed to purchase toddy from the Government Depot. The quantity permitted to be purchased was the equivalent of the yield of 1250 trees. The shortage of trees in Shengaram village was, therefore, rightly estimated by the lower Courts at 350. We do not think it is necessary for us to probe any further into the matter as we are satisfied that the findings are correct.

7. The learned Counsel for the appellants submitted that the bar of Section 41 applied only to suits for damages arising from tertious acts and not to suits for damages arising from breaches of contract. Section 41 of the Hyderabad Abkari Act runs as follows:

41(1) No action for damages shall be entertained by a Civil Court against Government or against any Abkari officer for any act done or ordered to be done in good faith and in accordance with this Act (2) All actions against any Abkari officer and all actions which may be lawfully brought against Government or against any Abkari officer on account of any act or thing alleged to have been done in accordance with this Act, shrill not be entertained after six months from the oae of doing the act or thing.

(3) If, in a suit for compensation for damages it is proved that adequate compensation was being tendered before the institution of the suit, it shall be lawful for the court in its judgment to dis allow costs to the plaintiff and lay on him the costs of the defendant.

The argument of the learned Counsel was that the very requirements of good faith in order to claim immunity showed that the immunity conferred was in respect of tortious acts and not breaches of contract. Whatever merit there may be in this submission in so far as it relates to the bar under Section 41(1), the submission has no force in relation to the bar under Section 41(2). Section 41(2) it not confirmed to actions for damages as is the case under Section 41(1) but extends to "all actions". Good faith does not have to be established to plead the bar of limitation under Section 41(2) though it is necessary to claim immunity under Section 41(1) Again the act complained of in the action may even be an act alleged to have been done in accordance with the Act end not inertly an act done in accordance with the Act as under Section 41(1) Having regard to the wide language employed in Section 41(2), we are unable to see any justification for confined that Sub-section to actions for

damages arising out of tortious acts only. In Raghnnnndhan Reddy v. Slate/Hyderabad through Secretary of Government, Revenue Department AIR 1963 AP 118, Jagmohan Reddy and Chandrasekhara Sastry JJ had occasion to cons-true Section 41 of the Hyderabad Abkari Act. There Jaganmohan Reddy, J., observed as follows (at p. 115) :

It would appear that Sub-section (1) bare suits for damages against Government or against Abka Officers for acts done in good faith, while Sub-section (2) prescribes a period of limitation of six months for all actions which may be lawfully brought against Govt. or against Abkari Officers. Learned advocate for the appellant, Shri Raghuvir, sought to be content that this is confined to suits for damages, but later recognised the force of the contention of the learned Government pleader that all suits which can be lawfully brought, whether for damages or otherwise, are governed by the limitation. There is in out view no difficulty in the applicability of this section to the present suit inasmuch as it arises out of the action of the Excise Commissioner and the Excise Department in claiming loss incurred by the Government as a result of purported breach of contract by the appellant.

8. In the present case the plaintiffs themselves have mentioned in the plaint that the cause of action for the suit arose on 8th May, 1952, when the two shops were reauctioned, on 30th September, 1952, when the period of the contract expired and on 30th July 1952 when the Government gave a reply to their notice disclaiming all liability on the part of the Government for the loss alleged to have been occasioned to the plaintiffs. Whatever date is taken as the starting point the suit is clearly barred by limitation under Section 41(2). The appeal is, therefore, dismissed with costs.