

Ram Narain Mahato

Vs

State of Madhya Pradesh

Civil Appeal No. 1563 of 1966

(J. C. Shah, V. Ramaswami-I, A. N. Grover JJ)

16.09.1969

JUDGEMENT

SHAH J.

1. Thakur Randhirshah, Jagirdar of Sonpur Jagir executed a deed dated August 5, 1949, in favour of Ram Narain Mahto-hereinafter called, 'the plaintiff' - relating to sale of timber, for Rs. 51,501/- and received Rs. 15,000/- in part payment. On February 19, 1951, the Forest Officer of the State of Madhya Pradesh prevented the plaintiff and the Jagirdar from cutting the trees. On March 31, 1951, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951) was brought into force and by virtue of that Act the interest of the Jagirdar in the estate vested in the State. On June 14, 1954, the plaintiff instituted an action in the Court of the Additional District Judge, Chhindwara, for a decree for Rs. 1,50,000/- for breach of the contract of sale against the State of Madhya Pradesh and against the Jagirdar. There were four heads of the claim for compensation :

#(i) Rs. 21,375/- being the value of 4,275 logs of timber which were cut but which the plaintiff could not remove;(ii) Rs. 30,000/- for 6,000 logs of timber which though cut were not found on the spot and some of which were either burnt or stolen;(iii) Rs. 30,000/- on account of 6,000 logs of timber from the standing timber of four village which had not been cut; and(iv) Rs. 75,000/- for 15,000 logs of timber which the plaintiff could not cut from the remaining villages.##

The plaintiff claimed compensation for the logs of timber at the rate of Rs. 5/- per log in the aggregate.

2. The State of Madhya Pradesh contended that the Jagirdar had started illegal cutting for which proceedings were taken against him and that he was prevented from cutting any timber; that sometime thereafter the logs of timber lying in the forest were "hammer-marked" and the Jagirdar was permitted to remove the logs till March 31, 1953, subject to certain conditions, e.g., obtaining Malguzari passes for the transit and submitting weekly statement of the removal, that the agreement, dated August 5, 1949, being unregistered was inadmissible in evidence, and created no title, that in any event the deed could not be enforced against the State because of the vesting of the Jagir under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, in the State; that the contract created a mere personal liability enforceable against the Jagirdar, and that the State was not the successor-in-interest of the Jagirdar but claimed a right to the Jagir under a statute.

3. The Trial Court held that the plaintiff was entitled to the value of the logs of timber described under the four heads of his claim, at the rate of Rs. 1/8/- per log. Accordingly the Trial Court determined the compensation payable to the plaintiff at Rs. 46,912/- and after giving credit for Rs. 36,000/- payable by the plaintiff to the Jagirdar and to which the State became entitled, passed a decree for the balance of Rs. 10,912/- and interest thereon. The plaintiff and the State appealed to the High Court. The High Court agreed with the Trial Court that the rate per log could not exceed Rs. 1/8/-. The High Court disallowed the claim of the plaintiff for items (ii), (iii) and (iv) and for item (i) the High Court allowed Rs. 3,712/- being the value of 2475 logs of timber which had not been removed. The High Court held that out of the amount awarded nothing was liable to be deducted towards the alleged arrears due to the Jagirdar. The plaintiff appeals to this Court with certificate granted by the High Court.

4. Counsel for the plaintiff urged that the courts below were in error holding : (1) that the rate per log of timber was Rs. 1/8/-; (2) that the High Court erred in disallowing compensation for 6,000 logs of timber which were cut and appropriated by the plaintiff but which were on account of negligence of the servants of the State either burnt or stolen; (3) that the High Court erred in disallowing compensation for items (iii) and (iv) being the value of logs of timber which the plaintiff was entitled to, but could not cut because of the restrictions imposed by the State.

5. On the first plea not much need be said. The Trial Court as well as the High Court, on a consideration of the evidence held that the value of a log of timber did not exceed Rs. 1/8/-. That is a concurrent finding of fact and this Court will not interfere with that finding, unless it is shown to be based on no evidence or is grossly erroneous or perverse. No such attempt is made before us.

6. On the second plea also the plaintiff's claim must fail. The evidence led by the plaintiff relating to the cutting of 6000 logs of timber and appropriation thereof is vague, and is not supported by reliable evidence. The books of account and the registers maintained by the Jagirdar were not tendered in evidence. It was said that they were burnt. The High Court has disbelieved the story that the books of account and registers were burnt and we see no reason to disagree with that finding. The plaintiff himself had no personal knowledge about the destination of the logs of timber; he merely repeated what the Jagirdar's men had told him. He admitted that out of the logs of timber which were cut, 4500 logs were "hammer-marked" by the Forest Department and he was asked to remove them by the end of March 1953. The testimony of witnesses Badrinarayan P.W. 4, Ramlal P.W. 5, and Ramkesh P.W. 7 was found by the High Court to be unreliable. We have been taken through the record of the evidence by counsel for the plaintiff and we see no reason to disagree with the view which appealed to the High Court. The second claim must also fail.

7. Then remain the claims for items (iii) and (iv) in the plaint. The logs of timber under these claims were admittedly not cut. There were standing trees. The relevant terms of the deed dated August 5, 1949, may, to appreciate the claim of the plaintiff, be read :

"Deed of agreement in respect of selling of timber of jungles of Sonpur Jagir.

Deed of agreement executed by Shri Thakur Randhirshah, Jagirdar of Sonpur X X X in favour of Bhai Ram Narayanji Mahto, contractor of timber X X X X to the following effect :

"I, the executant, have already taken Rs. 15,000/- X X X from the person, in whose favour the deed of agreement has been executed, X X X. I have entered into a contract in respect of selling timber, after getting logs 2 feet or more than that in

girth cut from my below mentioned nine villages for Rs. 51,501/- X X and have sold the same subject to the following conditions :

Nine villages, timber of which has been sold by me, are as follows :

(then follow the names of nine villages.)

In respect of cutting, I the executant, shall cut wood at my expenses and the same will be supplied to you in the jungle.

In respect of cutting (wood), I, the executant shall be cutting wood from the below mentioned jungles in this way :

(1) I shall supply wood from the jungles of Bambani, Kosami and Rajola Khapadhanna in first two years (i.e. from August 1949 to July 1951).

(2) I shall supply wood from Gotikhere and Harai from August 1951 to July 1952.

(3) I shall supply wood from Dulhadeo Baratmari and Budena from August 1952 to July 1953.

(4) I shall supply wood from Sejwara Khalan from August 1953 to 1954.

In respect of transport, if there is any delay in transporting contractor's wood during that period, the executant, shall extend the time up to six months so as to complete the transportation.

X X X X X##

(Then follows the manner in which the balance amount of Rs. 36,501/- was to be paid.)

X X X wood sold does not include the trees on the bank of the river or nadao or any such place, which are prohibited to be cut according to law. The wood of those places has not been sold.

#X X X X X".##

8. Under the deed all trees standing in the forests in the nine villages were not agreed to be sold : it was provided that trees with logs of "2 feet or more in girth" were to be cut and the logs were to be supplied in four different periods set out in the deed. The deed created by its own force no rights in the standing trees, for the Jagirdar was to cut the trees at his expense, and to supply the logs.

9. By Section 3 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951), in so far as it is relevant, it is provided :

"(1) Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the area specified in the notification, vesting in a proprietor of such estate, mahal, alienated village,

alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purpose of the State free of all encumbrances.

X X X X X".##

Section 4 provides, in so far as it is material :

"(1) When the notification under Section 3 in respect of any area has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date specified in such notification X X X X ensue, namely -

(a) all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land, scrub jungle, forest, trees, X X X shall case and be vested in the State for purposes of the State free of all encumbrances; X X X X X X X X X X".

10. The relevant provisions of the Sale of Goods Act may also be noticed. Section 2(7) of the Sale of Goods Act defines "goods" as meaning "every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale". Trees from which logs of timber were agreed to be cut and sold are things attached to or forming part of the land. The trees were agreed to be severed under the contract of sale. A contract for sale of logs is doubtless a contract for sale of goods. But in view of the terms of the deed the contract was not for sale of ascertained goods. Only logs with a girth not less than 2 feet were to be supplied after the trees were cut by the Jagirdar. This is not a contract under which the trees of the entire forest in a particular village were agreed to be sold. Goods to be sold were, therefore, unascertained, and it is well settled that a contract for unascertained goods is not a complete sale, but only a promise to sell : *Badische Anilin Fabrik v. Hickson* ((1906) AC 419 at p. 421), it was said in that case :

"Where the goods are not ascertained or may not exist at the time of the contract, from the nature of the transaction, no property in the goods can pass to the purchaser by virtue of the contract itself; but where certain goods have been selected and appropriated by the seller, and have been approved and assented to by the buyer, then the case stands as to the vesting of the property very much in the same position as upon a contract for the sale of goods which are ascertained at the time of the bargain."

Where a thing is attached to, or forms part of, land at the time of the contract and which is to be severed by the buyer, the property in the thing passes in the absence of a contract to the contrary to the buyer on the severance of the thing from the land. This is clearly the effect of Section 18 of the Sale of Goods Act. For property to pass, the identity of the thing intended to be delivered must be ascertained, and unless the parties are agreed as to what goods are to pass under the terms of the contract, the property will not pass. It is essential that the thing should be specific and ascertained in the manner binding upon the parties unless that be so, the contract cannot be construed as a contract

for sale of moveable property. Again under Section 21 of the Sale of Goods Act, even if there be a contract for the sale of specific goods, but the seller is obliged under the terms of the contract to do something to the goods for the purpose of putting them into a deliverable state, the property passes only when the thing agreed to be done is done and the buyer is informed thereof.

11. Granting that the contract was for sale of specific goods, that is, it was a contract for sale of logs out of trees in the forest with a girth of two feet or more, the timber had to be cut and had to be put in a deliverable state. The Jagirdar did not by the deed sell the trees of his forests. The plaintiff had no right even to cut the trees. The logs of timber agreed to be supplied had no existence as individual chattel, until the trees were cut and severed from the land, and logs of the specifications were separated. But before the trees were cut and the logs appropriated to the contract, the estate of the Jagirdar vested in the State of Madhya Pradesh. It is true that the provisions of the Sale of Goods Act, especially Sections 18 to 44 are rules of construction of contracts for determining the interest of the parties. If there be a contract that the property is to pass even before the property is put into a deliverable state, the property may pass. But in the contract executed by the Jagirdar no such intention appears.

12. It is not necessary to refer to the large number of cases cited at the Bar - except a few. In *Kursell v. Timber Operators and Contractors Ltd.* ((1927) 1 KB 298) under a contract the vendors agreed to sell and the purchasers agreed to purchase all the merchantable timber growing in a forest in the Republic of Latvia. Merchantable timber was therein defined to be "all trunks and branches of trees but not seedlings and young trees of less than six inches in diameter at a height of four feet from the ground". Timber was to be cut subject to certain conditions. After the contract was entered into the Latvian Assembly passed a law by which the forest became the property of the Latvian State and the contract stood annulled and all property and rights of vendors and purchasers in the forest were confiscated. It was held by the Court of Appeal that the contract was not a contract for the sale of specific goods in a deliverable state within the meaning of Section 18 Rule 1 of the Sale of Goods Act, 1893; that the goods in question were neither identified nor agreed upon; that it was not every tree in the forest which passed, but only those complying with certain measurements not then made; that the timber was not in a deliverable state until the purchasers had severed it and that they could not under the definition in the rule be bound to take delivery of an undetermined part of a tree not yet identified, and accordingly the property in the timber had not passed under Section 18, Rule 1.

13. Several cases have arisen in this Court in which the breach of a claim to a fundamental right of the purchaser who had entered into a contract for purchasing standing trees before the enactment of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, was set up. These cases may be briefly noticed. In *Chhotabhai Jethabhai Patel & Company v. The State of Madhya Pradesh* ((1953) SCR 476) this Court held that the rights conferred upon the contractors under agreements with the proprietors of the estates before the date on which the estates vested in the State, under which they were entitled to pluck, collect and carry away tendu leaves, to cultivate, culture and acquire lac, and to cut and carry away teak and timber and other species of trees were merely rights of licence, and that the contractors were not proprietors nor persons having any interest in the proprietary rights through the proprietors, within the meaning of the Act. The rights of the contractors were also held not to be encumbrances within the meaning of the expression "free from encumbrances" in Section 3(1) of the Act. The contractors were held entitled to a writ against the State prohibiting the State from interfering with the rights of the contractors under the contracts which they had entered into with the proprietors. In that case the Court held that the estate vested in the State by virtue of Section 3 and 4 of the Madhya Pradesh Act, and the right to the trees also vested in the State, but the State had right to obstruct the contractors in exercise of

the rights under the contracts and on that ground a writ of prohibition was issued. It was held that the contractors had no proprietary rights nor did they possess any interest in the proprietary rights through the proprietors to the trees and the leaves, and on that account the rights of the contractors did not vest in the State. It was assumed, without indicating the ground on which it was so assumed, that the contractual obligations which were undertaken by the Jagirdars were enforceable against the State after the estate vested in it. It was observed at p. 483 :

"The petitioners are neither proprietors within the meaning of the Act nor persons having any interest in the proprietary right through the proprietors. There is no provision in the Act which extinguishes their rights in favour of the State."

But this case was dissented from in a later decision of this Court in *Shrimati Shantabai v. State of Bombay & Others* ((1959) SCR 265). In that case under an unregistered instrument a contractor was granted a right to take and appropriate all kinds of wood from certain forests in the Zamindari. After the enactment of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, all proprietary rights in land vested in the State and the contractor could no longer cut any wood. The petitioner applied to the Deputy Commissioner and obtained from him an order under Section 9(2) of the Act permitting her to work the forest and start cutting the trees. The Divisional Forest Officer later passed an order directing that her name may be cancelled and materials cut by her forfeited. A petition for a writ was then moved in this Court. This Court held that the contractor has no right in the forest or the trees. The Court observed that if it was a right in immovable property, it could not be enforced because there was no registered instrument; if it was claimed that a profit-a-prendre was transferred by it, it was still unenforceable because the instrument granting the right was unregistered; if it was a contract giving rise to a purely personal right, assuming that the contract was property within the meaning of Article 19 (1)(f) and Articles 31(1) of the Constitution, the state had not acquired or taken possession of that property. The Court declined to follow the earlier judgment of this Court in *Chhotabhai Jethabhai Patel & Company's* case (supra).

14. In *Mahadeo v. The State of Bombay* ((1969) Supp 2 SCR 339, again, a similar question was raised by a contractor who had purchased the right to remove forest produce-mainly tendu leaves, from the forests included in the Zamindari belonging to the proprietors prior to the enactment of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. The Court in that case held that the contracts were unenforceable, because they were not registered and that in any event the agreement did not amount to grant of any proprietary right by the proprietors to the contractors and their remedy was not against the State because the State had not taken of such contracts or licences.

15. In *State of Madhya Pradesh v. Yakunuddin* ((1963) 3 SCR 13) the contractors' right derived for the Jagirdar prior to the enactment of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, to cut and remove the trees was held not enforceable against the State.

16. In all these cases there had been a partial examination of the problem in the light of a claim to an existing and enforceable fundamental right vested in the contractor. In the first case *Chhotabhai Jethabhai Patel & Company's* case (supra) the Court held, without disclosing the ground for so holding, that the fundamental right of the contractor was enforceable against the State. In *Shrimati Shantabai's* case (supra) and *Mahadeo's* case ((1969) Supp 2 SCR 339) the Court held that there was no infringement of any fundamental right and in *Yakinuddin's* case ((1963) 3 SCR 13) which

reached this Court in appeal from an order made in a petition under Article 226 of the Constitution the Court held that the rights were not enforceable against the State.

17. The present case arises out of a suit instituted for recovery of compensation by a contractor who was prevented from enforcing his claim in respect of the forest trees under the terms of the contract entered into with the Jagirdar. The contract was one relating to sale of future goods, but it was not a contract for sale of specific property in a deliverable state. Title to the logs which the plaintiff had agreed to purchase did not vest in him at the date on which the estate vested in the State of Madhya Pradesh. On that ground the plaintiff's claim to cut standing trees in the forest of Sonpur Jagir after they vested in the State was rightly negatived.

18. The appeal fails and is dismissed with costs.

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