H. P. Gupta

Vs

Hiralal

Criminal Appeal Nos. 226-232 of 1966

(J. M. Shelat, G. K. Mitter JJ)

24.02.1970.

JUDGMENT

SHELAT J.

1. All these appeals, founded on a certificate granted by the High Court of Allahabad, raise a common question as to jurisdiction. The appeals arise from complaints filed by the respondent in the Court of First Class Magistrate at Meerut under Section 207 of the Companies Act, 1956 on an allegation of failures on the part of the appellant, the director-in-charge of Messrs. Iron Traders (Private) Ltd., to pay to him dividends on shares held by him, although the dividends were declared by the company for the respective years. The question being common, all these appeals are disposed; of by a common judgment.

2. The appellant contended that the Magistrate at Meerut had no jurisdiction to try the complaints and that the Magistrate at Delhi, where the company's registered office is situate, who would have the jurisdiction. The Magistrate rejected the contention and held that as the dividend had to be paid at the registered address of the respondent, which was at Meerut, it was the Meerut Court which had the jurisdiction. The Sessions Judge, on appeal, upheld the order of the Magistrate and in revision the High Court, rejecting the appellant's contention, confirmed the view taken by the Magistrate and upheld by the Sessions Judge. The High Court in taking the aforesaid view observed :

> "The object behind the statute is to ensure prompt payment of dividend to shareholder. That payment may be made to him directly or it may be made by sending a cheque or warrant to his registered address. If a shareholder complains that he has not received payment he is entitled to proceed against the company and its Directors by finding a complaint at the place where he resides because the law demands that payment should have been made to him there."

The High Court's reasoning was clearly based on the premise that payment of dividend has to be made at the place where the shareholder resides, and therefore, it is the Magistrate within whose jurisdiction the shareholders registered address is situate who has the jurisdiction. The contention in these appeals is that such a view is not in accord with Section 207. The question is of some importance, for, if the view taken by the High Court is correct, it would mean that directors of companies would be liable to be prosecuted at hundreds of places where the registered addresses of their shareholders are on allegations that dividends are not paid to them.

3. Section 205 deals with dividends and the manner and time of payment thereof. Sub-section (1) provides that no dividend shall be declared or paid by a company for any financial year except out

of the company's profits for that year arrived at in the manner therein set out sub-section (3) provides that no dividend shall be payable except in cash. Sub-section 5(b), however, empowers payment of dividend by cheque or dividend warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend or in the case of joint shareholders to the registered address of that one of them who is first named in the register of members or to such person or to such address as the shareholder or the joint shareholders may in writing direct. Section 206 provides that no dividend shall be paid by a company in respect of any share warrant has been issued to the bearer of such warrant or to his bankers. Section 207 lays down the penalty for failure to distribute dividends declared by the company and provides that where a dividend has been declared by a company but has not been paid or a cheque or a warrant in respect thereof has not been posted within 42 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company, its managing agent or secretaries and treasures shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to 7 days and shall also be able to fine. But the section further provides that no offence shall be deemed to have been committed within the meaning of the foregoing provision in the cases therein set out.

4. A dividend once declared is a debt payable by the company to its registered shareholders. It is clear from Section 205 that although under sub-section (3) no dividend shall be payable except in cash, sub-section (5) authorises a company to pay the dividend by a cheque or a warrant. Therefore, dividend can be said to have been paid either when it is paid in cash or when a cheque or a warrant is sent through the post directed to the registered address of the shareholder entitled to payment thereof. Indeed, Section 207 itself lays down that the offence thereunder is committed when dividend is either not paid or a cheque or a warrant in respect thereof has not been posted within the time prescribed therefor. Once, therefore, a dividend is deemed to have been paid.

5. The section casts an obligation on the company to pay the dividend, which is declared, to the shareholder entitled thereto within 42 days from its declaration. The offence under the section takes place when there is failure to pay or a cheque or a warrant therefor is not posted to the registered address of the shareholder. It will be noticed that the section makes the failure to post within the prescribed period and not the non-receipt of the warrant by the shareholder an offence. Therefore, the obligation to pay within the prescribed period is satisfied once the dividend is paid or a cheque or a warrant therefore is posted at the registered address of the shareholder. Prima facie, both the obligation to post the dividend warrant and the failure to satisfy that obligation would occur at the place where the obligation is to be performed and that would be the registered office of the company and not the address at which the warrant is to be posted.

6. But the question is since the dividend, when declared, becomes a debt payable by the company to the shareholder and the company becomes a debtor, does the common law rule that the debtor must seek out the creditor apply ? There are two considerations which must not be lost sight of before that rule is applied. The first is that Section 207 does not make the non-receipt of the dividend warrant by the shareholder within 42 days an offence. The offence consists in the failure to post the dividend warrant within the prescribed period. The provisions of Section 205 empower payment of dividend by a cheque or a warrant and treat the posting of a cheque or warrant as payment. Therefore, payment in cash or the posting of a cheque or a warrant as payment. Therefore, payment in cash or the posting of a cheque or a warrant a equivalent and the obligation to pay is discharged when either of them is done. The second consideration is that the power to pay dividend by posting a cheque or a warrant provided in Section 205(5) is incorporated in the Articles of Association of the company by Article 132. That article reads :

> "Unless otherwise directed by the company in General Meeting any dividend may be paid by cheque or warrant set through the post to the registered address of the member entitled or in the case of joint holders to the registered address of that one whose name stands first on the register in respect of the joint holding and every; cheque so sent shall be made payable to the order of the person to whom it is sent."

7. Section 36 of the Act, which is in the same terms as Section 20 of the English Companies Act, 1948, provides that subject to the provisions of the Act the Memorandum and Articles of Association, when registered, bind the company and the members thereof to the same extent as if they respectively have been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles. It is well established that the Articles of Association constitute a contract between a company between a company and its members is respect of their ordinary rights as members. (See Hickman v. Kent or Pomney Marsh Sheep Breeder's Association (1915 (1) Ch 881) and Beattis v. Beattia (1938 Ch 708). If under a contract, promisee prescribes the manner in which the promise is to be performed, the promisor can perform the promise in the manner so prescribed. (See Section 50 of the Contract Act). Thus, if A desires B, who owes him Rs. 100/- to send him a note for that amount by post, the debt is discharged as soon as B puts into the post a letter containing the not duly addressed to A. (See illustration (d) to Section 50 of the Contract Act). In this connection the decision in Thairlwall v. The Great Northern Railway Co. (1910(2) KB 509) shows how the problem is dealt with by the English Courts. The plaintiff there, who held certain stocks of the defendant company, filed an action to recover dividend payable on those stocks. The defence was that the dividend was paid having been sent by post to the registered address of the plaintiff. The question was looked at from the point of view whether there was any agreement by or obligation on the plaintiff to accept the dividend warrant as payment. If there was any such agreement, the principle laid down in Norman v. Ricketts would apply, namely, that a debtor or a creditor can agree to make and accept payment of the debt in some form other than cash and that when the creditor asks his debtor to send the amount by post, then if the debtor sends a cheque for the amount by post the risk of loss in transit falls on the creditor and the posting is equivalent to payment. Further the stock certificates had upon the back of them a clause that dividend would he payable by warrant which would be sent by post to the proprietor's registered address, or to any person duly authorised to give a receipt for the same. Section 9 of Act of 1890, under which the defendant-company was incorporated, also provided that the terms and conditions on which the stock was issued shall be stated on the certificate thereof. In the six monthly report of accounts issued by the directors to the stockholders there was a statement that the profits of the company had enabled the directors to declare a dividend and there was at the back of that report a notice that the dividend warrants would be payable on a certain date and would be sent by post to the stockholders on the previous day. Under Section 90 of the Companies Act, 1845 it was within the power of the directors to fix the date at which and the mode in which dividends should be paid, subject of course to the control of a general meting. The stockholders of the company at their general meeting a declared the amount of dividend as proposed by the directors but had passed no resolution as to how payment was to be made. It was held that though no such resolution as to how passed by the stockholders, they had notice as to how the directors proposed to pay the dividends and as no alternation was made in those proposals, the stockholders were held to have decided among themselves by a proper resolution that the dividend should be paid on a certain day and in the manner proposed by the directors. Such a conduct was equivalent to a request, and therefore, the stockholders became entitled to payment in that way and in that way alone. Consequently, when the dividend warrant had been sent by post the dividend was paid and the company's obligation to pay stood discharged.

8. It follows, therefore that once a mode of payment of dividend is agreed to, namely, by posting a cheque or a warrant, the place where such posting is to be done is the place of performance and also the place of payment, as such performance in the manner agree; to is equivalent to payment and results in the discharges of the obligation.

9. It is clear from Section 205(5) that the company could pay dividend either in cash or by posting a cheque or a warrant at the registered address of the respondent. Article 132 of the Articles of Association also authorises the company to pay dividend either in cash or by posting a cheque or a warrant to the shareholder at his registered address. The effect of Article 132 is that when a dividend warrant is posted at the registered address of the shareholder that would be equivalent to payment. Once a warrant is so posted the company is deemed to have paid and discharged its obligation. As aforesaid, the Articles of Association constitute an agreement the company and the shareholders, and the latter are entitled to the payment of dividend in the manner laid down in the Articles and in that manner alone. Article 132 thus not only authorises the company to make the payment in the manner laid down therein but amounts to a request by the shareholders to be paid in the manner so laid down. When, therefore, the company posts the dividend warrant at the registered address of a shareholder, that being done at the shareholder's request, the post office becomes the agent of the shareholder, and the loss of a dividend warrant during transit thereafter is the risk of the shareholder. In Indore Malwa United Mills Ltd. v. Commissioner of Income-Tax ((1966) 59 ITR 738) this Court, on a question arising whether on the facts there payment was made in taxable territory, held that if by an agreement, express or implied, between the creditor and the debtor, or by a request, express or implied, by the creditor, the debtor is authorised to pay the debt by a cheque and to send the cheque to the creditor by post, the post office is the agent of the creditor to receive the cheque and the creditor receives payment as soon as the cheque is posted to him. That being the position, the place where a dividend warrant would be posted, the post office being the agent of the shareholder, is the place where the obligation to pay the debt is discharged - in the present case at Delhi where the company has its registered office. It follows that the offence under Section 207 of the Act would also occur at the place where the failure to discharge that obligation arises, namely, the failure to post the dividend warrant within 42 days. The venue of the offence, therefore, would be Delhi and no Meerut, and the Court competent to try the offence would be that Court within whose jurisdiction the offence takes place, i.e., Delhi. This should be so both in law and common-sense, for, if held otherwise, the directors of companies can be prosecuted at hundreds of places on an allegation by shareholders that they have not received the warrant. That cannot be the intention of the Legislature when it enacted Section 207 and made failure to pay or post a dividend warrant within 42 days from the declaration of the dividend an offence.

10. This view is also in accord with the principle laid down by Maule, J., in Regina v. James Milner (175 ER 128) that the felony of not surrendering at a district court to a fiat in bankruptcy, under Stat 5 and 6 Vict. Clause 122. Section 32 is committed at the place where the district court is situate; and an indictment for the offence cannot be sustained in a different country from the in which the person was a trader or in which he committed an act of bankruptcy. On the same principle the High Court of Calcutta has also held in Gunanad Dhone v. Lala Santi Prokash Manley (29 CWN 432) that it is the court within the local limits of whose jurisdiction the accused is liable to render accounts and fails to do so by reason of having committed a bred of trust alleged against him that has the jurisdiction.

11. The offence under Section 207 is the failure to pay dividend to post a cheque or a warrant for the dividend amount. Since the obligation to post the warrant arose at the registered office of the company, failure to discharge that obligation also arose at the registered office of the company.

Therefore, the alleged offence must be held to have taken place at the place where the company's registered office is situate and not where the dividend warrant, when posted, would be received.

12. In that view, the High Court was in error in holding that the Magistrate at Meerut had the jurisdiction to try the said complaints. The appeals must accordingly be allowed and the High Court's orders set aside. Order accordingly.

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 Pradhesh 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".

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 severence 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 tees 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 after they vested in the State was rightly negatived.

18. The appeal fails and is dismissed with costs.

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