

Smt. Pushpapriyadevi and Others

Vs

The State of Maharashtra and Another

Civil Appeal No. 2465 of 1968

(R. S. Sarkaria, P. N. Kailasam JJ)

04.04.1978

JUDGMENT

KAILASAM, J. -

1. This appeal is by the legal representatives of the plaintiff by a certificate granted by the High Court of Bombay (Nagpur Bench) against its judgment and decree dated August 12, 1966.
2. The plaintiff in the suit is the brother of the ex-proprietor of the Ahiri Zamindari, the second defendant, second respondent in this appeal. The first defendant is the State of Maharashtra, the first respondent in this appeal.
3. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act I of 1950), received the assent of the President on January 22, 1951 and was published in the Gazette on January 26, 1951. The State Government published a notification bringing the Act into force from March 31, 1951. Before the Act came into force on March 31, 1951 the plaintiff who is a brother of the second respondent, the proprietor of the estate, took a contract on March 15, 1951, for cutting the standing trees in the forest known as Hachbodi Nendwadi coupe for a sum of Rs. 50,000. The contract provided that a sum of Rs. 15,000 was to be paid immediately on the date of the execution of the contract and the balance to be paid within six months. The second respondent filed a writ before the Supreme Court challenging the validity of the Act and also of the notifications and obtained an order of stay on March 27, 1951. The writ petition was ultimately dismissed on May 2, 1952 and the stay vacated. After the dismissal of the writ petition filed by the second respondent, the Departments of the Government refused permission to the plaintiff to remove the trees cut. The plaintiff made a representation to the State government and the Government by a letter dated March 12, 1953, Ex. P-17, permitted the plaintiff to remove the trees on condition that he deposited Rs. 35,000. Accordingly, the plaintiff paid Rs. 35,000 on March 24, 1953 and removed the timber.
4. The suit out of which this appeal arises was filed by the plaintiff for the return of the sum of Rs. 35,000 on the ground that he had already paid Rs. 35,000 to his brother on September 30, 1951 and that the Government was not entitled to recover another sum of Rs. 35,000. He claimed for the return of the amount of Rs. 35,000 with interest of Rs. 7000 in all Rs. 42,000. It was contended in the plaint that as the Supreme Court had granted a stay of the operation of the Act the property did not vest in the State on March 31, 1951 according to the notification and that it was only on May 2, 1952 when the Supreme Court dismissed the writ petition that the estate vested in the Government. On this ground it was submitted that the plaintiff's contract was binding on the defendant's estate. Plaintiff also contended that apart from Rs. 15,000 which he paid to the second respondent on the

date of the agreement i.e. on March 15, 1951, he paid the balance of Rs. 35,000 on August 31, 1951. The plaintiff, it was submitted, was forced to pay another Rs. 35,000 as the first respondent, the State, refused to permit him to remove the timber that had already been cut by him. In any event, the plaintiff contended that his title became perfect on the date of the contract before March 31, 1951 when the estate vested in the State. The State denied the claims of the plaintiff and contended that the property vested in the State on May 2, 1950 and denied the allegation that the plaintiff had paid a sum of Rs. 35,000 to the second respondent. While admitting that the plaintiff applied for permission to remove the teak cut and (sic on) receipt of Rs. 35,000 it denied that the amount was collected under any duress. The plea by the State Government was that the contract Ex. P-19 entered into by the plaintiff with the second respondent was sham and collusive transaction without consideration.

5. The trial Court decreed the suit on November 21, 1959 holding that the transaction was entered into by the second respondent in the ordinary course of management and that the transaction was not sham or a bogus one. It also found that as a result of the stay order the property continued to be sale price under the contract. It also held that the transfer of sale under the contract of the standing timber was sale of movable property and therefore the transaction did not contravene the provisions of Section 6 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950.

6. In an appeal by the State before the High Court it was conceded by the plaintiff that the vesting of property in the State could not be postponed by reason of the stay order. The order of stay passed by this Court was not produced and the High Court rightly accepting the concession found that the vesting of the estate was not postponed because of the order of the stay granted by this Court.

7. Before examining the contention whether the contract Ex. P-19 was a sham and collusive transaction and whether the plaintiff had paid Rs. 35,000 to his brother, the second respondent, it is necessary to examine the provisions of the Act for determining the rights of parties on the date when the contract was entered into. The Madhya Pradesh Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act, 1950 (Act I of the 1951), received the assent of the President on January 26, 1951. Section 3 of the Act provides that on and from a date to be specified by notification by the State Government in this behalf all proprietary rights in an estate vesting in a proprietor of such estate shall pass from such proprietor and vest in the State for the purposes of the State free of all encumbrances. By a notification the Act came into force on March 26, 1951 and the estate vested in the State on March 31, 1951. Section 4 states that when a notification under Section 3 in respect of any area has been published all rights, title and interest Section 3 in respect of any area has been published 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 etc. shall cease and be vested in the State for purposes of the State free of all encumbrances. Section 6 of the Act renders certain transfers void. It provides that except as provided in sub-section (2), the transfer of any right in the property which is liable to vest in the State under this Act made by the proprietor at any time after March 16, 1950, shall as from the date of vesting be void. While under Section 3 the interest of the proprietor vests in the State government from the date specified in the notification i.e. March 31, 1951, Section 6 provides that the transfer of any right which is liable to vest in the State under this Act made by the proprietor at any time after March 16, 1950 shall be void from the date of vesting. The result of the operation of this section would be that the contract dated March 15, 1951 which is a transfer of a right of property which is liable to vest in the State having been made by the proprietor after March 16, 1950 shall become void from the date of the vesting i.e. March 31, 1951. The plea on behalf of the plaintiff is

that the transfer would become void only as from March 31, 1951 but as by that date the sale in favour of the plaintiff had become complete, Section 6 would not have any application. On behalf of the State, it was submitted that the plaintiff applied under sub-section (2) that the transfer was in good faith and in ordinary course of business management and therefore may be declared that the transfer shall not be void after the date of the vesting.

8. The Collector refused to accept the plea but permitted him to remove the timber that had been cut on payment of Rs. 35,000 which was not paid to the second respondent. The questions that arise for consideration are whether the transaction of sale was complete before the date of the vesting of the estate i.e. on March 31, 1951 and whether the plea of the plaintiff that he was forced to pay a sum of Rs. 35,000 to the State even though he had already paid the amount of Rs. 35,000 to the second respondent as provided for in the contract is made out.

9. To determine the question as to whether the transaction between the plaintiff and the second respondent was complete before March 31, 1951 it is useful to refer to the contract entered into between the parties. Ex. P-19 is the contract and is dated March 15, 1951. The agreement is for the sale and purchase of forest produce and that it was agreed between the parties in the following terms :

(1) The Forest Product sold and purchased under this agreement is the following :

Unmarked (Teak & Miscellaneous) Standing/cut/wind-fallen trees, situated in the coupe known as Teak trees coupe in the/near Hachbodi-Nendwadi Forest Range in the Ahiri Estate :

Teak 1000; Teak tress over 4 feet in girth near Hachbodi-Nendwadi at Rs. 50 per tree sanctioned by Z. S. Ahiri on March 14, 1951.

10. Clause 3 provided that the contract shall commence on March 15, 1951 and will be in force up to March 14, 1953 after which date the contractor will have no right to any material not removed from the contract area. The contractor agreed to remove the forest produce only during the above period. Clause 4 provided that the consideration payable by the contractor for this contract is Rs. 50,000 and that the amount will be duly paid by the contractor by crediting it in the Ahiri Estate Treasury in instalments of Rs. 15,000 on fifteenth day of April and Rs. 35,000 on fifteenth day of September. Clause 5 of the contract is important any may be extracted in full :

5. The contractor will not remove any forest produce from the site of the x (x torn) and until the logs are checked and passed by the Estate Forest Staff by affixing x (x torn) bad passing hammer. The contractor will not remove any forest produce between the sunset and sunrise. The contractor will make his own arrangements for stacking x (x torn) outside the contract area.

Clause 7 provided that the contractor will duly coppice the stumps of the trees felled by him. He agreed to carry out all his operations properly, according to the rules in force governing the forest area in a workman-like manner and further agreed to abide by any directions and instructions in regard to the working of this contract that may be issued to him by the Estate Forest Staff and other estate authorities. Clause 8 provided that in the event of the contractor's failure to pay any of the instalments within the time fixed, the estate authorities will be entitled to stop and restrain all

further extraction or other work in the contract area. Clause 9 provided that the contractor agreed to file every month accounts of the felling, logging and extraction done by him.

11. The clauses above extracted clearly show that the contract was to commence on March 15, 1951 and be in force till March 14, 1953 during which period the contractor agreed to file monthly accounts of felling, logging and extraction by him. Clause 5 also provided that the contractor will not remove any forest produce till the logs are checked and passed by the Estate Forest staff. The second instalment of Rs. 35,000 is to be paid on September 15, 1951. These clause make it very clear that what was contracted for was the sale of forest produce which is a proprietary right vested in the proprietor in the property which according to the Act is to vest in the State. The plea on behalf of the plaintiff that the contract was only for the sale of goods i.e. movable property and that as trees had been marked felled before March 31 the contract of sale of goods had been concluded cannot be accepted. Apart from the fact that the contract was clearly not for sale of goods but for transfer of right in property, the facts also do not support the plea of the plaintiff that the trees were marked and felled before March 31, 1951. The evidence of PW 1 is that the marking and cutting was done at the same time simultaneously and that the plaintiff had cut all the trees in the disputed contract. According to PW 2 the trees were being cut as they were marked. The trial Court held that the title of the plaintiff to the trees was complete before March 31, 1951 but the High Court came to the conclusion that there is no evidence to show that the trees were cut before the date of vesting. The High Court may not be quite correct in stating that there is no evidence to show that the trees were cut before the date of vesting but there can be no doubt that the evidence cannot be accepted for it is impossible to have cut the trees before March 31, 1951.

12. Even assuming that the trees were cut the property will not pass to the plaintiff till requirements of Clause 5 of the contract are complied with i.e. the logs have been checked and passed by the State Forest Officer by affixing marks and delivered to the plaintiff. This was admittedly not ascertained and the title cannot pass to the plaintiff. We have no hesitation in coming to the conclusion that the trees were not in fact cut before March 31, much less the cut trees ascertained before March 31, 1951.

13. The decision of this Court in *Badri Prasad v. State of Madhya Pradesh* ((1969) 2 SCR 380 : (1971) 3 SCC 23) was relied on by both the appellants and the respondents. The facts are similar and arise out of a forest contract in Madhya Pradesh and the case raised similar questions. The facts of the case briefly are that the appellant before this Court entered into a contract for removing forest produce in Madhya Pradesh. After the passing of the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, a notification was issued vesting the estate in the State and the appellant was prohibited from cutting timber in exercise of his rights under the contract. Latter after some negotiations the appellant agreed to pay an additional sum of Rs. 17,000 but reserved his right to claim a refund. The State Government rejected the appellant's right to cut trees. The appellant thereafter filed a suit claiming specific performance of the contract on the ground that the forest and trees did not vest in the State under the Act and even if they vested the standing timber having been sold to the appellant did not vest in the State and in any event a new contract was completed in February and the appellant was entitled to specific performance. This Court negatived all the pleas and held after considering the earlier decisions that it was too late in the day to contend that the forest and the trees did not vest in the State under the Act. Repelling the contention on behalf of the appellant that under the contract the plaintiff had become owner of the trees as goods, this Court observed that though the trees which were agreed to be severed before sale or under the contract of sale are goods for the purpose of Sale of Goods Act but before they cease to be proprietary rights or

interest within the meaning of Sections 3 and 4(a) of the Act, they must be felled under the contract. On the facts of the case the Court held that the property in cut timber would only pass to the appellant under the contract at the earliest when the trees were felled. It further added that as the contract provided that the appellant was entitled to cut teak trees of more than 12 inch girth it would have to be ascertained which trees fell within the description and till that is ascertained they were not ascertained goods. Thus in order that the property in the goods passes under the Sale of Goods Act, it is necessary that the trees should be felled and ascertained before the relevant date. In the present case we agree with the conclusion arrived at by the High Court that the trees were not felled before March 31, 1951 and further they were not ascertained as required under the contract, for as pointed out the logs had to be checked and passed by the State Forest staff by affixing the mark before they can be removed by the appellant. Thus the facts are similar and the decision in the case applies to the present case. Holding that the trees were not felled and that the goods were not ascertained, we find that the title in the goods had not passed to the appellant before March 31, 1951, the date on which the estate vested in the State.

14. When it is found that the title in the goods had not passed to the appellant, then the provisions of Section 6(1) will be attracted and this being a transfer of right in property which is liable to vest in the State after March 16, 1950, it shall be void from the date of vesting.

15. We agree with the finding of the High Court that it is not possible to accept the appellant's case that he paid Rs. 35,000 to the second respondent. The appellant is the brother of the Zamindar, the second respondent. The appellant has not chosen to examine himself as a witness and speak to his payment of Rs. 35,000 to the second respondent. On behalf of the appellant his agent was examined as PW 1. According to him he paid in cash to the respondent a sum of Rs. 35,000 on September 30, 1951. The witness was questioned as to whether for making the payment he borrowed the money from the second respondent himself. He denied any knowledge about such borrowing. It is most unlikely that any payment of Rs. 35,000 was made on behalf of the appellant of September 30, 1951. Without making sure that he would not have paid Rs. 35,000. As pointed out by the High Court PW 3 does not state that he in fact received Rs. 35,000 in cash. There is no material to show that the appellant had such an amount with him. In the correspondence that passed between the appellant and the Government, the appellant did not mention that he had already paid Rs. 35,000 to the second respondent. In fact, when the Government demanded that he should pay Rs. 35,000 the appellant paid the amount without any protest. Taking into account the fact that the appellant and the second respondent are brothers, the imminence of the vesting of the entire estate of the second respondent with (sic in) the State, and the absence of any material to show that the appellant was possessed of the funds, we have no hesitation in agreeing with the finding of the High Court that the appellant would not have paid the amount to the second respondent.

16. Lastly, it was contended that in any event as the Government permitted the appellant to remove the logs on payment of Rs. 35,000 it should be construed as ratification of the contract entered into by the second respondent and as such the Government is not entitled to collect Rs. 35,000 as, if at all anyone was entitled to the amount it was only the second respondent. We have no hesitation in rejecting this argument for after the vesting of the forest in the Government, the Government under Section 6(2) offered to permit the appellant to remove the trees on payment of Rs. 35,000. Having agreed to the condition and paid Rs. 35,000 the appellant cannot ask for any refund.

17. We find that there is no substance in this appeal and dismiss it with costs of the first respondent.

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