

(1966) 05 RAJ CK 0001
In the Rajasthan High Court
Case No : First Appeal No. 27 of 1958

Khan Mohamed and Others	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 06-05-1966

Acts Referred:

Rajasthan Forest Act, 1953 — Section 39, 47

Citation : AIR 1967 Raj 37 : (1966) RLW 608

Hon'ble Judges : V.P. Tyagi, J;I.N. Modi, J

Bench : Division Bench

Advocate : M.C. Bhandari, for the Appellant; Raj Narain, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Tyagi, J.—This is plaintiffs' appeal against the judgment and decree of the Senior Civil Judge, Udaipur dated 8th of January, 1958, dismissing the plaintiffs' suit as being time barred.

2. The facts of this case are not much in dispute. It is admitted between the parties that the forest of Thikana Madri in District Udaipur was leased out by the Forest Department to the plaintiffs for the manufacture of 600 Handis of "Katha" (Catochu) at the rate of Rs. 15 per Handi. One of the conditions of the agreement which was signed between the parties on 27th November, 1947 was that the plaintiffs would complete the Theka work by the 30th of June, 1948 and if for certain unforeseen calamity the plaintiffs failed to complete their work, then it will be within the discretion of the department to renew the contract for the next term on the payment of 10 per cent over and above the amount stipulated in the contract. But for this purpose, it was necessary for the plaintiff to make an application by February 1948.

According to the allegation, made by him in his plaint, the plaintiff made an application for renewal of the contract in the month of April, 1948 but the copy of

that application has not been placed on record. Upto June, 1948, the plaintiff could prepare only 126 Handis. He made another application (Ex. A-3) on 28th September, 1948 requesting the authorities in the Forest Department to permit him to deposit the 10 per cent for the remaining 374 Handis, that is Rs. 561 and then to permit him to work the forest to complete the manufacture of 500 Handis for which the contract was given to him by the department. Thereupon, the statement of Khan Mohammad was recorded on 28th of September, 1948, wherein he admitted that an amount of Rs. 2,000 was outstanding against him of the last instalment to be paid by him under the agreement which he was prepared to pay with interest and further stated that there is a balance of 374 Handis in his agreement yet to be manufactured by him

It appears from Ex. A-5 dated 29th of September, 1948 that the plaintiff Khan Mohamad deposited Rs. 2,000 as the last instalment under the agreement along with Rs. 60 and 1 pie towards interest and also Rs. 561 as to 10 per cent money for the manufacture of 374 Handis. This amount was taken in deposit by the department in "Udrat". The department however, did not care to extend the term of the agreement and did not permit the plaintiff to work the forest for the alleged balance of 374 Handis which he claimed to prepare therefrom.

The Conservator of Forests, Udaipur range by his order dated 11th August, 1949, decided that the plaintiff had no right to work the forest and manufacture "Katha" from it and, therefore, he may be directed to withdraw the amount of Rs. 561 deposited as 10 per cent money over and above the contract. The plaintiff thereupon filed an appeal to the Chief Conservator of Forests who by his order dated 1st of February, 1960, dismissed the appeal of the plaintiff. Then a representation was made to the Government against the orders of the Conservator and Chief Conservator of Forests, but the plaintiffs failed to get any relief as the Government dismissed the representation, vide its order dated 17th June, 1950 (Ex. A-13).

Meanwhile, when the representation was pending before the Government, the plaintiffs started manufacturing "katha" in the said forest. The exact date as to when they started this work in the forest is not known as it has not been mentioned by either party, but it is evident from the document Ex. 2 that the Forestor of Gadwara seized 35 bags of the "katha" manufactured by the plaintiff out of which 29 contained the dry katha" and six contained the wet "katha" and 21 tins containing the liquid from which the katha was manufactured, that the katha was manufactured by the plaintiffs between 18th of March and 8th of May, 1950.

The plaintiffs made several representations to the officers concerned of the Forest Department and to the Government for releasing the said katha but the Government first of all demanded from the plaintiffs royalty and four times penalty and then asked the plaintiffs, vide the letter of the Government (Ex. 3) dated 25th January, 1954 to pay the market price of the katha and obtain the release thereof by the 27th of January 1954. The plaintiffs did not, however,

agree to pay the market price. They served the State Government with a notice u/s 80 of the Civil Procedure Code.

3. The grievance of the plaintiffs is that in spite of the fact that the katha was seized from their possession for which the plaintiffs did not agree to pay the royalty with penalty or the market price the Government did not take any proceedings under the Mewar Forest Act to get the Katha confiscated by referring the matter to the Magistrate having jurisdiction over the matter and therefore, the plaintiffs were left with no alternative but to file a suit against the Government for the return of the Katha seized from their possession, and in the alternative prayed that in case the specific property in the Katha was not available for return, they may be paid Rs. 17,525 as the price of the Katha seized by the State Government.

They also claimed Rs. 12,400 as damages for not allowing the plaintiffs to work the forest in accordance with the term in the agreement dated 27th of November, 1947, and thus they have been deprived of their right to manufacture 214 Handis which they were entitled to prepare under the said agreement. Thus, a suit for the total amount of Rs. 29,626 was filed in the Court of the Senior Civil Judge Udaipur, on 17th of January, 1956.

4. The suit was resisted by the State and it was inter alia pleaded by the defendant that the plaintiffs did not make any application according to the term of the agreement to renew their agreement by February, 1948, and, therefore, they lost all their rights to get the renewal for the next term and that the plaintiffs had unlawfully entered the forest and prepared 160 Handis of Katha in collusion with the employees of the department and also by defrauding certain officers and that the seizure of the Katha was in accordance with the provisions of the law and, therefore, the plaintiffs right to get a decree either for the return of the Katha or for the price thereof or for damages claimed by them for not extending the term of their agreement for the next season was totally denied by it. A plea was also taken by the State that the suit was barred by limitation.

5. The Learned Judge framed as many as 16 issues in this case, but the reproduction thereof will not be of any help for the disposal of this appeal as this appeal has been argued on a very limited point by the parties before us. Learned counsel for the plaintiffs-appellants has urged that in view of the judgment of the trial Court, the State Government had no authority to confiscate the Katha of the plaintiff seized by the officers of the Forest Department and, therefore, his clients were entitled to get the decree either for the return of the specific property in Katha or the price thereof but the suit was erroneously dismissed declaring it to be time barred by applying Article 28 of the Limitation Act of 1908 which is not at all attracted to the facts and circumstances of this case. According to learned counsel for the appellant, it is Article 49 which is applicable to this case and not Article 28 of the Limitation Act, if the proper article had been applied by the Court below, the suit could not be dismissed as time barred.

6. Mr. Raj Narain, appearing on behalf of the State, has contended that the plaintiffs had no right to file a suit for the return of the Katha seized by the Forest Department because they were rank trespassers and they entered the forest belonging to the State without any authority and after cutting the trees they dishonestly removed the trees and prepared Katha and then the Katha manufactured in this manner by the plaintiffs cannot be claimed as their property and the Government, that had seized the Katha having been unauthorisedly prepared by the plaintiffs had a right to confiscate it even though the State Government did not proceed in accordance with the provisions of Ch. VII of the Mewar Forest Act and the return thereof cannot be claimed by the plaintiff as no right vests in the plaintiffs to claim the ownership of that Katha.

7. The objection raised by the Deputy Government Advocate goes to the very root of the matter and, therefore, before going to the question of limitation, I would like to decide this question first.

8. It is admitted by the plaintiffs that in the first instance, they were given a lease for the Madri forest to work it out upto 30th of June, 1948. It is not disputed that whatever the Katha was manufactured by the plaintiffs upto 30th of June, 1948, was taken away by them. The dispute is in relation with the Katha that was manufactured by the plaintiffs between 18th of March 1950 and 8th of May, 1950. The plaintiffs in compliance with the requirement of term No. 21 of the agreement Ex. 1 applied to the State Government and to the Forest authorities for the renewal of this agreement, but it is not disputed by the parties that the Government refused to renew the contract of the plaintiffs. The plaintiffs exhausted the remedy of filing an appeal before the Chief Conservator of Forests and making the representation before the Government. The appeal of the plaintiff was dismissed on 1st of February, 1950. They somehow managed to deposit Rs. 561 in the Government treasury, but this amount was directed to be withdrawn by the plaintiffs by the Conservator of Forests on 11th August, 1949 (vide Ex. A-1). In spite of the firm attitude of the Government not to renew the lease agreement of the plaintiffs for the next term, the plaintiffs dared to enter into the forest belonging to the State on the 18th of March 1950, and prepared 160 Handis of Katha upto 8th of May, 1950.

When the authorities of the Forest Department came to know of this unauthorised manufacture of Katha they seized the Katha under receipt Ex. 2 from the possession of the plaintiffs. The plaintiff Khan Mohammad has been examined as a witness in this case and he has admitted in his examination in chief that he forcibly started the work in the forest in the year 1949-50 and prepared 160 Handis during that period. In his cross-examination he also admitted that at the time when he started the working of the forest unauthorisedly in the year 1949-50, the proceedings for the renewal of his lease were pending. He further stated that Khuman Singh restrained his labour from manufacturing the Katha but in spite of it his labour prepared 160 Handis under the supervision of his employees Jeeva and Imdad Hussain. About 30 to 35

families had worked as labour with him in the year 1949-50.

From these admitted facts, no doubt is left in my mind that the plaintiff in prepa(sic) the disputed Katha committed a trespass in the forest of the State, and after unauthorisedly felling the trees belonging to the State, he committed a theft of the wood and prepared the Katha therefrom. In these circumstances, I have to see whether any right of ownership accrued to the plaintiffs in the property manufactured by them through the process of trespass and theft.

9. Mr Bhandari, appearing for the appellant has tried to meet this point by urging that the property seized from the possession of the plaintiffs by the State authorities cannot be confiscated to the State unless proceedings in accordance with Chapter VII of the Mewar Forest Act were taken by the State. His contention is that according to this Chapter which relates to the offences in respect of the forest produce, Katha can be confiscated only by a competent Magistrate when the matter is referred to him in accordance with the provisions of Sections 33 and 36 of the said Act. There is no doubt that according to the scheme of the Chapter VII of the Mewar Forest Act, if any offence is committed in respect of the tools, vehicles, boats and cattle used in committing any such offence may be seized by any forest officer or police officer or customs officer. It is incumbent for these officers seizing such forest produce to make a report of the seizure to the Magistrate having jurisdiction to try the offence and it is on the cognizance being taken by such a Magistrate that he can order the confiscation of the property to the State u/s 36.

There is another provision embodied in Section 47 which deals with the power to compound offences and it provides that when any property has been seized as liable to confiscation, a Forest Officer empowered by the State Government in that behalf can release the same on payment of the value thereof as estimated by him.

This shows that an alternative method is also provided by the Act to dispose of the property seized under Chapter VII of the Mewar Forest Act, but as is evident from the very heading of the section, this provision has been incorporated in the Act to empower the Forest Officer to compound the offences by releasing the property after accepting the payment of the value thereof as estimated by such officer. This is possible only when both the parties agree to this proposal. If one of the parties, namely, the offender does not propose to get his matter compounded by the Forest Officer, then it is very doubtful whether such a procedure can be adopted to dispose of the property.

According to the provision of the law, if the offender does not want to get the matter compounded then there remains only one method for disposing of the forest produce relating to which the offence is alleged to have been committed under the said Act and it is by means of submitting the case before a Magistrate who can confiscate the property to the Government.

In this case, no such procedure seems to have been adopted by the department

concerned and it is on this ground that Mr. Bhandari has urged that the property having been taken from the possession of the plaintiff, could not be disposed of by confiscating the same to the Government without referring the matter to the Magistrate and hence, he was entitled to get back the property. There is some force in the argument advanced by Mr. Bhandari. The trial Court has accepted this proposition in its judgment. But before the offender can claim in a Civil Court the return of the property to himself, which had been seized from his possession, it will be his duty to show his right in the property.

An offender, no doubt, has a right to hold the possession of the property against the entire world but he cannot claim that right against the true owner of the property. In this case, the plaintiff himself admits that he had committed an act of trespass in entering the forest without permission from the duly authorised officers of the Forest Department and that he had felled the trees unauthorisedly belonging to the State and manufactured Katha therefrom forcibly. In these circumstances, it is not so easy as Mr. Bhandari thinks that the possession of the appellant over the property made in this fashion should be restored like the possession of one who claims the ownership of the property acquired by rightful means.

10. Mr. Raj Narain in support of his argument has referred us to two cases reported in *Osman and Another Vs. Emperor*, and *Emperor Vs. Bandhu Singh and Others*. In the Calcutta case, the property which was claimed by the petitioners before the Court was sold in auction and the right, title and interest of the petitioners were extinguished therein. Thereafter, they grew the crop in that property. It appears that the real owner who purchased that property filed a suit u/s 26-F of the Bengal Tenancy Act read with Order 21 Rule 35 of the CPC in a civil Court to get the actual possession of the lands. In that case, the petitioners who were declared trespassers for possessing the property after their rights were extinguished therein, were not allowed by the criminal Court to remove the crops though grown by them.

In the Patna case, it has been held by Mullick Ag. C. J. that "a mere trespasser cannot, by the very act of trespass, immediately & without acquiescence give himself possession against the person whom he ejects, and drive him to produce his title, if he can, without delay reinstate himself in his former possession. The owner may, if he does not acquiesce, re-enter upon the land and reinstate himself provided he does not use more force than is necessary. He must not commit a breach of the peace. His entry will be viewed as a resistance to an intrusion upon a possession which he had never lost. If he takes the risk of a forcible entry and use more violence than is necessary he will not be able to plead the right of private defence, but he cannot be sued by the trespasser who has entered by force or fraud either for recovery of possession u/s 9, Specific Relief Act, or for ejectment upon the strength of his temporary prior possession. Therefore, possession being still with the owner, he can prosecute the intruder for committing trespass within the meaning of Section 411".

11. Though these two authorities have no direct bearing on the facts and circumstances of the present case, yet it is possible to deduce from them a principle of law that a trespasser cannot by his act of trespass acquire the right of ownership in the property which he got in his possession by means of his wrongful act of trespass and such a possession cannot deter the real owner from taking back the properties from the hands of the trespasser. In the instant case, I find that the property was acquired by the plaintiff by entering forcibly in the forest which belonged to the State and then unauthorisedly removing the trees and using them for the manufacture of Katha. This amounts to the theft of the trees which had been fallen down by the plaintiff and any property acquired through theft cannot confer a valid title on the thief to claim the restoration thereof from the possession of the owner who really possessed the same before the Act of theft or trespass was committed against him.

In this view of the matter, I am definitely of opinion that the plaintiff cannot claim right vested in him for the restoration of the Katha which was seized under the provisions of the Mewar Forest Act, but not confiscated according to Chapter VII of the Act.

12. As I have come to the conclusion that the plaintiffs did not acquire any right in the property, therefore, they cannot file a suit for the recovery thereof and hence their suit should be dismissed on this ground, I think no useful purpose will be served to discuss the question relating to limitation, on the basis on which his suit was dismissed by the trial Court. Even if the suit is held to be within time, the plaintiffs cannot get a decree for the restoration of Katha or its price from this Court.

13. In this view of the matter, I dismiss the appeal of the plaintiff with costs.

Modi, J.

14. The facts leading up to this appeal have been narrated at length by my learned brother Tyagi J., in the judgment proposed to be delivered by him, and, therefore, I do not consider it necessary to state them over again.

15. I may state at the very outset, how ever, that learned counsel for the plaintiff-appellant abandoned before us that part of his claim to the damages to the tune of Rs 12,400 alleged to have been sustained by him by the refusal of the State to renew his lease for one more year after the 30th June, 1948.

16. That apart, the short but interesting question for determination in this appeal is whether a trespasser can lawfully lay claim to restoration of the fruits of his adventure in a civil action brought by him which fruits he was not allowed to take away by the officers of the defendant State and which he had obtained by an unlawful user of the trees standing in the forest which belonged to the defendant State.

17. Unquestionably the plaintiff was a trespasser, as he had no right whatsoever to extract Katha from the forest at the date he did so, his lease having already

expired and refused to be renewed by the State. Unquestionably again, the trees and the forest wherein they stood were the property of the State. The plaintiff had therefore, no right to the trees. He had no right to touch them either. But, even so, contends learned counsel for the plaintiff appellant, the Katha extracted by him from these trees did not as such belong to the State and, therefore, unless he was prosecuted and convicted and an order of confiscation of the Katha produced by him had been obtained against him from a competent magistrate according to the Mewar Forest Act, 1948, the Katha belonged to him and the defendant State had no right to detain it and therefore, he was and is entitled to get it back or its money's worth.

18. I am inclined to think that an unnecessary complication was allowed to be introduced in this case by the State's failure to prosecute the plaintiff under the Mewar Forest Act, 1948.

19. But the question nevertheless is whether in the absence of such prosecution the plaintiff is entitled, as a matter of right, to the restoration of the Katha extracted by him from the trees of the defendant or to get the price thereof. It is correct that a certain amount of money and labour must have been expended by the plaintiff in making the Katha from the trees, although it is equally correct and cannot be overlooked that he would not have been able to produce the material in question unless he had had access to and the use of the trees in the forest from which the Katha could be prepared and to which he had no right at all material times and upon which he had on his own admission committed a trespass.

20. Now, it seems to me that to allow the plaintiff to obtain the relief he seeks, in the circumstances above stated would be to help him to run away with the fruits of his wanton and wrongful act. Suppose the State had sued the plaintiff for damages for the latter's wrongful cutting down of the former's trees and for the loss caused to it on that account. Could the plaintiff successfully resist such a suit? I do not think he could, perhaps the only thing the defendant, might have asked at the most in an action against him would be for deduction by way of set off or otherwise of the money or labour spent by him on the actual manufacture of Katha.

21. If that is the correct perspective of things, then the defendant cannot rightly lay claim to the Katha as his own property. As I have already said above, to allow the plaintiff a decree for his claim in the present circumstances would be to make a present to him or somebody else's property to which he had no claim whatever. And, so far as his own share of expenditure on labour etc., goes, it should be a sufficient answer to say that if he has incurred any loss, the fault is entirely his own and he has to thank himself for, the consequences. This should be all the more so where the plaintiff is a wanton and wilful trespasser, and there is or can be no gainsaying the position that he did not act under a bona fide belief of his own right to title or that the defendant had acquiesced in his doing what he wrongfully did in which latter class of cases the amount of damages

awarded to the plaintiff owner might perhaps be suitably reduced. But that is certainly not the case here. The plaintiff has, therefore, completely disentitled himself to get back the Katha in specie or the price thereof.

22. In support of the conclusion to which I have come, I would invite reference to a few English decisions which I have been able to lay my hands on, and which seem to have a clear bearing on the point for decision before the Court.

23. In *Glenwood Lumber Co. Ltd. v. Phillips* 1904 AC 405 the respondent had obtained a license from the Govt. of Newfoundland to cut timber on certain land with effect from the 20th January, 1899. Prior to its grant, however, the appellants, expecting and believing that they would obtain the license, commenced cutting timber on the land which came to be leased out to the respondent and continued to do so until three days after its grant to the latter in spite of a formal notice from him not to do so, and they also removed the logs which had been hewn by them. The respondent therefore brought an action for return of the said goods or their value. The case ultimately went in appeal to the Privy Council where it was held, dismissing the appellants appeal, that the appellants were wrongdoers, that the respondent as lessee had, acquired lawful possession of the logs which were on his hand, and that such possession was perfectly good against a wrong-doer and further that the latter could not even set up a *jus tertii* unless he could himself claim under it. In this view of the law, it was held that the appellants were entitled to the value of the logs removed without deducting the expenses of the said wrongful act except so far as agreed.

24. The present is a converse of the case cited above but stronger on facts against the plaintiff.

25. Again in *Burling v. John Read* (1850) 11 QB 904 it was held that if a trespasser erected a building on certain land belonging to another person, the latter being the owner in possession thereof would be within his rights in pulling down the building. Lord Campbell C. J. observed in this case "The plaintiff is a trespasser; what right can he have to prevent the owner of the soil from pulling down the house?" The learned Lord further observed that "it would be giving a most dangerous extension to the doctrine in *Perry v. Fitzhove* (1846) 8 QB 757 (There the action was brought by the owner of a dwelling house, who was in it at the time of its being destroyed by the defendant and there was no question that the house really belonged to the plaintiff) if we were to hold that the owner of a house could not exercise the right of pulling it down, because a trespasser was in it."

26. Here, the plaintiff was a wrongdoer at every step, in entering into the forest at the date he did, in felling the trees and cutting them down, and in subjecting them to the process of manufacture of Katha and in trying to remove the bags containing the same from the forest in which attempt he was unfortunately for himself foiled. In this state of things, I am altogether unable to hold that the property in the Katha ever passed from the State to the plaintiff, and, if that is

the correct conclusion to come to, as I doubtless think it is, then the conclusion is inevitable that he can lay no lawful claim to the fruits of his misadventure on any understandable principle of law or the rule of justice, equity and good conscience.

27. Having regard to the conclusion to which I have come on the merits of the plaintiff's claim I do not consider it necessary to give any finding on the question of limitation. But, if it were necessary to express any opinion on that point, I would say that the proper article is not 28 but Article 49 of the Limitation Act, 1908 and the trial Court was therefore, in error in dismissing the suit as barred by time.

28. I, therefore, agree that this appeal be dismissed and the plaintiff's suit thrown out, though my grounds for doing so are different from those which prevailed with the trial Court.