
(1988) 06 GUJ CK 0009
In the Gujarat High Court

Manilal Ranchhoddas and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-06-1988

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 40, 40
Civil Procedure Code, 1908 (CPC) — Section 80
Forest Act, 1927 — Section 34A
Limitation Act, 1963 — Article 70

Citation : (1989) 1 GLR 36

Hon'ble Judges : P.M. Chauhan, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—The plaintiffs who are contractors in respect of trees in forest areas of villages of Gad-Boriad and Wagach Jagir having lost in first round of litigation which resulted into decision of the Supreme Court in the case of U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, have tried to reagitate the same question by filing suit before the trial Court. They lost in the suit and hence this appeal.

2. The appellant-plaintiffs filed a Special Civil Suit in the Court of Civil Judge (SD). Baroda praying that order dated March 27, 1965 (Ex. 70) passed by the Divisional Forest Officer, Chhota Udaipur cancelling the authorisation granted earlier on November 16 and 28, 1964 for cutting trees and bamboos from the forest area and restraining them from taking away the woods and directing them not to cut wood from the forest area in future was illegal and void. It was also prayed that the order passed by the Divisional Forest Officer directing to pay Rs. 37,006-93 and Rs. 10,178-87 was illegal and void and that they were entitled to refund of the aforesaid amount. The respondent-State resisted the suit on facts as well as on law points. The plaintiffs lost in trial Court and hence the appeal by the plaintiffs.

3. Facts in brief : In respect of the 52 villages situated within Gad-Boriad Jagir,

Naswadi taluka and in respect of 36 villages situated in the area of Wagach Jagir, plaintiff No. 2 (who is the partner of plaintiff No. 1 firm) had entered into contract with the Jagirdar. Under the contract he was entitled to cut woods and remove the same. It appears that there was previous litigation in respect of the contract pertaining to 36 villages between the same parties. On August 1, 1954, the Bombay Merged Territories and Areas (Jagir Abolition) Act, 1953 came into force. Thereafter on July 6, 1956, the State Government issued notification u/s 34A of the Indian Forest Act, 1927 and declared uncultivated land in the 39 villages of Wagach Jagir to be the forest land for the purpose of Chapter V of the Act. Thereupon the Divisional Forest Officer informed the contractors including the plaintiff that the Jagirs had been abolished and the reserved space and the trees standing on the land belong to the State Government and therefore they were restrained from cutting teak and Pancharao trees standing in the aforesaid land. The Divisional Forest Officer had taken follow up action and restrained the plaintiff and other persons from cutting woods from the forest area in question. Therefore, the plaintiff and others challenged the legality and validity of the action of the Divisional Forest Officer by filing Special C.A. No. 2146 of 1958 in the High Court of Bombay. The High Court partly upheld the claim of the petitioners therein. The matter was carried to the Supreme Court by the State Government which reversed the judgment of the High Court and decided the case in favour of the Government. The decision is reported in U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, .

4. After the judgment of the Supreme Court the Divisional Forest Officer cancelled the authorisation given to the plaintiff sometime in November 1964 and also claimed royalty as per orders dated June 8, 1965 and January 13, 1966 which are produced at Exs. 72 and 73 respectively. The plaintiff paid the amount of royalty as claimed by the Divisional Forest Officer on different dates. It appears that the aforesaid amount paid (deposited) was also treated as deposit by the respondent authorities and that is why on October 28, 1969 (Ex. 184) the plaintiffs were informed that the amount recovered from the plaintiffs as royalty deposit was transferred to revenue head since it was resolved that the trees of the Jagir area were held to be of the ownership of the State. Thereafter the plaintiffs served notice u/s 80 of the C.P. Code and filed suit on March 8, 1972 with the prayers as stated hereinabove.

5. The respondent-defendant resisted the suit inter alia contending that the suit was barred by *res judicata*", that it was time barred and that the plaintiffs were not entitled to claim refund as prayed for. After hearing the parties the trial Court as per its judgment dated April 30, 1977 came to the conclusion that the suit was barred by *res judicata* and that it was barred by period of limitation also. Even on merits, the trial Court came to the conclusion that the plaintiff had no case and were not entitled to claim refund of the amount in question. Thus the trial Court ordered to dismiss the suit with costs.

6. Learned Counsel for the appellant-plaintiffs submits that the trial Court has

not considered the question of limitation properly and has erred in holding that the suit was barred by limitation. It is contended that initially when the amount was paid by the plaintiffs in response to the order dated March 27, 1965, it was paid as deposit. In fact the respondent-authorities also considered the same as deposit towards royalty. Therefore the period of limitation would not commence from the date of demand made i.e. from March 27, 1965 nor it would commence from the date of payment of the deposit. It is further submitted that the period of limitation would commence only when the amount was appropriated to the revenue head i.e. on October 28, 1969.

7. Article 70 of the Schedule to the Limitation Act, 1963 reads as follows :

To recover movable property deposited or pawned from a depositary or pawnee three years from the date of refusal after demand.

In the facts and circumstances of the case, we are of the opinion that the period of limitation would commence from October 28, 1969 i.e. the day on which the plaintiffs have been informed vide Ex. 184 about the transfer of the deposited amount to the revenue head. In the facts of the case, this date should be considered to be the date of refusal of payment and from this date onwards the period of limitation of three years should be considered. Thus it would be evident that October 27, 1978 would be the last date for filing the suit within period of limitation. This suit having been filed on March 8, 1972, is clearly within the period of limitation.

8. The contention raised by the learned Assistant Govt. Pleader that the proper article of Limitation Act applicable would be Article 100 cannot be accepted. Article 100 is not a specific Article pertaining to amount of deposit and return of the same. The specific Article 70 pertains to deposit of moveable property and the refusal after demand and that is the proper Article applicable to the facts of the case. At any rate the residuary Article 113 may be invoked which also provides limitation for a period of three years. In above view of the matter, we are of the opinion that the trial Court had committed an error in holding that the suit was beyond the period of limitation. Therefore, the finding by the trial Court on this issue is reversed and set aside.

9. In view of the provisions of Section 40 of Bombay Land Revenue Code, 1879 (for short "the Code") and the provisions of Bombay Merged Territories and Areas (Jagir Abolition) Act, 1953 (for short "the Act") in order to establish their right to cut trees in forest areas the plaintiffs were required to prove that survey and settlement had already taken place in respect of the villages in question. Therefore, the learned Counsel for the appellant-plaintiffs submitted that the trial Court has erred in holding that there was no survey settlement in respect of the villages covered by two different contracts. In this respect, the appellants-plaintiffs relied upon the deposition of plaintiff No. 2, Rambhai Ranchhodbhai Patel (Ex. 191) and Shri Jashbhai Kalyanbhai Patel (Ex. 197). He has also relied upon Ex. 45 and Ex. 46 which are the copies in the form of extracts of some

revenue record. Plaintiff No. 2, (Ex. 191) has clearly stated in his deposition that there was no settlement of the suit land during Revakantha Agency Vahivat. As per his case Exs. 45 and 46 are copies of survey and settlement. Now in support of this case, Jashbhai Patel (Ex. 197), Special District Inspector Land Records, who retired from service on September 1, 1976, has been examined by plaintiffs. He has referred to some procedural aspect on survey and settlement. He has stated that in the state of Pandu-mewas and Sankheda-mewas the territory of the villages in question were situated. In his cross-examination he has stated that he cannot say as to in which villages the final settlement was made and as to in which villages the work was in progress. He stated that as far as Wagach (in which 39 villages are comprised) is concerned no survey work was made. In his cross-examination he has stated that Exs. 45 and 46 cannot be said to be settlement. He has further stated that as per the provisions of the Code procedure prescribed under Sections 95 to 117B of the Code has to be carried out and then only the settlement can be made.

10. Exhibits 45 and 46 are copies of some revenue record. One does not know from which record these copies are taken. It is only stated at the top that details as to the year in which survey and settlement took place and at the bottom of the statement it is stated that the copy is prepared from the record. It is not clear as to from which record it is taken out. It is also not clear whether it forms any part of proceedings for making survey and settlement or it forms part of final survey and settlement made at any time. Further the statement does not give any details whatsoever as regards the settlement. The plaintiffs own witness Shri Jashbhai Patel (Ex. 197) categorically stated that these exhibits cannot be said to be the settlement.

11. The defendant has examined one Shri Bhailalabhai Hirabhai Patel (Ex. 198) from the office of Land Records, Baroda. He has clearly stated that there is no report of records of survey settlement of Wagach and Gadboriad before their merger. He has further stated that after the merger no work has been done of the settlement of these states and no final notification of the settlement report of the villages in question has been published as required under the provisions of the Code. From the cross-examination of this witness it appears that some work pertaining to survey and settlement appears to have undertaken but no final survey and settlement as required under the provisions of the Code has taken place.

12. The provisions of law also clearly indicate that the aforesaid Exs. 45 and 46 cannot be said to be the settlement because under the provisions of the Code and Rules framed thereunder the settlement is required to be published in Official Gazette (Section 117-0 read with Rule 19-G). As per the relevant provisions of the Act and Section 40 of the Code and as per the decision of the Supreme Court, U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, , it is absolutely clear that the plaintiffs can claim their rights to trees in the forest areas in question only if they succeed in establishing that survey and

settlement has taken place in respect of the villages in question. The trial Court on appreciation of evidence found that the survey and settlement has not been carried out in these villages. Therefore the trial Court held, and in our opinion rightly, that the plaintiffs are not entitled to claim any right to trees in the forest area in question. In view of the aforesaid position, we requested the learned Counsel for the appellant-plaintiffs to show even today any published material on the basis of which it can be said that survey and settlement has taken place in respect of the villages in question. It must be stated in fairness to the learned Counsel for the appellant-plaintiffs that he has frankly conceded that he is not in a position to produce any such document.

13. Learned Counsel for the appellant-plaintiffs has submitted that Ex. 83 to Ex. 180 which are copies of village Forms 6, 7, and 12 show that the land in villages has been assessed and as per the assessment the land revenue is levied. Therefore Exs. 45 and 46 which give details regarding survey of certain villages if read with the Ex. 83 to Ex. 180, it will conclusively show that there has been survey and settlement in respect of the villages in question. This contention cannot be accepted. Pending the survey and settlement as required under the Code, revenue has got to be levied from the occupants of the land. In Section 7 of the Act it is provided as follows:

Until revenue surveys and settlements of land revenue of land in a Jagir village are made under Chapters VIII and VIII-A of the Code, land revenue payable to the State Government in respect of any land u/s 5 or 6 shall be paid at the rate at which the assessment in respect of such land was paid to the Jagirdar immediately before the appointed date.

Provision to the section mentions that where in respect of any land no assessment is fixed or the rates of assessment fixed in respect of any land are, in the opinion of the State Government, not in conformity with the standard rates of assessment fixed, the State Government may determine or revise the rate of assessment in respect of such land having regard to such standard rates of assessment and the person shall be liable to pay land revenue at the rate so determined or revised.

Learned Counsel for the respondent-defendant has submitted that village Form No. 6 and village Form Nos. 7 and 12 i.e. the record of rights are maintained as provided under the provisions of Section 7 of the Act and not pursuant to the survey and settlement which is alleged to have taken place. There is much force in the submission made by the learned Counsel for the respondents-defendant. What the learned Counsel for the appellant-plaintiffs asks us to do is to proceed with the inverse logic. He states that because there are record of rights in the shape of village Forms Nos. 6, 7 and 12, it should be presumed that there must be survey and settlement. Otherwise these village forms would not be in existence at all. Had there been no explanation for the entries in the record of rights, one would have been compelled to adopt the process of inverse logic as suggested by the learned Counsel for the appellant-plaintiffs. But the provisions

of Section 7 of the Act indicates that there is no room for such inverse logic. On the contrary for interregnum period during which the survey and settlement does not take place as provided under Chapter VIII and VIII-A of the Code, the method of fixing revenue assessment as indicate in Section 7 has got to be adopted. It is evident from village Form No. 6, (Exs. III, 115, 116 and 124) that minimum rate of assessment is fixed from the date mentioned therein i.e. 1-8-1956. This is in conformity with the provisions of Section 7 of the Act. In above view of the matter, the contention raised by the learned Counsel for the appellant-plaintiffs on the basis of Exs. 83 to 180, the village forms and the revenue records, cannot be accepted.

14. Learned Counsel for the respondent-defendant relied upon a decision of the Supreme Court in the case of U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, . There it is clearly held that after coming into force of the Act, the Jagirdars became occupants of the forest land in the Jagir villages and thereafter the only right which Jagirdars have are those of occupants under the provisions of the Code and such rights do not include the right to cut and remove the trees from the forest lands of the villages in question. In that case with respect to 36 villages of Wagach State (which is also a part of the subject matter of this appeal) after referring to the provisions of the Act and the Code, the Supreme Court has observed as follows:

The rights of the occupants under the Bombay Land Revenue Code do not include the right to cut and remove the trees from the forest lands. The reason is that the 36 villages in dispute have not been surveyed or settled and until there is completion of the survey and settlement there is no question of concession on the part of the State Government of the right to the trees in favour of the occupants.

The Supreme Court in terms held that the right of the Government to all trees in unalienated land would be deemed to have been conceded to the occupant under the provisions of Section 40 of the Code only when the survey and settlement is completed. In view of the above position, once it is held that no survey and settlement has taken place in respect of the villages in question, the Jagirdars do not get any right over the trees in the villages and consequently the plaintiffs who have taken contract from Jagirdars are also not entitled to any such right.

15. On the other hand, the learned Counsel for the appellant-plaintiffs relied upon a decision of the Supreme, Court in the case of State of Gujarat Vs. Kumar Shri Ranjit Singhji Bhavan Singhji and Others, . In the facts and circumstances of the case the Supreme Court held that the Jagirdar was entitled to compensation for teak trees standing on Jagir land and distinguished its earlier decision in the case of U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, . The facts of the case of Manvinkurve (supra) disclosed that the State of Bombay which at the relevant time had jurisdiction over the villages in question issued a notification u/s 34(A) of the Indian Forest Act declaring all uncultivated lands in the villages of the Jagir to be forests for the purpose of Chapter V of that Act. On

that account the forest were deemed protected forests and the Jagirdar had no right to cut and remove trees from the forest lands as owner and that under the Code the rights of occupancy did not carry the right to cut and remove trees from forest lands. In the case of Ranjitsinghji (supra) before the Supreme Court there was no evidence that any such notification was issued that teak trees formed part of the forest. There was no notification issued under the Indian Forest Act, extinguishing or restricting the right of the Jagirdars. Therefore on the facts of the case the Supreme Court held that the Jagirdar was entitled to compensation for teak trees. The distinction is a vital one. The factual situation as it existed in the case of U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, is the same as far as the facts and circumstances of this case are concerned. Therefore, reliance placed on the decision of Supreme Court in the case of State of Gujarat Vs. Kumar Shri Ranjit Singhji Bhavan Singhji and Others, is of no help to the appellant-plaintiffs.

16. Learned Counsel for the appellant-plaintiffs relied upon another decision of Supreme Court in the case of Thakoresri Maharasinghji Dolatsinghji and Others Vs. State of Gujarat and Others, . Therein the case of the Jagirdar was that on August 1, 1954, when "the Act" came into force, he became occupant of the land together with the forest standing therein. Till 1965 the Jagirdar was allowed to cut and remove the forest trees in his land but after the decision of the Supreme Court in the case of Manvinkurve (supra) the authorities concerned changed their mind and restrained the Jagirdar from cutting and removing the trees from the forest land. The Supreme Court held in favour of the Jagirdar in view of the fact that survey and settlement had been made in the year 1936 and the Land Revenue Code was applied in 1948 to the land in question. Therefore, in view of Section 216(2) of the Code, it was held that survey and settlement deemed to have been completed in 1936 which was after passing the Bombay Land Revenue Code in the year 1879. In view of this factual position, the Supreme Court held that the right to own trees must be deemed to have been conceded to the occupant of such land as there was no reservation made by the Government or the Survey Authority. Thus it is clear that this decision also does not dilute or modify the principles laid down in the case of U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, .

17. The aforesaid discussion clearly shows that the case of the Appellant-plaintiffs is hanging on one important fact. Has there been survey and settlement either prior to the applicability of the Code or even thereafter? As has been held hereinabove, the plaintiffs have failed to prove that there has been survey and settlement in respect of these villages. Therefore, it cannot be said that the State Government has conceded its right over the trees as provided u/s 40 of the Code in respect of these villages. Thus the plaintiffs have no right whatsoever to cut and remove the trees and the plaintiffs were liable to pay the royalty as demanded.

18. The learned Counsel for the appellant-plaintiffs submitted that the trial Court

has erred in holding that the suit was barred by the principles of res judicata. In view of our finding as regards the right of the appellants to cut and remove trees from the villages in question, this question becomes academic. But even so if we are called upon to decide this question, it has got to be held that as far as the question which has been decided by the Supreme Court in the case of U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, and the issue pertaining to the survey and settlement in respect of 36 villages of Wagach is concerned, the same has been concluded by the decision of the Supreme Court. To this extent the bar of res judicata did operate against the appellant-plaintiffs. It would have been open to the plaintiffs to show that even in respect of these 36 villages of Wagach there was survey and settlement, subsequent to the decision of the Supreme Court. But no such case has been pleaded nor the same has been proved. Similarly in respect of the villages of Gadboriad, the plaintiffs could have pleaded and proved that there was survey and settlement. But as we have stated hereinabove, the plaintiffs have failed to prove this. Thus as far as the question of res judicata is concerned, the same did operate against the appellant-plaintiffs but only partially as indicated hereinabove.

No other contention is raised. There is no substance in the appeal. In the result appeal fails and the same is hereby dismissed with costs.