
(1962) 03 MP CK 0033
In the Madhya Pradesh High Court
Case No : F.A. No. 232 of 1959

Manohar Prasad Mishra of Raigarh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 23-03-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) JLJ 1087 : (1962) MPLJ 772

Hon'ble Judges : T.C. Shrivastava, J; S.P. Bahrgava, J

Bench : Division Bench

Advocate : R.S. Dabir and R.P. Sinha, for the Appellant; H.L. Kkaskalam, for the Respondent

Final Decision : Allowed

Judgement

Shrivastava, J.

The respondent-State Government had sued the appellant Manohar Prasad for Us. 16,451-12 being the price of trees removed by him from the bhogra lands, raiyati lands and Grami forest lands in mauza Natwarpur. The claim has been decreed, by the trial Court and the defendant has, therefore, filed this appeal.

The case of the plaintiff as stated in the plaint was that the defendant (appellant) out Sal trees from his tenancy and bhogra lands as also from the village forest between 9-3-1951 and 3-5-1951. According to the plaintiff, these trees belonged to the State and the defendant had no right to cut or sell them. The value of the trees was assessed at Rs. 16,451-12.

The defendant admitted that he cut some Sal trees but stated that the cutting was between 9-3-1951 and 31-3-1951, He stated that he had removed the trees only from his raiyati lands. He assessed the value of the trees cut and Bold at Rs. 5,000 only; but resisted the claim of the State Government on the ground that the trees belonged to him and not to the State Government. He also stated that the trees did not belong to any prohibited species.

Before we take up the question of the title of the State Government in the trees, it is necessary to decide certain questions of fact. The plaintiff pleaded removal of the trees between 9-3-1951 and 3-5-1951; but there is no evidence on record as to when the trees were actually removed. The learned Judge of the trial Court has stated in paragraph 7 of the judgment that the period of cutting cannot be ascertained from the evidence on record, and it is not possible to ascertain whether it continued up to 3-5-1951 or was stopped on 31-3-1951. The defendant admitted cutting between the dates 9-3-1951 and 31-3-1951. As the plaintiff failed to prove his case that the cutting was continued for any longer period, the finding must be that the period was as stated by the defendant.

The plaintiff did not give the details of the trees removed from the three different types of lands mentioned in the plaint. It appears from the statement of Murli Manohar (P. W. 2) and his report Esh. P-5 that only seven trees were removed from the Grami forest and the rest were removed from the raiyati and bhogra lands. It is not possible to find out the number of trees removed from the bhogra lands, although the plaintiff has mentioned five khasra numbers of such lands in the schedule attached to the plaint. In the absence of any evidence, the statement of the defendant that he removed the trees from the raiyati lands alone as given in the written statement and also in Exh. P-1, which is a statement made by him before the revenue Court to the effect that he removed the trees only from the raiyati lands, must be accepted. The question whether the trees stood on the bhogra or the raiyati lands is immaterial in view of the fact that after the C. P. States Land Tenure Order, 1949, the holders of both bhogra and raiyati lands have been comprehensively covered by the term "raiyyat" as defined in that Order. The rights in the trees on both types of land, therefore, are the same after that Order.

As regards the value of the timber removed, the plaintiff examined Shri Parmar, Sub-Divisional Officer (Forest) as P. W. 6, who estimated the value of the timber at the figure given by the plaintiff. Pitamber (P. W. 8.) states that the timber worth Rs. 12,200 was sold by the defendant at the material time. The defendant has not clarified how he assessed the timber at Rs. 5 000 only. We agree that the assessment made by the Forest Officer (P. W. 6) cannot be a sure guide regarding the value of the timber removed, as he estimated it only on the basis of the stumps left. Relying on the statement of Pitamber (P. W. 8), we hold that the timber was worth Rs. 12,200 only.

As we have held that the removal of the trees was not made after 31-3-1951, it is not necessary to refer to the provisions of the Madhya Pradesh Abolition of Proprietary Rights Act, as the vesting of properties under that Act took place on 1-4-1951. We have only to examine the provisions in the Wazib-ul-arz of the Raigarh State and the C. P. States Land Tenure Order 1949. Clause 36 of the Wazib-ul-arz of the Raigarh State specifies the species of trees which cannot be cut by anyone from the Grami forest. These species do not include 8al trees. Clause 41 of the Wazib-ul-arz deals with trees on occupied lands, that is, raiyati

lands. The earlier part of the clause deals with planted trees and is not relevant. The last sentence is material. It runs as follows :

Trees of spontaneous growth other than those reserved under clause 36 may be cut and removed by the ryot within whose holding they are growing.

It appears from this provision that the raiyats have been given the right to cut all trees of spontaneous growth except the prohibited species specified in clause 36. The two clauses, read together, thus indicate that the Sal trees growing on the holdings of raiyats could be cut by them.

Turning now to the provisions of the C. P. States Land Tenure Order, 1949, which was in force at the time when the cutting had been made, we find the provisions, raiyat's right to trees in holdings in clause 21, which is as follows :

(1) Notwithstanding anything contained in any law or any entry in the Wajib-ul-arz, custom or decree or order of a civil Court or any contract to the contrary, but subject to the provisions of clause 23, a raiyat other than a sub-tenant shall have, during the period of his tenure, the same right in all trees studding in his holding as he has in the holding itself:

Provided that nothing in this sub-clause shall affect the rights of any other raiyat existing on the date of the commencement of this order.

(2) Notwithstanding any contract to the contrary a raiyat shall be entitled to foil and take the timber of Babul tree in his holding or to clear his land of scrub jungle.

(3) With the previous permission of a Revenue Officer a raiyat shall be entitled to fell any other tree which hinders the cultivation of the holding and the timber of such tree shall belong to the raiyat or the tenure-holder or the State as the Kovenue Officer may-decide.

(4) If a tenant other than a sub-tenant does not have the same right in trees in his holding as in the holding itself, ho may apply to Revenue" Officer to fix the value of such right, and purchase the right through the Revenue Officer, in such manner as may be prescribed by rules made und"3r this Order.

Under sub-clause (1) of clause 21 a raiyat has been given the same rights in all trees in his holding as; lie has in the holding itself. Clause 4 of the Land Tenure Order provides that a raiyat may transfer by sale any right in his holding to any other person. As the raiyat has been given the same right in the trees as he has in the holding itself, it follows that he has the right to sell the trees in his holding. The learned Government Advocate drew our attention to sub-clause (3) of clause 21 which provides that the title to the corpus of the tree cut shall be decided by the Revenue Officer, who shall determine whether the timber should go to the raiyat, the tenure-holder or the State. Two principles are indicated in this sub-clause which are to be followed by the Revenue Officer in deciding the question of title. At any rate, from this sub-clause it cannot be argued that the title in the

trees vested in the State Government. The burden of proving that the State Government had the title to the trees was on the plaintiff: and if this is the only provision which is relied upon, we must say that the Government has not proved its title to the trees on the holdings of tenants. On the other hand, sub-clause (1) of clause 21, read with clause 4 of the Order clearly indicates that the raiyats had been given transferable rights in the trees also. The provisions in the Wazib-ul-arz of the Baigarh State cannot have effect on the question of the rights of raiyats in trees in view of clause 27 of the Order, as the matter has been specifically provided for in clause 21.

The learned Government Advocate drew our attention to the decision of a Division Bench of this Court in *Shri Manohar Prasad v. State of Madhya Pradesh* M.P. No. 370 of 1953, D/- 27-8-195. That petition was filed by the present defendant Manohar Prasad under Article 226 of the Constitution challenging the order of the State Government regarding the disposal of trees on tenancy holdings. The question which was considered in that case was whether sections 53, 56 and 58 of the Madhya Pradesh Abolition of Proprietary Rights Act gave unfettered rights in the trees standing on malik-makbuza lands to the holders thereof. The implications of clauses 21 to 23 of the C. P. States Land Tenure Order, 1949, were also examined. In discussing the question of the rights of the raiyat in the trees in his holding as defined in clause 21 of the Land Tenure Order, a reference was made to section 212 of the C. P. Land Revenue Act, 1917, according to which the right of the raiyat, although heritable, is not transferable. On the basis of this provision, it was concluded that although the raiyat had the same rights in the trees as in the holding, those did not include a right to transfer the trees as the holding itself was not transferable. With great respect, we may state that the provisions in Chapter XIII of the C. P. Land Revenue Act, 1917, which relate to raiyatwari villages in the old Central Provinces, have no application to the raiyats in the erstwhile Princely States which merged with the Central Provinces in 1948. Chapter XIII of the Land Revenue Act, 1917, relates to raiyatwari villages in the old Central Provinces and was never extended to the merged territories at any time. The tenure of the raiyats in the raiyatwari villages was heritable but not transferable according to section 212 of the Land Revenue Act; but the rights of the raiyats in the erstwhile States had been brought on par with the rights of occupancy tenants under the C. P. Tenancy Act, 1920. Clause 4 of the C. P. States Land Tenure Order, 1949, gave the raiyats a right to transfer their holdings by sale; and as this is a specific provision for the raiyats of the States, their rights are governed by this provision. It appears that this provision was not brought to the notice of the learned Judges who decided that case. Following the reasoning adopted by the learned Judges but substituting clause 4 of the Land Tenure Order, 1949, for section 212 of the Land Revenue Act, 1917 it must be held that the raiyats had the right to sell the trees.

On this view, as the State Government failed to prove their rights in the trees, the suit could not succeed. We allow the appeal and set aside the decree of the trial Court. Instead, we direct that the suit be dismissed. The respondent shall

pay the costs of the appellant in both the Courts.