
(1961) 01 GAU CK 0008
In the Gauhati High Court

N.Ibohal Singh

APPELLANT

Vs

Budh Chandra Singh

RESPONDENT

Date of Decision : 01-01-1961

Acts Referred:

Civil Procedure Code, 1908 — Section 86, 87

Civil Procedure Code, 1908 (CPC) — Section 86, 87

Citation : AIR 1961 Manipur 40

Hon'ble Judges : T.N.R.Tirumalpad, J

Bench : Single Bench

Advocate : R.K.Singh, R.K.Manisana Singh, Advocates appearing for Parties

Judgement

1. This is an appeal against the judgement and decree of the first Subordinate Judge, Manipur, dismissing the suit filed by the appellant and the 3rd respondent against the late H. H. the Maharajah Bodh Chandra Singh.

(2) The suit was for a sum of Rs. 7.360//6 said to be the balance due for supply of rice as per the agreement Ext. 1 entered into between the appellant and the second respondent who was the Lourung Puren of the late Maharajah in the year 1952. It was stated that the said agreement Ext. 1 was entered into with the knowledge of the Maharajah, his Private Secretary and his A. D. C., that various payments were made towards the supplies made in 1952 and a balance of Rs. 21/4/6 alone remained unpaid, that further supplies as evidenced by the indents Exts. 2 to 9 making in all 364% mds. of rice worth Rs. 8.710//6, inclusive of the price of some empty gunny bags and Rickshaw charges were made between July and September, 1953, that towards the said balance a sum of Rs. 1,350/ alone was paid to the appellant leaving a balance o Rs. 7.360//6 unpaid. It was also mentioned in the plaint that permission to file the suit against the Maharajah was obtained from the Government of India as required under Sec. 87B, C. P. C.

(3) The Maharajah Bodh Chandra Singh filed written statement contesting the suit. According to him, the second respondent as Lourung Puren had no authority to enter into such an agreement, that in fact, no such agreement was entered

into, that the Maharajah had vast paddy lands from which a large quantity of paddy sufficient for the expenses in his palace as well as in the Govindajee's temple was realised by way of Loushal, that the Lourung Puren had the duty of only collecting the said loushal and delivering it at the Palace, that he misappropriated the collections and entered into a fraudulent conspiracy with Sanasam Kunjo Singh, Private Secretary, Sarangthem Chandramani Singh, Head Clerk and the appellant for deceiving the Maharajah and causing wrongful loss to him, that as a result lie and the Private Secretary and the Head Clerk were discharged from service and that the Maharajah was not therefore liable for the claim made by the appellant. He further pleaded that the certificate issued by the Government of India consenting to the institution of the suit was not in accordance with law and the suit was not legally entertainable.

(4) The second respondent, the Lourung Puren naturally supported the appellant completely in his written statement, but maintained that he was not liable for the plaint claim. Actually, the appellant did not make any claim against the second respondent and he made it clear that the second respondent was impleaded only as a pro forma defendant.

(5) During the pendency of the suit, Maharajah Bodh Chandra Singh died and his legal representatives including the present Maharajah Okendrajit Singh were brought on record. Maharajah Okendrajit Singh is a minor. Through his guardianadlitem he filed a written statement reiterating what has been stated in the written statement of his father and in addition raising a further point that he was the Ruler of Manipur under the Constitution of India and no suit lay against him under S. 8(b) of the Manipur Constitution Act, 1947, under Articles 2 and 3 of the Manipur Merger Agreement dated 2191949 read with Articles 291, 362 and 363 of the Constitution of India and also under the principles of international law and that the Court had therefore no jurisdiction to try the suit.

(6) The learned Subordinate Judge held in the suit that the certificate Ext. 24 granted by the Government of India to sue H. H. the Maharajah Bodh Chandra Singh was not in conformity with the provisions of Sec. 87 C. P. C.. as it did not direct the plaintiff to sue him in the name of his Agent or any other name. He however held that neither under the principles of international law nor under the Manipur Merger Agreement nor under the Indian Constitution did the Maharaja get any protection from legal proceedings and further that the Maharajah Bodh Chandra Singh in his written statement did not also raise the plea.

(7) With regard to the question of fact based on the agreement between the appellant and the second respondent, the lower Court held that the appellant has not proved that the agreement was entered into on behalf of the late Maharajah or that 364% maunds of rice were actually supplied. The lower Court also disbelieved that the sum of Rs. 1,350/ had been paid by the late Maharajah. Hence the suit was dismissed.

(8) Before I proceed to deal with the merits of the case, I must express my

disapprobation of the way in which this case has been dealt with by the Subordinate Judge. I have pointed out that the second respondent was supporting the appellant and that the appellant had not made any claim against the second respondent in the suit and that he impleaded him merely as a pro forma defendant. Actually, the second respondent was examined as P. W. 4 on the side of the appellant.

But on going through the depositions of witnesses, I found that the witnesses examined on the side of the appellant other than P. W. 4, who was the second respondent himself were allowed to be cross-examined by the second respondent and that too after the cross-examination by the legal representatives of the first defendant was over. One really does not understand why the Subordinate Judge allowed any cross-examination by the second respondent when there was no claim against him and particularly when he was supporting the appellant.

The learned Subordinate Judge went even further and allowed the second respondent to be examined a second time as D. W. 2 on his own behalf and permitted a second cross-examination by the legal representatives of the deceased Maharajah and after that a further cross-examination by the appellant. It is not understandable how the same witness can be examined twice once on the side of the plaintiff and on the second occasion as his own, witness as pro forma defendant. This only shows that the learned Subordinate Judge has no dear idea of the way in which Civil Suits should be dealt with by him. However in spite of such evidence which certainly was very unfair to the legal representatives of the late Maharajah, the learned Subordinate Judge dismissed the suit.

(9) I shall first of all deal with the finding of the learned Subordinate Judge that (he certificate Ext. 24 was not in conformity with the provisions of Sec. 87 C. P. C. and that the suit was not therefore maintainable. But before I deal with it, I must dispose of the argument of Maharajah Okendrajit Singh, the legal representative of late Maharajah, that he was the Ruler of Manipur under the Constitution and that no suit would lie against him under Sec. 8 (b) of the Manipur Constitution Act, 1947 or under Articles 2 and 3 of the Merger Agreement dated 21/9/1949 read with Arts. 291, 362 and 363 of the Constitution of India and also under the principles of International law.

My attention was drawn to the decision *Dr. Kam Manohar Lohia v. S. Sundaram*, AIR 1955 Manipur 41, which held that the Manipur State Constitution Act, 1947 has not been repealed and continued to be in force. Section 8 (b) of the said Act was to the effect that it shall be the prerogative of the Maharajah and the Maharani that neither may be made answerable at law or subject to any legal proceeding in the State Courts and that their persons and property shall be inviolable.

This argument has no substance at all in it. The merger agreement and the Indian Constitution have taken away the prerogative rights of the Maharajah of

Manipur. Whatever special rights which the Maharajah enjoys at present are the rights under the Merger Agreement which have been recognised in the Indian Constitution. So, the only question is whether under the Merger Agreement and the Indian Constitution, the Maharajah is exempt from the jurisdiction of the Civil Courts.

The Manipur State Constitution Act, 1947 exempts only the jurisdiction of the State Courts. There are no longer any State Courts. The Courts existing in Manipur at present are Courts under the Manipur State Courts Act, 1947 as amended in 1950 and later continued under the Manipur Courts Act, 1955 by authority of Parliament. Certainly, the Maharajah cannot exercise his prerogative rights over the said Courts.

(10) When we go to the Merger Agreement, Art. 2 provides for the continuation of the same personal rights, privileges, dignities, etc. to the Maharajah and Art 6 guarantees the succession according to law and Custom to the Gaddi of the State and to the Maharajah's personal rights, privileges, dignities etc. There is no doubt that these personal rights, privileges and dignities do not) cover any exemption from legal proceedings in Courts.

This is made clear by a reading of Art. 7 of the Merger Agreement which provides that no proceedings shall lie in any Court in Manipur against the Maharajah whether in a personal capacity or otherwise in respect of anything done or omitted to be done by him or under his authority during the period of his administration of that State. This exempts only the civil liability for acts done or omitted to be done during his administration of the State as Ruler and not acts done or omitted to be done after he ceased to administer the State nor acts done or omitted to be done in his personal capacity by way of contractual obligations with citizens of the State.

Moreover this point was not raised by the late Maharajah Bodh Chandra Singh in his written statement and has been raised only by one of his legal representatives. The present Maharajah Okendrajit " Singh has been impleaded in the suit not in his capacity as Maharajah at all, but as one of the legal representatives who has succeeded to the estate of the late Maharaja Bodh Chandra Singh,,

(11) When we refer to Art. 362 of the Constitution what has been guaranteed or assured are only such personal rights, privileges and dignities which have been given under the Merger Agreement which is referred to in Art. 291 of the Constitution. If we refer to Art. 291 we find that it deals with what is called "the privy purse" of the Maharajah. We are not concerned with "the privy purse" at all in this case. I have already pointed out that the personal rights, privileges and dignities will not include exemption from civil liability by way of proceedings in Courts.

(12) This will be again apparent when we] refer to Sees. 82 to 87B of the C. P. C. In dealing with these sections, I shall also deal with the finding of the

Subordinate Judge that Ext. 24 is not in conformity with Sec. 87 C. P. C. Now Ss. 85 to 87B, C. P. C. make it clear that not only are Rulers of Indian States not exempt from their civil liability in Indian Courts, but that even Rulers of foreign States, are not so exempt. Section 84 allows a foreign State to sue in Indian Courts.

Sections 85 and 86 permit Rulers of foreign" States to be sued in Indian Courts, the only restriction to such suits being that the consent of the Central Government in writing is necessary before such a suit is filed. Section 87B makes Sec. 85 and subsections (1) and (3) of Sec. 86 applicable to the Rulers of Indian States. Manipur has been declared to be a State to which section 87B C. P. C. will apply. Thus the only restriction regarding the filing of the suits against Rulers of former Indian States is that the consent of the Central Government is necessary. Such a consent has been obtained in the present case as seen from Ext. 24.

(13) The learned Subordinate Judge has stated that Ext. 24 is not in conformity with the provisions of Sec, 87 C. P. C. as it did not direct the plaintiff to sue the Maharajah in the name of his Agent or in any other name. Evidently, the learned Judge did not read Sec. 87~B. He would then , have seen that Sec. 87 C. P. C., applies only to Rulers of Foreign States and has not been made applicable to Rulers of former Indian States.

It is Sec. 85 which provides for the appointment of any person to prosecute or defend a suit on behalf of a Ruler and for such a person being recognised as an Agent of the Ruler. Section 85 has no doubt, been made applicable to Rulers of former Indian States by Sec. 87B. But such Agent is to be appointed by the Central Government I only at the request of the Ruler. It is not necessary in giving the certificate of consent under section, 86 C. P. C. for the Central Government to name any Agent or other person to represent the Ruler.

On reading Sees. 85 and 86 together, it is clear that on a certificate of consent being given I to sue a Ruler, the latter can apply to the Central j Government under Sec, 85 for permission to be represented by an Agent in the Court in a specified suit or suits. Thus the learned Subordinate Judge was wrong in stating that Ext. 24 was not in conformity with Sec. 87 C. P. C.

(14) The learned Subordinate Judge further remarked that the material on record did not show that the certificate was granted after notice to the Maharajah and that the grant of the certificate appeared to have offended natural justice., There is no provision in Sec. 86 for the issue of a notice before a certificate is granted. I am unable to see how any question of natural justice can arise.

I take it that a certificate is provided so that; the Central Government may assure itself that no frivolous suits are filed against the Rulers of Foreign States or former Indian States and further that the suits do not relate to any matter affected by any treaty with the Foreign State or by the Merger Agreement with the Ruler of the former Indian States. The Central Government is not deciding thereby any issue as between the Ruler of the State and the person who

requested for the issue of such certificate. All such questions would only be decided in the suit which is eventually filed in the Court. No question of infringement of rules of natural justice therefore arose as far as Ext., 24 is concerned.

(15) The learned Subordinate Judge has entered into a long discussion on International Law. No such question arose at all in this suit, as International Law would come in only when two Sovereign States are involved. The former Indian States after their merger with the Indian Union and after the promulgation of the Indian Constitution have ceased to be Sovereign States.

(16) I hold therefore that Ext. 24 is a valid sanction given by the Central Government for filing the suit against the late Maharajah. I further hold that no separate sanction was necessary when the present Maharajah Shri Okendrajit Singh was impleaded as one of the legal representatives of his late father.

(1729) Now we shall enter into the merits in the suit. (After discussing the media of the case, His Lordship concluded:)

(30) I have no hesitation in coming to the conclusion that the learned Subordinate Judge was right in dismissing the appellant's claim. The appeal fails and it is accordingly dismissed with the costs of the legal representatives of the late Maharajah Bodh Chandra Singh. The appellant will pay the courtfee due on the memorandum of appeal.