

(1958) 08 MP CK 0017

In the Madhya Pradesh High Court

Case No : First Appeal No. 67 of 1954

Shrimant Thailendrakishoredas

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-08-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1959 MP 27 : (1958) ILR (MP) 542 : (1958) 3 MPLJ 763

Hon'ble Judges : M. Hidayatullah, C.J.;G.P. Bhutt, J

Bench : Division Bench

Advocate : M.L. Shrivastava, for the Appellant; S.B. Sen, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

The judgment in this appeal shall also govern the disposal of F. A. 68 of 1954.

This appeal arises out of Civil Suit No. 6-B of 1950 and the sister appeal out of Civil Suit No. 1-B of 1951, both decided on 14-11-1953 by the Additional District Judge, Rajnandgaon. The plaintiffs in the two suits are brothers. In F. A. 67 of 1954 the plaintiff is Shrimant Thailendra Kishore Das, the brother of the ex-Ruler of Chhuikhadan State who is the appellant in the other appeal. Both the suits were filed against the State of Madhya Pradesh for damages. In this suit the damages were placed at Rs. 30,000 and in the other case at Rs. 12,500. Both the suits were dismissed with costs and hence the present appeals.

The facts are as follows : Mahant Rituparna Kishore Das (plaintiff in Civil Suit No. 1-B of 1951) was the Ruling Chief of Chhuikhadan State. On 15-12-1947 he entered into an agreement with the Union Government, and on 1-1-1948 there was a merger of his State with the Dominion of India. Before the merger on 11-2-1947 he purported to sign an agreement in favour of his brother Shrimant Thailendra Kishore Das (plaintiff in Civil Suit No. 6-B of 1950) by which the Chhuikhadan State bound itself to supply to Shrimant Thailendra Kishore Das

4,000 teak trees of 36 inches girth and over at Chhurkhadan. The delivery was to be effected by the end of June 1948.

Shrimant Thailendra Kishore Das was to pay Rs. 11,000 on delivery of 2,000 tree trunks and a like amount on delivery of the remaining 2,000 tree trunks. It was provided in the agreement that if delay occurred in the delivery of the tree trunks Shrimant Thailendra Kishore Das was to cut and cart away the trees and debit the expenses of cutting and carting etc. towards the purchase price. It was also agreed that the top pieces of the trees cut were to be removed by the contractor by the end of December 1948.

As a consequence of this agreement, 2,000 trees were delivered to Shrimant Thailendra Kishore Das by 26-3-1948. Of these, some were delivered to him at Chhuikhadan and others were required to be cut and carted away by him to a destination of his choice. He accordingly made payment of Rupees 11,000/-as follows:

Rs.

6,684- 4-6

Cash

Rs.

4,315-11-6

By vouchers of expenditure

Rs.

11,000- 0-0

Total

The case of Shrimant Thailendra Kishore Das in this suit was that he was ready and willing to pay the balance of Rs. 11,000 and was entitled to the remaining trees but that the contract was illegally cancelled by the State Government, causing him a loss. He gave out that the market price of the trees was Rs. 20-8-0 per log and the contract price Rs. 5-8-0 per log and claimed damages at Rs. 15 per log for 2,000 logs undelivered to him. It was in this way that his claim for Rs. 30,000 was made up.

The other suit was filed by Mahant Rituparna Kishore Das, the ex-Ruler of Chhuikhadan, who alleged that he had purchased the top pieces from his brother and kept them in his godowns in five villages. These top pieces were seized and an auction of them was proclaimed by the D. F. O. on 14-5-1949. He sent a letter to the Government on 12-5-1949 and received a reply on 14-11-1949 that the matter was receiving consideration. Having waited and served a notice he brought the present suit for wrongful conversion of the timber from the tops at the rate of Rs. 8 per tree, though he confined his claim to Rs. 10,000 on account

of general damages and added thereto a sum of Rs. 2,500 as special damages for mental worry etc. His claim was thus for Rs. 12,500, which was dismissed in the Court below and hence his appeal.

The State Government raised a number of pleas. It urged that the contract itself was sham and the document evidencing it was both fabricated and ante-dated. It averred that there were not 4,000 trees of 36 inches girth and over, and that the contract in effect was to sell every teak tree in Chhuikhadan State for the benefit of the ex-Ruler. In support of its case the State Government stated that the records of the State did not show that Shrimant Thailendra Kishore Das had applied for a contract, that no budget provision had been made to meet the expenses of cutting and carting etc., that there were no other documents or entries in any register, that in 1940 one Mr. H. F. Mooneys, Forest Adviser, Eastern States, had enumerated the trees in Chhuikhadan State and had found only 2,000 to 2,500 trees of over 36 inches in girth, that teak trees were being extracted at the rate of 100 trees per year ever since, and that it was therefore unlikely that 4,000 trees could be existing in Chhuikhadan State.

It also pointed out that the price was exceedingly low inasmuch as the cost of cutting and transporting 4,000 teak trees and logs to Chhuikhadan would itself have amounted to Rs. 22,000 at Rs. 5-8-0 per log and the contract price therefore represented only the cost of extraction and did not leave any margin of profit to the State; in other words, the State Government averred that this was a gift of the trees by the Ruling Chief to his brother or himself, making it appear as a reasonable contract by adding an amount of Rs. 22,000 as costs, which merely covered the expenses of extraction. The State Government stated that the contract of the Ruling Chief was not binding upon the State Government and the plaintiff Shrimant Thailendra Kishore Das had fraudulently obtained possession of 2,000 trees through subordinate forest officers. The State Government also claimed immunity for its action in the municipal Courts on the ground that the action of the State Government could not be questioned there.

The trial Court framed 14 issues in Civil Suit No. 6-B of 1950 and decided them against the plaintiff Shrimant Thailendra Kishore Das. In the sister case additional issues were framed to cover the case of the tree tops and the right of Mahant Rituparna Kishore Das to bring the suit.

The trial Court held that the agreement was very suspicious but it was prima facie genuine. It held that the State Government was not bound to honour the agreement and its action in repudiating it was not open to challenge in a civil Court, being an act of State. It also held that there was no proof that there were 4,000 trees in Chhuikhadan State of 36 inches girth, that the formalities for such a contract in Chhuikhadan State were not proved, and that Shrimant Thailendra Kishore Das did not sign any document to bind himself in return. It also held that the market value of the trees on the date of cancellation was not proved, and that thus no suit for damages could be successful. It held that there was no cause of action. Civil Suit No. 6-B of 1950 was thus dismissed.

In the other suit the same findings were reaffirmed in a judgment which adopted the reasoning in the judgment in Civil Suit No. 6-B of 1950. It was further held for purposes of that suit that though 2,000 trees were delivered the contract itself was not recognized by the State and was rightly rescinded by it, that the top pieces could not be removed, and that though possession thereof was given by subordinate officers it did not bind the Government. The trial Court also held that there was no reliable proof that Mahant Rituparna Kishore Das had purchased the top pieces from his brother nor that he had collected them in his depots, and it was held that the ex-Ruler Mahant Rituparna Kishore Das had no cause of action. Civil Suit No. 1-B of 1951 was therefore dismissed with costs.

In these two appeals all these findings are challenged, while the State Government challenges the finding about the genuineness of the agreement and urges that it was a fabrication and was antedated.

There are undoubtedly very many suspicious circumstances about the transaction. To begin with, the ex-Ruler purported to act for the State without the intervention of the Dewan. The agreement was in favour of his brother and was on the eve of integration. The said 4,000 trees were sold for a price which left a very large margin of profit to the purchaser with no profit whatever to the State of Chhuikhadan. The evidence shows that a teak log of 36 inches girth or more contains about 13 to 14 c. ft. (P.W. 5). The price of teak was Rs. 5 to Rs. 5-8-0 per c. ft at Nandgaon (P.W. 2) and Rs. 4 to Rs. 4-4-0 at Chhuikhadan (P.W. 3). The price of 4,000 logs at Rs 5 per c. ft. would be nearly Rs. 2,80,000. The cost of transport with cutting was estimated by the plaintiff's witnesses themselves to be Rs. 5-8-0 per log.

The amount to be spent for cutting and carting the trees would have come to Rs. 22,000 which left a clear profit, in so far as the logs were concerned, of Rs. 2,58,000. To this must be added the price of the tops, which was estimated to be from Rs. 3 to Rs. 6 per tree. The cost of transport was estimated to be about Rs. 1 per tree and the profit thus works out to about Rs. 16,000. The total profit to the purchaser was thus Rs. 2,74,000 and the income to the State was Rs. 22,000 which undertook the burden of cutting and transporting the trees, which amounted to Rs. 22,000 according to the evidence of the plaintiffs witnesses. It would thus appear that the transaction was wholly one-sided and amounted to a gift of the trees standing in Chhuikhadan State either to the ex-Ruler or to his brother or to both.

It was thus an exceedingly imprudent act so far as the governance of a State is concerned. If one were to go by the evidence regarding Mooney's report, to which we have referred earlier, there were not more than 2,000 to 2,500 trees in Chhuikhadan State. These trees were being extracted at the rate of Rs. 100 per tree from the year 1940 when the report was given. It would thus appear also that a large number was put down in the agreement, so that even if the trees were not supplied there would still be a substantial claim for damages against the incoming State.

When we add to it the following circumstances that there was no application for the contract (P.W. 1) Mahant Rituparna Kishore Das, that there was no counterpart signed by Shrimant Thailendra Kishore Das (P.W. 2), that there was no earnest money demanded (P.W. 2), that there was no budget allowance for cutting the trees (the statement of P.W. 1 is not believable), that there was no proclamation of sale (P.W. 1), and that the papers did not pass through the Dewan (P.W. 1). it is quite obvious that the contract was not in the interest of the State but to benefit the ruling family. Shrimant Thailendra Kishore Das had never taken such a contract before (P.W. 1) and there was no reason given by him why he was given such a contract on such highly profitable terms on the eve of integration. We are of the opinion, therefore, that the contract, even if it was executed by the ex-Ruler on the date alleged, was not a bona fide one and was for the aggrandisement of the family of the ex-Ruler and himself at the expense of the integrating State.

Assuming, however, that the contract was good in favour of Shrimant Thailendra Kishore Das, the question is whether there was any acceptance of this contract at any time by the State of Madhya Pradesh. According to the C. P. States (Administration) Order, 1947, the Ruler of the State was equated to the Provincial Government, and the approval of the Provincial Government was therefore necessary. The Provincial Government never accorded its approval to this agreement though 2,000 logs were cut and supplied by the subordinate officers and the price was accepted by them. The State Government repudiated this contract and did not consider itself bound by it. In our opinion, the action of the State Government is not justiciable in the civil Courts, being an act of State. What is meant by an act of State was laid down by their Lordships of the Privy Council in *Vajesinghji v. Secy. of State* AIR 1924 PC 216 (A) in the following words :

"This law was most clearly laid down in the judgment of the Board delivered by Lord Atkinson in the case of *Secretary of State for India v. Bai Rajbai* ILR 39 Bom 625 : (AIR 1915 PC 59: 42 IA 229) (B). Their Lordships do not propose to repeat what was there said. It was no new law that Lord Atkinson laid down. The same had been held in the case of *Secretary of State for India v. Kamachee Boye Sabiba* 7 Moo IA 476 (C) and *Cook v. Sprigg* 1899 AC 572 (D). It matters not how the acquisition has been brought about. It may be by conquest. It may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can only make good in the municipal Courts established by the new sovereign such rights as that sovereign has, through his officers, recognised.

Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to these inhabitants to enforce these stipulations in the municipal Courts. The right to enforce remains only with

the High Contracting Parties. This is made quite clear by Lord Atkinson at page 233 (of 42 Ind App): (at p. 63 of AIR), when, citing the Ponogoland case of *Cook v. Sprigg* (D) (cit. sup.), he says :

" It was held that the annexation of territory made an Act of State and that any obligation assumed under the treaty with the ceding State either to the sovereign or the individuals is not one which municipal Courts are authorised to enforce."

The law was restated by their Lordships in AIR 1930 267 (Privy Council) and *Secy. of State v. Rustam Khan* AIR 1941 PC 64 (F). Their Lordships of the Supreme Court have approved of the statement of the law by the Privy Council in *Raja Rajinder Chand Vs. Sukhi*, . It would thus be quite clear that the contract entered into by the Chhuikhadan State or the ex-Ruler was not *proprio vigore* binding upon the State Government unless it accepted it or ratified it in some way. There was no acceptance, and the action of the subordinate officers, some of whom were the ex-servants of the State of Chhuikhadan, cannot bind the State Government.

The case decided in F. A. No. 91 of 1953, D/-22-1-1957 (H) was cited before us but is easily distinguishable, because in that case the competent authority had already ratified the contract, and hence the case could not be covered by the doctrine of act of State any more. In our opinion, the claim of Shrimant Thailendra Kishore Das was not justiciable in a Court of law, and Civil Suit No. 6-B of 1950 was rightly dismissed. His appeal, therefore, has no substance and is dismissed with costs.

What we have said so far applies also to Civil Suit No. 1-B of 1951 out of which first appeal No. 68 of 1954 arises. There is, however, one other matter which is special to that case. In the written statement of the State Government the sale in favour of the plaintiff in that suit (Mahant Rituparna Kishore Das) was specifically denied. It was also alleged that the plaintiff had no cause of action against the defendant and his right of suit was also denied. The contention of the plaintiff was that he had purchased the tree tops from his brother; and to establish that he had a right of suit, he had to prove satisfactorily the purchase in his favour.

The evidence on this part of the case is exceedingly unsatisfactory and it appears that Mahant Rituparna Kishore Das took on himself the duty of filing this suit. If he did so without purchasing the property, he would be hit by Section 6(e) of the Transfer of Property Act which provides that a mere right to sue cannot be transferred. We have thus to examine the evidence led in the case with regard to the sale of the tree tops to Mahant Rituparna Kishore Das. On this part of the case the evidence is of the two brothers. Mahant Rituparna Kishore Das as P.W. 1 stated as follows :

"The tops were removed by Thailendra Kishore Das before the time of some of the trees and tops of roughly between 600 to 700 were removed by me as they have been purchased by me. I have kept them in about five depots in five

different villages and I had also removed them before 31-12-1948."

In his cross-examination he stated :

"I purchased the top pieces from my brother Thailendra Kishore Das between Oct. to Dec. 1948, I cannot say for what amount I purchased. There was no writing. I have taken the top pieces of 600 to 700 trees. The five depots mentioned by me were my depots. I do not know whether Forest Department had any depot. I opened the depots for collecting these top pieces. I have maintained an account of collecting the top pieces in my private office but the cash book is filed in some Criminal Court. I did not visit the place nor have personal knowledge about the collection of top pieces."

His brother (P.W. 2) stated as follows :

"I settled with my brother, the Raja Saheb, that he might get them removed and pay me a reasonable price.

* * * * * My brother had opened depots at Chhindari and other places soon after the contract.

* * * * * I cannot say of now many trees the logs pieces were transferred by me to Raja Saheb. The talk about transfer of the logs pieces took place before the merger, i.e. before 1-1-48. I did not go to see if Raja Saheb got the logs pieces collected. I was informed that they had been collected, I do not know when they were collected."

This is all the evidence with regard to the transaction of sale as alleged by the plaintiff in that suit. We are not satisfied that the sale in favour of Mahant Rituparna Kishore Das has been established at all. All that he has done is to sue the Government relying upon his position as the ex-Ruler of Chhuikhadan State. He probably felt that the logs from the tree tops having been placed in his depots would not be touched by the State Government. In this he was deceived and inasmuch as he took upon himself the task of corresponding with Government on the subject, we think that the plea of sale was put in to claim a right of suit.

We are not satisfied that there was such a sale, the terms of which are not deposed to at all by the two brothers. We think that the plaintiff in this suit was incompetent to sue in view of Section 6(e) of the Transfer of Property Act. Since the suit was brought by a person having no right of suit, no decree can follow. The suit was, therefore, rightly dismissed, both for the reason that the State Government is not answerable for the cancellation of the contract in a municipal Court and for the additional reason that the plaintiff in this suit had no right of suit.

In the result, both the appeals fail and are dismissed with costs.