
(1960) 10 KL CK 0004

In the High Court Of Kerala

Case No : S.A. No. 396 of 1960 and C. R. P. No. 421 of 1960

State of Kerala

APPELLANT

Vs

Ravi Sarma Raja

RESPONDENT

Date of Decision : 21-10-1960

Acts Referred:

Constitution of India, 1950 — Article 295(2), 3, 31(1), 4
States Reorganisation Act, 1956 — Section 91(a)

Citation : (1960) KLJ 1461

Hon'ble Judges : Velu Pillai, J

Bench : Single Bench

Advocate : K.A. Mohammad Government Pleader, for the Appellant; P. Govinda Menon, P.K. Krishnankutty Menon and P. Narendra Menon, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—The suit that has led to this Second Appeal, was instituted in the Court of the Subordinate Judge at Parur, for declaring the right of the plaintiff's family to an annuity, now payable by the defendant, the State of Kerala, which is divided into monthly, half-yearly and yearly installments as specified in the plaint. The plaintiff is a member of a Malayala Brahmin family, which possessed sovereign rights over the territory of Parur, which were relinquished in favour of the Ruler of Travancore State in the year 939 M. E. corresponding to 1764 A. D. It is the plaintiff's case, that in consideration of this relinquishment, the Ruler of Travancore State, made a grant to the plaintiff's family, of the annuity, which originally was payable partly in money and partly in paddy, but later, was payable in money only, the part which was payable in paddy being commuted into money at the rate of one Travancore Sirkar rupee per parah of paddy, and amounting in the aggregate, to Rs. 4000-12-0 per annum. It was common ground, that the annuity was being paid regularly till September 1, 1956. In March, 1955, the Government of Travancore-Cochin State passed an order, by which the amount of such annuities was to be reduced pro rata at every reduction in the number of members in the concerned family, as by death or otherwise. Several attempts

were since made by the plaintiff, for the payment to him of the full amount of the annuity, without reduction, but they did not succeed. Hence the present suit was filed for declaration as aforesaid. The contentions of the defendant, which require to be stated for the disposal of this appeal were, that there is no legal right in the plaintiff or his family to the annuity, which was being paid ex gratia and not in pursuance of any grant, that the defendant is not liable to pay the same, that the Kerala State having come into existence as a result of Acts of State, the municipal courts are precluded from adjudicating with respect to the annuity, and that consequential reliefs not having been prayed for, the suit is barred under the proviso to Section 42 of the Specific Relief Act, 1877. The Subordinate Judge, by whom the suit was tried, has held in favour of the plaintiff on these contentions and has decreed the suit in terms of the plaint with costs. The defendant preferred an appeal to the Court of the Additional District Judge at Parur, which was out of time, and the petition to condone the delay was dismissed, by the order, which is now sought to be revised in Civil Revision Petition 421 of 1960. The appeal having been dismissed as barred by limitation, the defendant has preferred this Second Appeal. Both in the Civil Revision Petition and in the Second Appeal, the learned Government Pleader pressed, that the delay in preferring the first appeal ought to have been condoned. The learned counsel for the plaintiff-respondent agreed to this, but pressed for a decision of the case on the merits by this Court itself, instead of its being sent back to the lower Court for consideration of the merits. The first question for decision is, whether there was a grant of the annuity to the plaintiff's family by the Ruler of Travancore. It was not disputed, that the plaintiff's family possessed sovereign powers over Parur territory. The cession of this territory by the ruling family to the Ruler of Travancore is an admitted historical fact; the document of cession itself is found printed in the Appendix to Volume II of the Travancore State Manual by T. K. Velu Pillai at page 169, and it bears the date, Meenom 2, 939 M. E. It is seen from an entry at page 173 of the same Appendix that the Ruler of Travancore made a present of a diamond jewel to the Shri Padmanabhaswamy Temple, on Mithunam 23, 941 M.E. The history of Travancore by P. Sankunni Menon contains a record of the historical event, in the following words at page 199:

In this year, 939 M. E. (1764 A. D) this able Dalawah persuaded the Rajah of Paravoor to resign formally his sovereign rights in the Paravoor State in favour of Travancore and retire on a pension. Accordingly the Rajah signed an agreement, by which he gave up entirely his sovereign rights to Travancore, and accepted a family pension.

The allegation in the plaint, that there has been payment from the year 1764 A. D. was not denied, and in the written statement, payment every year was even admitted. P. W. 1, the plaintiff, has sworn to this, and to the fact, that such payment was to the family and not to any individual member thereof. After the Travancore State ceased to exist as a State, the payments were continued by the Governments, of the United States of Travancore and Cochin and afterwards, of the Travancore-Cochin State, till September 1, 1956. Thus, there have been

regular payments during the space of about 192 years. The original deed of grant is not available, and specific evidence as to it, is now lost in antiquity. But it seems to me, that in the circumstances and on the facts, a presumption in favour of a grant which is now lost, may reasonably be raised. The principle on which a presumption of lost grant is founded, has been stated by the Privy Council in AIR 1930 103 (Privy Council) in the following terms:

The presumption of an origin in some lawful title which the Courts have so often readily made in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming, is one which is not a mere branch of the law of evidence. It is resorted to because of the failure of actual evidence.....The matter is one of a presumption, based on the policy of the law, but even considered as an inference from proved facts, the grant presumed is a thing, which may well be regarded as likely to have happened. At the same time it is not a presumption to be capriciously made, nor is it one which a certain class of possessor is entitled to, de-jure. In a case such as this, where it is necessary to indicate what particular kind of lawful title is being presumed, the Court must be satisfied that such a title was in the nature practicable and reasonably capable of being presumed, without doing violence to the probabilities of the case. The presumption is not an "open sesame" with which to unlock in favour of a particular kind of claimant a closed door, to which neither the law nor the proved facts would in themselves have afforded any key. It is the completion of a right, to which circumstances clearly point, where time has obliterated any record of the original commencement.

In my view, the present case falls squarely within the scope of this principle and its limitations. The principle has been recognised by the Supreme Court in *Buddu Satyanarayana and Others Vs. Konduru Venkatapayya and Others*, and *Monohar Das Mohanta Vs. Charu Chandra Pal and Others*, . In Ext. P. 5, hypothecation bond, dated Karkadakom 30, 1104 M. E., executed in favour of the Government of the Travancore State by the plaintiff's family, the annuity in question was secured to guarantee due payment under its provisions, and this is a strong piece of evidence, that the payment of the annuity was not ex-gratia. It is improbable to think, that the sovereign rights which were relinquished by the Parur Rajah belonged to him and not to his family. Apart from the sworn statement, of P. W. 1, that the payment was being made to the family, in paragraph 3 of the written statement it has been admitted, that the payment was to the family. I agree with the learned Subordinate Judge in holding that there has been a grant of the annuity to the plaintiff's family, in or about the year 1764 A. D.

2. The next question is, whether the Kerala State is liable to make payment and whether the municipal Courts of the State can adjudge its liability. Article III(b) of the Covenant entered into by the Rulers of the former States of Travancore and Cochin, for the formation of the United States of Travancore & Cochin reads:

as from the appointed day

(b) all duties and obligations of the Ruler of either of the Covenantee States pertaining or incidental to the Government of that State shall devolve on the United State, and shall be discharged by it;

The contention was, that the United States of Travancore and Cochin later the Travancore-Cochin State, and still later, the Kerala State, came into existence by successive acts of State, and that the Courts have no right to adjudicate with respect to the liability of these Governments. The covenant above referred to, was between two sovereign States, for the formation of a new State and was thus an act of State just as a similar Covenant entered into by certain States for the formation of Patiala and East Punjab States Union (Pepsu), was held to be an act of State, by the Supreme Court in *Dalmia Dadri Cement Co. Ltd. Vs. The Commissioner of Income Tax*, . That case is also authority for holding, that an act of State, cannot found a right which could be adjudged or enforced in municipal courts. They could be so adjudged or enforced only if, to quote from the judgment in the above case

the new State had accorded recognition to them and what is requisite, therefore, is a declaration or conduct of the Patiala Union (the new State) subsequent to its formation which can be regarded as amounting to affirmation of Ext. A (the right).....It was argued that Article VI of the Covenant would at least be valuable evidence from which affirmance of those rights could be inferred. That is so; but that inference must relate to an act or conduct of the new State.....If there were any acts of the new State which were equivocal in character, it would have been possible to hold in the light of Article VI of the Covenant that its intention was to affirm the concessions in clause (23) of Ext. A (the right claimed).

But the Patiala Union, instead of affirming the rights conferred on the party previously by Ext. A therein by one of the Covenantee States, promulgated an Ordinance which disaffirmed such rights, which were therefore negated. Bose J. also, by a separate judgment affirmed this principle, and made a reservation in cases "in which, rights to immovable property are concerned" as to which, he had expressed himself somewhat differently, in *Virendra Singh and Others Vs. The State of Uttar Pradesh*, . The Privy Council had laid down the law in *Asrar Ahmed v Durgah Committee, Ajmer* (AIR 1947 P. C. 1) in the same terms. It observed:

Where a State has been ceded by a Native Ruler to the British Government the rights which the inhabitants of that State enjoyed against its former Ruler avail them nothing against the British Government and cannot be asserted in the Courts established by that Government except so far as they have been recognised by the new Sovereign Power. Such recognition may be by legislation or by agreement, expressed or implied.

3. The next stage in the constitutional evolution was reached when on November 24, 1949, the Rajapramukh of the United States of Travancore & Cochin made a

proclamation, declaring "that the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the United States of Travancore & Cochin as for the other parts of India and shall be enforced as such in accordance with the tenor of its provisions". With the Constitution of India, came into existence, the new State of Travancore-Cochin as a Part B State. As observed, the United States of Travancore and Cochin continued to make payment till the date of the Constitution. As held by the Supreme Court, Article III of the Covenant may be referred to, at least as explaining the payment, the right to which, having been recognised, may be treated as its liability. Under Article 295 (2) of the Constitution, all liabilities and obligations of the Government of the United States of Travancore and Cochin became those of the Government of the State of Travancore-Cochin. The Government of the State of Travancore-Cochin in turn continued to make payment till September, 1956. Whether the Covenant and the Proclamation are to be regarded as acts of State or not, there has been recognition by the successive Governments, of the right to the annuity. Upon the Constitution of India coming into force, this right became a right to property, and entitled to protection under Article 31 (1) of the Constitution. In *M/s. Dalmia Dadri Cement Co. Ltd. v Commissioner of income tax*, cited, the petitioner before the Supreme Court, had no such rights on the date of the Constitution, as the Patiala Union, far from recognising the rights under the agreement with the Ruler of the State of Jind, had repudiated them by an Ordinance. But in *Virendra Singh's* case, the grants made by two independent States, had been recognised by the Union of Vindhya Pradesh, though formed by an act of State, and subsequently, after the Constitution came into force, the Government of the State of Uttar Pradesh decided to revoke them. The grants made by the two States not having been repudiated up to the date of the Constitution, Bose J. held that they conferred rights which could be enforced under the Constitution.

4. The reorganisation of States was not an act of State; it was brought about in the exercise of the legislative power of Parliament under Articles 3 and 4 of the Constitution. Bose J. had ruled in *Virendra Singh's* case, that under the Constitution no State Government has the right to do anything in the nature of an act of State.

There can be no act of State against any one who owes allegiance to the Crown. Hence the defence of act of State cannot be set up by the Crown or any of its servants in an action of tort brought by a British subject or by a friendly alien resident within British territory". (Halsbury's Laws of England, Third Edition, vol. VII, page 280, Paragraph 594), Section 91 (a) of the States Reorganisation Act, 1956, reads as follows:

The benefit or burden of any assets or liabilities of an existing State not dealt with in the foregoing provisions of this Part shall-

(a) if there be only one successor State, pass to that State,"

This is sufficient to fasten the liability of the Travancore-Cochin State on the defendant-State. I therefore hold, that the Kerala State is liable to make payment of the annuity, and that the plaintiff's right thereto, can be adjudged and enforced by the municipal courts of the State.

5. The objection to the maintainability of the suit u/s 42 of the Specific Relief Act, 1877, was taken in the memorandum of appeal to this Court for the first time. The plaintiff lost no time in making an application for amendment of the plaint, so as to include a prayer for the recovery of the arrears of annuity for 18 months, i.e., till the institution of the suit, and paid court-fee on the plaint for this court. He was ordered to pay court-fee for the lower court also, and this has been done. The objection not having been taken in the first court, it is not proper to refuse the amendment prayed for. (See Pollock and Mulla on Indian Contract and Specific Relief Acts, 8th Edition, page 864 and the cases collected). Accordingly, I hereby allow the amendment prayed for in C. M. P. 3694 of 1960.

6. It was pointed out by the learned Government Pleader, that the Subordinate Judge is not clear in the decree, as to the commutation rate for the portion of the annuity payable in paddy. It was alleged in the plaint, that the prevailing commutation rate was, one Travancore Sirkar rupees per parah of paddy, and that by memo dated February 12, 1955, it was enhanced to one rupee eight annas per parah, and in the amended plaint, the plaintiff claimed to be paid at this rate. This rate may be adopted for the arrears sued for. As for the future payment, the commutation rate which may be fixed for pensions and annuities will be adopted. But in drafting the decree, two mistakes were committed, one, that the monthly cash payment is Rs. 19.25nP, based on a mistake in the plaint, and the other, that the six monthly payment is Rs. 130.37nP. whereas it is really Rs. 140.37nP. as claimed in the plaint. These mistakes have been subsequently corrected by the Additional District Judge at Parur by order dated December 3, 1959, passed on C. M. P. 2588 of 1959 in A. S. 153 of 1959 and in preparing the decree, these points have to be borne in mind. The Government Pleader raised an objection, that the suit being for a declaration of the right to receive the annuity court-fee has to be paid u/s 3 (2) of the Travancore-Cochin Court Fees Act, 1125. I have upheld this objection, and ordered the plaintiff to pay additional court-fee here, for the suit, and I have also ordered the defendant-appellant to pay additional court-fee in this court and in the court of the Additional District Judge, Parur similarly. These directions have been complied with, by both parties. In the result, a decree is hereby granted to the plaintiff, also to recover arrears of annuity as claimed in the petition for amendment of the plaint, referred to above. The commutation rate after the date of the suit, will be, what may be fixed by the Government of the State of Kerala for pensions or annuities. Subject to these modifications, the decree passed by the Subordinate Judge as corrected by order dated December 3, 1959, referred to above, is affirmed, and the appeal is dismissed with costs. The Civil Revision Petition 421 of 1960 is allowed, but without costs. The order as to costs in the Court of the Additional District Judge, Parur, will be as decreed by that court.