
(1961) 03 MP CK 0019
In the Madhya Pradesh High Court
Case No : F.A. No. 34 of 1958

State of Madhya Pradesh

APPELLANT

Vs

Murlidhar Mulamchand, Firm

RESPONDENT

Date of Decision : 21-03-1961

Acts Referred:

Constitution of India, 1950 — Article 133, 19(1)(f), 299, 31, 31(1)

Citation : (1961) ILR (MP) 837 : (1961) JLJ 943 : (1961) MPLJ 729

Hon'ble Judges : S.P. Bahrgava, J; N.M. Golwalker, J

Bench : Division Bench

Advocate : H.L. Khaskalam, for the Appellant; A.P. Sen, for the Respondent

Final Decision : Allowed

Judgement

N.M. Golwalker, J.

This is an appeal by the defendant-State challenging the correctness of the decree passed against it by the Additional District Judge, Balaghat, in Civil Suit No. 24-B of 1954. The plaintiff has also filed an appeal with respect to the claim which was disallowed and the same has been registered in this Court as First Appeal No. 64 of 1958. This judgment, therefore, will govern the decision of that appeal also.

Briefly stated the facts giving rise to the suit of the plaintiff against the defendant-State are these. That the plaintiff had purchased a right to pluck, collect, remove and enjoy the various forest produce like lac, tendu leaves, from the proprietors of the different Malguzari jungles as detailed in Schedule A attached to the plaint. This right he had acquired before the proprietary rights in those forests came to vest in the State of M.P. under the M.P. Abolition of Proprietary Rights Act of 1951 and those rights were also to be enjoyed by him after 1-4-1951 on which date those proprietary rights came to so vest. It was the case of the plaintiff that the Deputy Commissioner, Balaghat, in whose jurisdiction all those Malguzari forests were, took charge of all those forests as

from 1-4-1951 and ousted the plaintiff therefrom preventing him thereby from enjoying the aforesaid rights that he had already acquired. The plaintiff avers that this ousting was unlawful and caused him considerable loss which he was entitled to get from the defendant-State. Accordingly he filed the suit for damages. In addition to the damages he also claimed a refund of Rs. 3,600 which he was required to deposit in Government treasury for purchasing the right to collect tendu leaves of all those village forests for the year 1951. He claimed the refund on the ground that since he had already that right to collect, the recovery of the money was unlawful. Similarly he also claimed refund of Rs. 10,000 which he was required to deposit towards the right to collect lac from those forests for the years 1951, 1952 and 1953. This refund is however claimed on the ground that the contract evidencing grant of this right to him was not in conformity with Article 299 of the Constitution of India and was void.

The defendant disputed the right of the plaintiff to claim damages as also for refund of the amounts.

The learned Additional District Judge trying the suit dismissed the claim for refund of Rs. 10,000 not only on the ground that the contract was good even though not in conformity with Article 299 of the Constitution but also on the ground that the plaintiff was allowed to enjoy the rights of collecting lac and he did avail of the same. He also held that even if the plaintiff did not care to avail of those rights to collect lac in pursuance of that contract granted by the defendant, he could not claim refund of Rs. 10,000 as it was his own volition to abandon those rights and the defendant could not be held responsible for the same. The other two claims of the plaintiff for the damage as also for refund of Rs. 3,000 were, however, accepted and decreed. Hence these appeals brought by the defendant and the plaintiff.

Admittedly the plaintiff's claim for losses has been solely decreed on the basis of the view expressed by the Supreme Court in the case of *Firm, Chhotabhai Jethabhai Patel and Co. v. State of Madhya Pradesh* AIR 1953 SC 108=1953 SCR 476, in which the contracts of the type as in the instant case were held to be mere licences and enforceable against the State even after the vesting of the proprietary interest in the State in pursuance of the M.P. Abolition of Proprietary Rights Act, 1951. It was held in that case that the outgoing proprietors did not under the contracts convey any proprietary interest to the grantees. However this law laid down has been later on held to be not a good law by their Lordships of the Supreme Court in the case of *Mahadeo v. The State of Bombay* AIR 1959 SC 735. Now the legal position laid down by the Supreme Court is this that the contracts of the type as in the instant case do convey thereunder proprietary rights to the grantees and as all the proprietary rights in an estate, mahal, alienated village or alienated land vesting in the proprietor or in any person having interest in such proprietary rights through the proprietor, shall pass from such proprietor or such other person to and vest in the State free from all encumbrances, no rights in favour of such grantees, therefore, subsisted under

those contracts after 1-4-1951 and the State could exclude those grantees from enjoying any such rights secured to them under those contracts. That means the exclusion of the plaintiff from those various areas by the State could not be said to be unlawful.

Before the Supreme Court came to decide the case of Mahadeo v. The State of Bombay AIR 1959 SC 735, it had already given decisions in two cases, one of Anand Behera and another v. State of Orissa and another AIR 1956 SC 17=1955 (2) SCR 919 and the other of Shantabai v. State of Bombay 1959 SCR 265=AIR 1958 SC 532, where similar questions as are involved in the instant case were examined. It was laid down therein that rights conferred under the contracts, which were substantially similar to those that are in question before us, partook of the nature of interest in immovable property. The authority of the case of Chhotabhai 1953 SCR 476=AIR 1953 SC 108 was thus weakened considerably and ultimately in the case of Mahadeo v. The State of Bombay AIR 1959 SC 735, that decision was held to have been given per incuriam and therefore not liable to be followed. Not only that but it was regarded as overruled in the case of the State of M.P. v. Keshrimal F.A. No. 124 of 1956, D/- 25-6-1959. (1959 MPLJ Note No. 129) to which one of us (Golkar J.) was a party. The result, therefore, is that the interest granted to the plaintiff under the various deeds of contracts has to be held to be of the nature of proprietary interest of the grantor. It would, therefore, necessarily follow that the said interest having vested in the State of M.P., under the provisions of the M.P. Abolition of Proprietary Rights Act, free from all encumbrances, no interest whatsoever under the contracts subsisted in favour of the plaintiff so as to enable him to lay any claim thereunder. There appears to be no escape from this consequence with the result that the very basis of the decree granted to the plaintiff disappears. In our opinion the question as to the nature of rights reserved to the plaintiff under various contracts in the instant case stands finally concluded by the latest pronouncement of the Supreme Court referred to above. It makes no difference that in Mahadeo's case AIR 1959 SC 735 contracts had conveyed more than mere leaves.

The learned counsel Shri A.P. Sen, appearing for the plaintiff-respondent however relying on the following observations made by the Supreme Court in Shantabai's case 1959 SCR 265=AIR 1958 SC 532 urged that the suit, as framed against the State of M.P., claiming compensation for having been excluded from enjoyment of the rights under the various contracts is maintainable. The observations relied upon are these:-

If, therefore, the document is construed as a matter of contract, then assuming but without deciding that a contract is a property within Articles 19(1)(f) or 31(1) of the Constitution, she cannot complain, for the State has not acquired or taken possession of her contract in any way. The State is not a party to the contract and claims no benefit under it. The petitioner is still the owner and is still in possession of that contract, regarded as her property, and she can hold it or

dispose of it as she likes and if she can find a purchaser. The petitioner is free to sue the grantor upon that contract and recover damages by way of compensation. The State is not a party to the contract and is not bound by the contract and accordingly acknowledges no liability under the contract which being purely personal does not run with the land. If the petitioner maintains that, by some process not quite apparent, the State is also bound by that contract, even then she, as the owner of that contract, can only seek to enforce the contract in the ordinary way and sue the State if she be so advised, as to which we say nothing, and claim whatever damages or compensation she may be entitled to for the alleged breach of it. This aspect of the matter does not appear to have been brought to the notice of this Court when it decided the case of Chhotabhai Jethabhai Patel and Co. v. The State of Madhya Pradesh 1953 SCR 476=AIR 1953 SC 108, and had it been so done we have no doubt that case would not have been decided in the way it was done.

In our opinion, by the aforesaid observation, it was never suggested that the Supreme Court accepted that the petitioner before it had the remedy of suit instead of the petition under Article 31 of the Constitution for damages against the State. It was merely pointed out in the light of a particular submission made before it that the petitioner, if she be so advised, may pursue her remedy in the ordinary way. Even then as to the question, whether the State is bound by the contracts entered into by the outgoing proprietor, it has been expressly stated that the process by which the State was said to be bound was not apparent to them. So it will not be permissible to say that right of such a suit against the State has been duly recognised. We do not, therefore, feel disposed to accede to this submission.

Then apart from what has been stated in the foregoing paragraph, the State of M.P. cannot be held liable to compensate the plaintiff for refusing to recognise the contracts in his favour. It was urged before us that the plaintiff is not a person having interest in any proprietary rights through the outgoing proprietor within the compensation of section 3 of the M.P. Abolition of Proprietary Rights Act. In our opinion the moment it is accepted that he held certain proprietary rights by virtue of the contracts granted by the outgoing proprietor, he would have to be held to be such a person. There appears to be no escape from this inevitable resulting position. It means therefore that the plaintiff would have to share with his grantor the amount of compensation determined and paid under the M.P. Abolition of Proprietary Rights Act. It cannot be disputed that the grantor has been paid compensation for his rights in the same forest which vested in the State under that Act inasmuch as the forest was liable to vest in the State. It cannot also be disputed that the compensation within the contemplation of that Act payable to the outgoing proprietor has to be determined and paid only in accordance with the provisions of that Act and of no other. Since the outgoing proprietor could not have claimed the same by a civil suit against the State much less could the present plaintiff do so. Thus in this view that we have taken we do not see how the instant suit filed by the plaintiff

can be held to be tenable. It has, therefore, to be dismissed.

As to the claim for refund of Rs. 3,000 it has also got to be disallowed on the ground that as the defendant was entitled to permit the plaintiff to collect tendu leaves for the year 1951, as the old contract in favour of the plaintiff no longer subsisted, the recovery of Rs. 3,000 from the plaintiff for allowing him to collect tendu leaves could not be said to be unlawful. The learned Additional District Judge allowed the claim for refund on the ground that the plaintiff had already that right and the defendant could not recover Rs. 3,000 from him for granting him that right. But in view of the legal position as stated in the foregoing paragraph the defendant was fully justified in recovering Rs. 3,000 from the plaintiff. Thus we hold that the plaintiff is not entitled to claim refund of the amount and accordingly we disallow that claim also.

The result, therefore, is that we reverse the decree of the lower Court and instead dismiss the plaintiff's suit.

As to the appeal filed by the plaintiff, so far as his claim for Rs. 10,000 is concerned, we do not see how we can come to any conclusions other than those arrived at by the lower Court. The evidence on record conclusively establishes that the plaintiff did work for some time the contracts granted to him for purposes of collecting lac and he appears to have abandoned them, as observed by the learned Additional District Judge, as the rates went down in the year 1952 and thereafter. It was thus plaintiff's own decision not to enjoy those contracts and the State could not be held liable for refund of Rs. 10,000 to him. There is thus no substance in this appeal and we dismiss the same.

The result, therefore, is that we allow this appeal of the State Government and set aside the decree passed against it by the lower Court. Instead we dismiss the plaintiff's suit. The appeal filed by the plaintiff is also dismissed. However in the circumstances of the case we make no order for costs in this Court with regard to either appeals. As to the costs of the suit in the lower Court we direct in the circumstances that the parties shall bear their own costs. Counsel's fee according to the prescribed schedule of rates, if certified.

Shri A.P. Sen requested us to grant a certificate for leave to appeal to the Supreme Court under Article 133 of the Constitution of India. The amount of the subject-matter of the dispute in the trial Court and still in dispute in appeal was and is not less than Rs. 20,000. The plaintiff is, therefore, entitled to the certificate asked for on the strength of the valuation itself. Further the judgment of this Court reverses the judgment of the trial Court, which constitutes an additional ground. The certificate may, therefore, be issued.