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STATE v. LACHMAN KEVALRAM

Gajendragadkar J.

learned brother in holding that the revisional application made by the State against the appellants must be allowed and the sentence of transportation passed against them must be enhanced to the sentence of death.

It is indeed very unfortunate that the appellants, who appear to be young educated men, should have committed this heinous offence. The deliberation which obviously preceded the commission of this offence speaks for itself. The three offenders had armed themselves with fire-arms and while carrying out their object of committing robbery they showed no scruples in the matter of using their fire-arms. All of them rained bullets on passers-by on the public roads of Ahmedabad and it seemed clear from their conduct that if necessary they were prepared to give blood-bath to the citizens of Ahmedabad that morning. It seems to me that offences of this kind must be dealt with very sternly, and unless the sentence of death is imposed on reckless and cold-blooded adventurers like the appellants, the administration of law itself may come into disrepute. That is why I have come to the conclusion that the ends of justice require that the application for enhancement of sentence made by the State must be allowed.

P. C. No order on the contempt application.

Revision Application allowed.

K. B. S.

APPELLATE CIVIL

Before Mr. Justice Bavdekar.

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THAKORE SAHEB KHANJI KESHARI KHANJI (ORIGINAL JUDGMENT-DEBTOR) APPELLANT *v.* GULAM RASUL CHANDBHAI (ORIGINAL DECREE-HOLDER) RESPONDENT.*

Civil Procedure Code (Act V of 1908), s. 86—Constitution of India, art. 363—Suit for money decreed against former Ruler of Indian State—Execution resisted on ground that defendant entitled to personal dignity as before under terms of Merger Agreement—Defendant whether entitled to privileges under s. 86—Whether decree without jurisdiction.

In a suit filed by the plaintiff against the defendant, who was a former Ruler of an Indian State, a decree for money was passed. The execution of the decree was resisted by the defendant on the ground, *inter alia,* that under the terms of the Merger Agreement he was entitled to the privileges under s. 86 of the Civil Procedure Code, 1908, and that the decree was passed without jurisdiction:—

Held, that (*i*) since the suit itself had no reference to any dispute arising out of the provisions of a treaty, agreement, covenant, engage-

* First Appeal No. 130 of 1955 with First Appeal No. 131 of 1955.

ment, sanad or other similar instrument within the meaning of art. 363 of the Constitution of India the fact that there was a dispute between the parties to the suit as to the meaning of the words 'personal dignity' in one of the clauses of Merger Agreement did not bring it within art. 363, and s. 86 of the Code of Civil Procedure did not apply. (*ii*) section 86 of the Code of Civil Procedure did not apply to the defendant who had ceased to be a Ruling Chief before the suit was filed.

Held, therefore, the Court which passed the decree had jurisdiction to try the suit against the defendant.

Kant Narain v. *Chandrabhal*,[1] referred to.

Appeal under s. 47 of the Code of Civil Procedure against the decision of A. K. Shah, Civil Judge, Senior Division, Baroda.

On December 11, 1948, one Gulam Rasul Chandbhai (plaintiff) filed a suit against Khanji Keshari Khanji (defendant) who was the former Thakor of Vajiria and obtained a money decree for Rs. 22,379-15-9, on February 24, 1949. The Vajiria State had merged in the Union of India. Under one of the terms of the Merger Agreement dated May 24, 1948, the defendant was entitled to all the personal dignities and title enjoyed by him before August 15, 1947. In execution of the decree the plaintiff sought attachment of certain agricultural lands of the Jagir of Vajiria State and for appointment of Receiver of these lands to receive the rent thereof from the tenants and to pay it towards the decretal dues. The defendant contended, *inter alia*, that the decree obtained by the plaintiff was without jurisdiction and that the amount sought to be recovered through the Receiver was a pension and exempt from attachment under s. 60 of the Code of Civil Procedure, 1908, and s. 11 of the Pensions Act.

The trial Judge held that the decree was not void for want of jurisdiction and that a Receiver could be appointed as prayed by the plaintiff.

The defendant appealed to the High Court.

M. H. Chhatrapati, with *C. S. Trivedi*, for the Appellant.

B. K. Amin, with *A. H. Thakkar*, for the Respondent.

Bavdekar J.—This is an appeal arising from execution proceedings. The respondent has obtained a decree for money and is seeking to execute it by appointment of a Receiver of what he called the land revenue of certain lands in the former principality of Vajiria. The appellant, who was the former Ruler of the State, contended in the first instance that the decree which had been obtained in this case by the respondent was without jurisdiction. He said that in the second instance the amount of which the respondent prayed that a receiver should be appointed was a pension and was exempt from attachment under the provisions of s. 60 of the Code of Civil Procedure and s. 11 of the Pensions Act, and in case it could not be attached, no

1. (1951) A. I. R. All. 603.

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receiver could also be appointed in respect of it. The learned trial Judge has held that the decree which had been obtained by the respondent was not void for want of jurisdiction. He has indeed accepted that the amount, of which the respondent sought for the appointment of a receiver, was exempt from attachment under the provisions of s. 60 as well as s. 11 of the Pensions Act; but he said that even so there was no difficulty with regard to the appointment of a receiver. The appellant has come in appeal, and the first point which is made before me is that the decree in this case was without jurisdiction.

The respondent attempts to meet this contention by pointing out that the appellant did not raise any contention about jurisdiction in the suit, and he says that now that the Court has passed a decree, his question cannot be gone into in execution. It appears, however, that their Lordships of the Privy Council have decided now once for all that s. 86 of the Civil Procedure Code is based upon public policy, and it was not open, therefore, to any ruling chief to waive the provisions of that section. His failure to object to jurisdiction consequently would not render the decree as one which had been passed by a Court which had jurisdiction to try the suit.

The appellant points next to the ruling of this Court in *Ladkuvarbai* v. *Ghoel Shri Sarsangji Pratabsangji*,[2] in which it was held that if a decree was passed without jurisdiction, the Court may not agree to lend its assistance where the assistance was necessary, e.g., by way of an order to issue notice to show cause under O. XXI, r. 22, if it discovers subsequently that the decree which it had passed was one without jurisdiction. In my opinion, it is not necessary to go into this question in the present appeal, for the reason that I do not think that the decree was void for want of jurisdiction.

Now, the privilege which had been claimed in this case on behalf of the appellant was that under s. 86, and the privilege was only available to Sovereign Chiefs or Ruling Princes. The suit in this case was filed in December 1948, and it is no longer in dispute that at that time the State of the appellant had merged in the Dominion of India, and the appellant was no longer a Sovereign Chief or Ruling Prince. It is contended, however, that under the terms of the Merger Agreement, the appellant was entitled to the same personal dignity and titles as before the date of the agreement, and he is consequently entitled to the dignity which s. 86 confers upon all Sovereign Chiefs and Ruling Princes.

In support of this contention, reliance is placed upon the decision of the Allahabad High Court in *Kant Narain* v.

2. (1870) 7 Bom. H. C. Rep. 150.

Chandrabhal.[3] In that case there was a clause in the Merger Agreement:

"The Maharaja and his family shall be entitled to all personal privileges enjoyed by them whether within or outside the territories of the State, immediately before the 15th of August 1947".

It was held that this had reference to the privilege conferred under s. 86 of the Code of Civil Procedure, the guarantees having been given a statutory effect in art. 363 of the Constitution of India.

Now, in the first instance, a personal dignity is different from a personal privilege, and the right of being exempt from being sued in a Court cannot properly be called a dignity. But even if it amounted to one, I do not see how it would help the appellant. It is true that the Government under the Merger Agreement guaranteed the personal dignity of the appellant. But what is required when an exemption from being sued is claimed is a provision of an enactment. The Merger Agreement has not got the force of law. This appears to have been impliedly recognised by the Allahabad High Court, when they pointed to art. 363 of the Constitution. Now, that article provides:

"Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument."

It seems to have reference to disputes arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument between the Ruler of the State on the one hand and the Government of the Dominion of India or any of its predecessor Governments on the other. Now, the suit which was before the Court had, by itself, no reference to any such dispute. It is true that there is a dispute between the two parties to the suit with regard to the meaning of the words 'personal dignity' in one of the clauses of the Merger Agreement between the appellant and the Dominion of India on the assumption that that agreement has application. But that does not render the dispute which was before the Court in the suit against the appellant a dispute arising out of the provisions of a treaty, agreement covenant, engagement, sanad or other similar instrument.

3. [1951] A. I. R. All. 608.

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In that case, inasmuch as s. 86 has no application to the appellant, who has ceased to be a ruling chief when the suit had been filed, the trial Court had jurisdiction to try the suit against the appellant.

(The rest of the Judgment is not material to the Report).

Appeal dismissed.

K. B. S.

APPEAL FROM ORIGINAL CIVIL, INHERENT AND GENERAL JURISDICTION

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Desai.

1955 *April 6*

P. L. MAYEKAR, AND ANOTHER, APPELLANTS (ORIGINAL RESPONDENTS Nos. 2 & 3) *v.* AMICHAND NARAYAN, AND ANOTHER, RESPONDENTS (ORIGINAL PETITIONER AND ORIGINAL RESPONDENT NO. 2).*

Industrial Disputes Act (XIV of 1947), ss. 2 (k) and (5) and 10 (1) (c)—Dismissal of employees—Dispute concerning re-instatement of such employees referred to Industrial Court—Whether Government had jurisdiction to refer case of dismissed employees to Industrial Tribunal?

A workman as defined in s. 2 (*s*) of the Industrial Disputes Act, 1947 means any person who is employed at any time in an industry. In order to determine whether an industrial dispute has been properly raised or referred, s. 2 (*k*) and s. 2 (*s*) must be read together. A dispute which is the result of a difference between employer and workmen and connected with the employment or non-employment or the terms of employment or conditions of labour of any person can be referred by Government under s. 10 (*1*) (c) of the Act and the Industrial Court can assume jurisdiction in respect of such dispute. The Industrial Court has, therefore, jurisdiction to try a dispute not only with regard to workmen dismissed during the pendency of the dispute but also those dismissed prior to the raising of such disputes.

P. L. M. and another, Appellants, employees of A. N., Respondents were dismissed prior to 1952. Certain demands were put forward by the Labour Union of which the Appellants were members and among the demands was one concerning the re-instatement of the Appellants. The Government of Bombay referred all these demands to the Industrial Court under s. 10 (*1*) (c) of the Act. On the question whether the Government had jurisdiction to refer and the Tribunal could assume jurisdiction to hear disputes as regards workmen dismissed prior to the raising of industrial dispute,

Held, that the Government was entitled to refer to Industrial Tribunal a dispute relating to workmen already dismissed and the Industrial Tribunal had jurisdiction to deal with such dispute.

Narendra Kumar v. *All India Industrial Disputes (Labour Appellate) Tribunal and another*[1] and *Western India Automobile Association* v. *The Industrial Tribunal, Bombay,*[2] referred to.

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* Appeal No. 112 of 1954: Miscellaneous Application No. 210 of 1954.

1. [1954] Bom. 260.
2. [1949] 51 Bom. L. R. 894.