Govindram Gordhandas Seksaria and another Vs State of Gondal by His Highness the Maharaja of Gondal and others

Court: Privy Council

Date of Decision: Dec. 19, 1949

Citation: (1950) AIR(PC) 99

Hon'ble Judges: Lionel Leach, Radcliffe, Oaksey, Lords Greene, JJ.

Advocate: Nevill, Barrow, Rogers, V, Lattey, J.D. Rathod, R. Parikh, Sir Herbert Cunliffe, J.M.R. Jayakar, L.M. Jopling, S.P. Khambatta, R.J.T. Gibson, Sir Thomas Strangman, D.N. Pritt, for the Appearing Parties.

Judgement

Lord Radcliffe

These are consolidated appeals from two decrees of the High Court of Judicature at Bombay dated 8th November 1943. The first of these

decrees reversed a judgment against the respondent the State of Gondal in favour of the present appellants which had been given on 15th January

1943, by the High Court in its ordinary original civil jurisdiction : the second decree dismissed an appeal by these appellants from the same

judgment in so far as it rejected their claim in the suit against respondents 2 and 3.

2. The facts out of which the litigation arises are simple and they have produced no material divergence of view in the Courts in India. The real

question is how the law should be applied to those facts. All that it is necessary to notice may be briefly set out as follows. On 1st October 1926, a

limited company called The Currimbhoy Mills Co. Ltd., executed a debenture trust deed mortgaging two mills known as the Currimbhoy Mill and

the Mahomedbhoy Mill together with certain plant thereon to trustees for debenture holders to secure an issue of debentures. Respondents 2 and 3

(whom it will be convenient to refer to as ""the Trustees"") were two of the trustees acting under the trust deed and were the only trustees who were

made parties to the suit : respondent 1, the State of Gondal, acting through His Highness the Maharajah (hereinafter referred to as ""the

Maharajah""), was at all material times the owner of all the debentures secured by the trust deed. By October 1933, the Trustees, in exercise of

their powers under the deed, had entered into possession of the mills which, it seems, lay within the municipal limits of the City of Bombay, and

remained in possession until 9th September 1937, when the mills were handed over to Mr. Seksaria whose legal personal representatives are the

first appellants. At that date Mr. Seksaria had just become the purchaser of the mills for a sum of Rs. 12,50,000 under a contract between the

Maharajah and himself, one of the terms of which was that possession should be given on payment of the full purchase price and before formal

transfer. The full price Rs. 12,50,000, was in fact paid into the Maharaja''s bank account on 7th September 1937, the contract in question having

been effected by and contained in (i) a letter which Mr. Seksaria wrote to the Maharajah dated 1st September 1937, (ii) a telegram and confirming

letter dated 4th September 1937, from the Dewan of the State of Gondal to Mr. Seksaria, (iii) a telegram from Mr. Seksaria to the Dewan dated

5th September 1937, a telegram in reply of the following day and a final telegram in reply to that on the same day.

3. What happened after the conclusion of the sale contract was this. On 29th November 1937, Mr. Seksaria entered into an agreement by way of

sub-sale with the appellant company under which he agreed to sell the mills to the Company for the same price of Rs. 12,50,000. It is impossible

to ascertain from the evidence in the suit at what date, if any, prior to the formal transfer from the trustees the appellant Company entered into

possession of the mills in place of Mr. Seksaria. During the hearing of the appeals before the High Court, that Court heard and refused an

application on behalf of the appellants for leave to adduce further evidence on this point. In these circumstances their Lordships are unable to treat

the appellant company as having entered into possession at any date before transfer. But before the sub-sale of 29th November a new and

disturbing fact had come to light. On 7th October the Assessor and Collector of Municipal taxes, Bombay, addressed a letter to Mr. Seksaria

informing him that bills amounting to Rs. 1,24,092-1-0 were outstanding in respect of municipal taxes on the mills, and that, as such taxes were a

first charge on the properties, subject always to Government land revenue, payment ""at a very early date"" was requested. Statements enclosed

with the letter showed unpaid taxes to the amount stated going back to the date 1st April 1933, and covering not only the general tax but water

charge as well. From this date until 23rd February 1939, a correspondence went on in which there took part from time to time Messrs. Kanga and

Co., solicitors for Mr. Seksaria and the appellant company, Messrs. Craigie, Blunt and Caroe, solicitors for the Maharajah and the trustees, the

Assessor and Collector of the Bombay Municipality and, at a late stage, Messrs. Crawford Bayley and Co., his solicitors. Out of this

correspondence certain facts appear clearly enough. Firstly, no one disputed that there were unpaid municipal taxes due in respect of the mills, but

Messrs. Craigie Blunt and Caroe raised the point that the assessments were too high in view of the fact that the mills had been closed since 1st

April 1933, and by May 1938, the assessments had at their request been reduced to a sum of Rs. 89,318-8-0 in all. Secondly, Messrs. Kanga

and Co., maintained from first to last that so much of the taxes as related to the period before 9th September 1937, was for the vendor''s not the

purchaser''s account and asked for it to be discharged accordingly, Mr. Seksaria himself addressed a long and reasoned letter to the Maharajah on

8th December 1938, when the Municipality was pressing for payment, in which he requested that directions for payment should be given at once

in order to avoid unnecessary litigation and unpleasantness."" This letter was not answered or even acknowledged. Thirdly, at no time did Messrs.

Craigie Blunt and Caroe make any suggestion that there clients, the trustees, had not come under liability for the taxes by virtue of their possession

which had terminated on 9th September 1937, and it is quite clear from some of the letters that they did in fact, no doubt rightly, regard them as so

liable. Fourthly, neither the Maharajah nor the trustees made any attempt to pay the sums due. Fifthly, the Municipality were becoming increasingly

insistent that the unpaid taxes should be paid by one or other of the parties and as early as May 1938, they declined to give the appellant company

or Mr. Seksaria a connection for the supply of water to the mills until the dues were paid. By July the Municipality were threatening action and on

31st October of the same year their solicitors wrote to Messrs. Kanga and Co. stating that they were instructed to institute legal proceedings to

enforce the statutory charge upon the property. Eventually, on 23rd February 1939, after further requests for payment by the Maharajah or the

trustees had proved unavailing, the appellant company paid the Municipality the sum of Rs. 78,466-12 in full satisfaction of the claim against the

mills.

4. On 25th March 1939, a deed was executed whereby the trustees and a third trustee who was then residing in Paris transferred the mills to the

appellant company free from the right of redemption and all claims under the Debenture Trust Deed. Mr. Seksaria executed this deed as a

confirming party. The recitals to the deed- inaccurately, but no doubt immaterially-stated that Mr. Seksaria had contracted with the trustees for the

purchase of the mills for Rs. 12,50,000 and had paid this sum to them. The recitals also mentioned the sub-sale by Mr. Seksaria to the appellant

company.

5. The property having been thus conveyed in pursuance of the contract, Mr. Seksaria and the appellant company instituted the present suit as joint

plaintiffs claiming that the respondents should be ordered to pay to them the sum of Rs. 77,522-6 (being so much of the sum of Rs. 78,466-12

paid as related to the period up to 9th September 1937) with interest. The trial Judge gave judgment for both Mr. Seksaria and the appellant

company against the Maharajah in the sum of Rs. 95,630, covering the sum claimed and interest, with costs, but he dismissed their suit as against

the trustees. He ordered them to pay the trustees'' costs but directed that they should be at liberty to add those costs to the costs that they were

entitled to recover from the Maharajah. The basis of the learned Judge''s view was that the Maharajah had made a contract with Mr. Seksaria into

which were imported by law the provisions of S. 55, T. P. Act. The result of that was to impose upon him an obligation to clear off the unpaid

municipal taxes up to 9th September 1937. Although Mr. Seksaria had not himself paid the money to discharge these taxes, the learned Judge

interpreted the sub-sale to the appellant company as being an actual sale of Mr. Seksaria''s contractual rights against the Maharajah and, so

holding, considered that there had been an assignment by Mr. Seksaria to the appellant company of his right of action for damages in respect of the

Maharajah''s breach of contract. Since assignor and assignee were both before the Court, he considered that there was no difficulty in giving

judgment for them both against the Maharajah. As to the trustees, they had made no contract with either of the plaintiffs and he saw no ground of

action against them.

6. Both sides appealed from this decision. The High Court sitting in its appellate jurisdiction dismissed the appeal of Mr. Seksaria and the appellant

company as against the trustees : but the Maharajah''s appeal was allowed. By two decrees dated 8th November 1943 (which are the decrees that

are under appeal before this Board), the suit was dismissed as against all the defendants to it, those defendants being given their costs both of the

trial and of the appeal. The two Judges who heard the appeal, the Chief Justice and Kania J., came to substantially the same conclusion. They held

that Mr. Seksaria had no right of action against the Maharajah on the contract of sale because Mr. Seksaria had suffered no damage from the

Maharajah''s breach of contract in not paying off the taxes. He, Mr. Seksaria, had not found the money to make the payment. Secondly, they held

that the appellant company had no right of action against the Maharajah, since there was no contract between them and the fact that at the date

when it paid to the Municipality the sums demanded it had no interest which the law recognised in the mill property prevented any right arising

under S. 69, Contract Act. For some reason which is not clear to their Lordships the learned Judges appear to have considered that a person

could not be ""interested in the payment of money"" within the meaning of that section unless he was at the same time entitled to some legal interest in

the property in respect of which such payment might be made. Thirdly, as regards any claim against the Trustees, the learned Judges considered

that no relevant obligation was imposed upon them by the terms of the conveyance of 25th March 1939, since by that date the unpaid taxes had

been paid off, and, even if they were bound as between themselves and the Municipality to meet the taxes accruing during their period of

possession (as Kania J. seems to have thought that they were), the appellant company had acquired no rights against them by making its payment,

since it made that payment ""voluntarily"" and at a date when it possessed no legal interest in the mills.

7. Their Lordships find themselves unable to agree with these conclusions. They do not consider that it would be right to treat Mr. Seksaria as

having suffered no damages by reason of the Maharajah''s breach of contract : they do not think that S. 69 of the Contract Act has the limited

meaning which the High Court have attached to it in this case : and they regard the appellant company''s payment of the taxes as having been in no

relevant sense a ""voluntary"" one. But before taking up these points in any detail it is convenient to notice a preliminary objection to the jurisdiction

of the High Court which was advanced on the Maharajah''s behalf.

8. This objection was advanced before both the Courts in India, although the form of the argument has not always been the same. It did not

commend itself to either of those Courts and their Lordships entertain no doubt that they were right in overruling it. As the argument was put before

their Lordships it can be summarised in this way. The Maharajah as a sovereign prince was not liable to be sued in the Courts of British India

except in accordance with the rules prescribed by S. 86, Civil PC. That section lays it down that such a prince may be sued with the consent, but

shall not be sued without the consent, of the Crown representative : and enacts in sub-s. (2) that consent may be given with respect to a specified

suit or to several specified suits, or with respect to all suits of a specified class or classes, and may specify, in the case of any suit or class of suits,

the Court in which the prince may be sued, but consent shall not be given ""unless it appears to the consenting authority that"" one at least of certain

defined conditions exist. The consent of the Crown representative had been obtained in this case and had been expressed in the form of an

authority under S. 86 for Mr. Seksaria and the director and managing agent of the appellant company to institute a suit against the Maharajah in the

High Court at Bombay in respect of the matters specified in the plaint that was attached to the document of consent. This was the same plaint as

that which was actually delivered in this suit. Nothing, it would appear, could be more conclusive. But, it was argued, a reading of the plaint would

show that none of the conditions which must appear to the Crown representative to exist before a consent was given did in fact exist in this case,

and therefore the sanction required has not been validly given.

9. In their Lordships'' opinion this argument is misconceived. For the High Court the test whether the Maharajah was rightly impleaded before it

was the existence of the consent of the Crown representative duly certified by the signature of the political secretary. It was no part of its function

to try by its process the question of fact whether any of the conditions required for the giving of his consent existed, or even the question whether it

had appeared to the Crown representative that one or more of them did exist. The certified consent is in all ordinary cases conclusive evidence that

it did so appear. There might conceivably have been cases, as Kania J. supposed in his judgment, in which a certificate showed on the face of it

that the Crown representative did not consider any of the necessary conditions to exist: or possibly special circumstances might have arisen entitling

a Court to go behind a certificate and investigate the facts. Their Lordships express no opinion on that point, for in this case there was nothing to

suggest that any such special circumstances existed. Indeed the certificate itself leaves it open as to which of the various conditions the Crown

representative relied upon. The objection was no more than an attempt to get the Court to try for itself what the Act by S. 86 has left to the Crown

representative to ascertain. The trial Judge decided quite rightly that it was not for him to go behind the certificate or to entertain the objection, and

their Lordships are at one with the Appellate Court in upholding this decision.

10. It remains to consider the merits of the appeals. A somewhat complicated structure of rights and liabilities was set up by the circumstance that,

apart from the Maharajah and Mr. Seksaria who made the original contract for sale of the mills, there were the trustees, the legal owners of the

mills who had actually been in possession of them, and the appellant company which sub-purchased from Mr. Seksaria and actually found the

money to pay off the outstanding municipal taxes. But the basic fact is that the Maharajah contracted to sell the mills to Mr. Seksaria. By making

such a contract he imposed upon himself the obligation imported by S. 55 (1) (g), T. P. Act "" to pay all public charge .... accrued due in respect of

the property up to the date of"" possession and "" to discharge all incumbrances on the property then existing"". In this case, the terms of the contract

operate to substitute the date of possession for the date of sale that would otherwise be the determining date. Both the Courts in India have held

that the Maharajah, not the trustees, was the contracting party and that S. 55 (1) (g) was imported into his contract. Their Lordships agree with

them. It was argued that the provisions of S. 55 (1) (g) did not form a part of the Maharajah''s contract for two reasons. One was that, since the

trustees, and not he, were to be the conveying parties, he was not a '' seller '' within the meaning of S. 55 and that, consequently, his contract was

not affected by that section. Their Lordships do not consider that the meaning of the word ''seller'' is limited in that way and they have nothing to

add to what was said by Kania J. on that point. The other reason was that in a letter, dated 5th August 1937, to Messrs. Kanga and Co., the

Dewan of Gondal State had stated that the Maharajah desired to dispose of the mills at "" a price of Rs. 12,50,000 net "" and it was suggested that,

in the light of this the later documents which in fact contained the contractual terms should be interpreted as excluding any obligation on the

Maharajah such as S. 55 (1) (g) would otherwise have imposed. Their Lordships regard this argument as untenable on two separate grounds. The

word "net" does not, expressly or by implication, appear in the sale contract that was actually made. If it had, it would not have been sufficient in

the context to exclude the application of S. 55 (1) (g).

11. Having undertaken by his contract to clear off the outstanding taxes the Maharajah defaulted on this obligation. There is no other way in which

to interpret his continued failure to make any provision for meeting them in the face of a series of requests for payment that began with Messrs.

Kauga and Co.''s letter to Messrs. Craigie Blunt and Caroe, dated 12th October 1937, and were reinforced by Mr. Seksaria''s letter to the

Maharajah himself which was despatched in December 1938. By February 1939, it was obvious that the Municipality were not going to wait any

longer and in their Lordships'' opinion Mr. Seksaria was quite entitled at that date to treat the Maharajah as having repudiated his obligation and to

take what measures were open to him to prevent this breach of contract bringing about a forced sale of the purchased mills in realisation of the

Municipality''s charge. The monies required were provided by the appellant company and it is this circumstance that led the High Court to allow

the Maharajah''s appeal on the ground that Mr. Seksaria had suffered no damage. It is impossible to ascertain from the record the nature or extent

of Mr. Seksaria''s interest in the appellant company, and it is necessary to treat the two of them as independent legal persons for all purposes. The

trial Judge escaped the difficulty with which the appeal Court were faced, because he held that Mr. Seksaria''s sub-sale to the appellant company

should be read as an actual assignment of his contractual rights against the Maharajah. Their Lordships do not think that this view can be adopted

by them. The agreement, dated 29th November 1937, was an ordinary sub-sale : it amounted to a contract to sell the property which Mr.

Seksaria had agreed to purchase, but it neither assigned nor contracted to assign his contractual rights under that agreement. On the other hand,

their Lordships cannot accept the view of the appeal Court that Mr. Seksaria has no claim against the Maharajah because he proved no damage.

On the contrary, they think that his damage appears clearly enough from the facts themselves.

12. What was the position on 23rd February 1939, when the taxes were paid ? If it was the Maharajah''s obligation, as between himself and Mr.

Seksaria, to find the money, just as much was it Mr. Seksaria''s, as between him and the appellant company. There is nothing in the sub-sale

agreement to shift the obligation from the vendor. At that date he had failed in his duty to the company, not the less because the cause of his failure

was the Maharajah''s breach towards him. It is true that before instituting the present suit the appellant company did not go through the formality of

notifying to Mr. Seksaria that it would assert its legal rights against him, either for breach of his obligation under S. 55 (1) (g), T. P. Act or under S.

69, Contract Act (a section which will be more fully considers later). But why should it? The facts spoke for themselves and the immediate

purpose both of Mr. Seksaria and the appellant company, once the property had been saved from forced sale, was to join together in a suit to

recover from the persons primarily liable the amount of money that had been expended. It seems to their Lordships neither right in law nor just in

practice, once it be conceded that the Maharajah had undertaken to Mr. Seksaria that he would clear off these taxes, that the Maharajah should

be absolved from liability merely because Mr. Seksaria had not gone through the procedure of paying over to the appellant company, his co-

plaintiff in the suit, the sum of money which he would certainly have to make good to it unless it could obtain indemnity from the Maharajah or the

trustees direct.

13. It is now necessary to consider what are the rights of the company. In their Lordships'' view those rights are to be found in S. 69, Contract

Act. That section runs as follows :

A person who is interested in the payment of money which another is bound by law to pay, and who, therefore, pays it, is entitled to be

reimbursed by the other.

The learned Judges of the High Court in appeal held that the appellant company could not establish a right under this section because it was not

interested in the payment of the money that it paid. The view that it was not "interested'' was based on the fact that at the date of the payment the

company had no property interest in the mills in respect of which the taxes were claimed. And in accordance with this view, the company''s

payment was described by the learned Judges as a voluntary one. To their Lordships it seems to have been very unlike a voluntary payment. The

company had contracted to buy these mills, and they were imminently threatened with a forced sale which would, of course, defeat its purchase.

Money had to be found for the taxes if the mills were to be saved. Neither the Maharajah nor the trustees showed any sign of paying the

Municipality. So the appellant company paid. But to describe it in those circumstances as having made a voluntary payment appears to their

Lordships to involve some misuse of language. Nor do they appreciate why it should not properly be described as interested in the payment. In

any ordinary use of language, the company was interested in the taxes being paid at the time when they were paid since only through the payment

could it realise the fruit of the contract that it had entered into. The words themselves do not require that a person to be interested in a payment

should at the same time have a legal proprietary interest in the property in respect of which the payment is made. It is no doubt true that there have

been decisions which have tested whether a person was interested in a payment by ascertaining whether he had such a proprietary interest. It may

be a good test in appropriate circumstances. But it would be a sad fallacy to deduce from the circumstance that a person may be interested in a

payment because he has an interest in the property to which it relates the conclusion that no one who has not an interest in a property can be

interested in a payment made in respect of that property. In truth, S. 69 invites no such judicial limitation. The section is part of a chapter of the

Contract Act devoted to ""Quasi Contract."" The phrase itself is no doubt taken from a familiar branch of the English Common law, although there is

no reason to suppose that the Indian Contract Act was intended to do no more than to reproduce in compendious phrases the precise doctrines of

the English law of contract. But the general purport of the section is reasonably clear: to afford to a person who pays money in furtherance of some

existing interest an indemnity in respect of the payment against any other person who, rather than he, could have been made liable at law to make

the payment. So interpreted, S. 69 appears to their Lordships to apply to the payment made by the appellant company in this case.

14. The Maharajah was bound to pay this money in the sense that he had made a legally enforceable contract with Mr. Seksaria to pay it. Unless

the words ""bound by law to pay,"" where they occur in the section, exclude those obligations of law which arise inter partes, whether by contract or

by tort, and embrace no more than those public duties which are imposed by statute or general law, the Maharajah was a person from whom

reimbursement could be claimed under the section. But their Lordships think that the words extend to any obligation which is an effective bond in

law. Certainly the Common law of England afforded a right of indemnity to one who had paid ""under compulsion of law"" against the true obligor

without limiting the circumstances in which the latter''s liability had arisen. Certainly too, there is authority in the Courts of India for the proposition

that ""bound by law"" covers obligations of contract or tort. Accepting this interpretation, as their Lordships do, they hold that the act of payment by

the appellant company gave to it a right of action against the Maharajah to obtain reimbursement of the sums so paid. Thus, as against him, both

the plaintiffs in this suit ought to have been held to have good, though alternative, rights of action.

15. Nor does this exhaust the plaintiffs'' rights. Not only did the appellant company''s payment exonerate the Maharajah from his contractual bond

but it at the same time exonerated the trustees from whatever liability they may have had to the municipality by virtue of the provisions of S. 146,

Bombay Municipal Act of 1888. Their Lordships have had placed before them on behalf of the trustees all that can properly be said in support of

the argument that there is no sufficient ground for holding them to have been under any such liability. The conveyance of 25th March 1939 shows,

it was said, that the mills were land held immediately from the Government: in such a case sub-s. (1) of S. 146 applies and it is only the ""actual

occupier"" from whom the taxes may be levied. The trustees may have been in possession up to 9th September 1937, but that is not to say that they

were in occupation: the more likely occupiers were a firm, Messrs. Brady and Co., who were acting as the trustees'' agents in looking after the

property. Their Lordships have given careful consideration to the argument, but they are unable to feel any doubt that S. 146 does operate to

make the trustees themselves primarily liable for the taxes that accrued during their period of possession. That they were in possession from about

October 1933, until Mr. Seksaria took over is found as a fact by the trial Judge, and this fact is accepted by the Judges on appeal. There may in

certain circumstances be a distinction between ""actual occupation"" and ""legal possession,"" but their Lordships can see no reason at all to suppose

that any such distinction existed in this case. The position which Messrs. Brady and Co. held is described in the trustees'' own statement of

defence: they are stated to have been in charge of the mills on behalf of the trustees. It is impossible that they could have been the occupiers for the

purposes of S. 146 (1), since such an occupier is described in the section as ""holding"" from Government or certain other persons. But if the

occupiers were not Messrs. Brady and Co., who else could have been except the trustees who had the possession ? It is of some interest to see,

although the legal question whether the trustees were liable for the taxes or not does not depend on the attitude of the parties or their advisers, that

the trustees" solicitors had obviously been treating their clients as liable to the municipality long before the Maharajah sold the mills to Mr.

Seksaria. Indeed it was on their representation that the assessment of the mill was reduced.

16. The result is that S. 69, Contract Act, affords to the appellant company an additional right of recourse against the trustees, since its discharge

of the outstanding taxes exonerated the trustees who were primarily liable by virtue of the Municipal Act.

17. Their Lordships are of opinion therefore that both these appeals should succeed. The two decrees of the High Court (in appeal) dated 8th

November 1943, should be set aside and the decree of the High Court (in original civil jurisdiction) dated 15th January 1943, should be restored

in so far as it gives judgment against the Maharajah in the sum of Rs. 95,630.12 and interest. There should also be judgment for the appellant

company in the same sum with interest against the trustees, it being declared that the appellants" rights against the respective respondents are

alternative and that they are to be at their election which they are to pursue. Having regard to the special relationship between the Maharajah on

the one hand and the trustees on the other their Lordships think that justice will be done if the Maharajah is ordered to pay to the appellants the

plaintiffs" costs of the suit up to and including the trial in the first Court without distinguishing between their costs as against the several respondents;

and if the Maharajah is ordered to pay to the appellants the costs incurred by Mr. Seksaria and the appellant company as respondents to his

appeal to the High Court, and the trustees are ordered to pay to the appellant company its costs of its appeal to the High Court. Their Lordships

have humbly advised His Majesty accordingly.

18. The Maharajah must pay the appellants" costs of this appeal.