(1869) 03 CAL CK 0011

Calcutta High Court

Case No: Regular Appeal No. 48 of 1868

Mah Wine and Aga Syud Abdul Hossein		APPELLANT
	Vs	
Richard Snadden		RESPONDENT

Date of Decision: March 2, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

In treating the letter of Chow Rajapoot as a notice, and not as an agreement, I am taking the same view of it as the Court at Bangkok in the decision of His Royal Highneas Krom Kenaug Wongsa Dheraj Sinde in the suit brought against the Chief of Zimmay (under whose permit the plaintiff claims) by the defendant Moung Shoay Gaw, under whom the appellant claims. The document may be taken as evidence against them of the law of that place and of the evidence given in the suit. It appears from the said judgment and otherwise that Moung Shoay Gaw went to reside in Moulmein, and did not superintend the forest; and that in the Siamese civil year 1224, Chow Rajapoot wrote to the Commissioner at Moulmein, asking for the paper granted to Moung Shoay Gaw, which letter was in substance as follows:--

The Chow Rajapoot gave Moung Shoay Gaw a paper granting the superintendence of the forest of Muang Yuom, and Moung Shoay Gaw went to live in Moulmein, and did not superintend the forest. Therefore, Moung Shoay Gaw will no longer be allowed to superintend the forest or cut timber.

2. The Commissioner replied that he had called Moung Shoay Gaw to him and questioned him; that Moung Shoay Gaw said that, when he was prosecuting Mr. Lenaine, the Moulmein Judges sent that document to India; but when the Indian Judges returned the paper, it would be forwarded to Chow Rajapoot. From this Moung Shoay Gaw tacitly admitted that his interest whatever it was had ceased.

3. It was considered by the Court at Bangkok that the neglect of Moung Shoay Gaw to work the forest for a period of three years came within the terms of Article 4 of the Treaty with the British Government, of which a copy was set out in the

judgment; and, consequently that, if the paper given by Chow Rajapoot to Moung Shoay Gaw had been an agreement similar to the usual agreements in the country, which it was not, being only a notice to the British authorities, it had become useless; and that Moung Shoay Gaw could not resume the cutting of the timber without personal conference with the tributary prince of Zimmay, Chow Rajapoot, and their relatives. Chow Rajapoot in his examination says that the document X, S.A. was the original letter written to the authorities; that the forests belonged to him; that having once given a similar power to that marked X, S.A. to work a forest for ten years, it cannot be cancelled, unless there was some proper cause; that it might be transferred by the grantee without the knowledge or consent of the grantor; and that the non-user of such a document would not justify its cancel-ment. But he also stated, with reference to the Chief of Zimmay, that he could not give any opinion as to the correctness or incorrect ness of the acts of his superiors. It was stated by the Regent of the Northern Provinces of Siam that Zimmay was a state subject to Siam, and subject to orders sent by him; and that, with reference to the answers of Chow Rajapoot as to the circumstances of his grant to Moung Shoay Gaw, and to questions of law and custom as to its transference and cancelment, the statements of Chow Rajapoot were not entitled to any value, as the Shan States are in a semi-civilized condition, and their laws and customs cannot be considered as defined.

4. It is unnecessary, for the purpose of this case, to decide whether Chow Rajapoot had the right to grant to Moung Shoay Gaw the exclusive right to cut timber in the forest in which the timber in dispute was cut, or whether the right, if granted, was transferable or forfeited by the grantee''s absence from the country. Nor is it necessary to decide whether Chow Rajapoot did or did not grant to Moung Shoay Gaw the exclusive right to out timber in the said forest, or to enter into all the numerous questions which appear to have been raised in the suit.

5. It appears to me to be clear that, if Moung Shoay Gaw did acquire the exclusive right to cut and to authorize others to cut timber in the forest, such right did not vest in Moung Shoay Gaw all the timber in the forest. It might give him a right to recover damages against any person, who, by cutting timber, should interfere with his exclusive right, but would not vest in him the timber so cut by others. There is nothing to show that, by the law of the country in which the forest was situate, Moung Shoay Gaw or his assignees acquired the right to all the timber in the forest, and to take possession of all the timber which, under any circumstances, might be cut by others between the years 1220 and 1230 of the Siamese civil era.

6. It is not material whether the license was granted at the request of Moung Shoay Gaw or not. It is clear that the plaintiff and his agent did cut under the authority granted de facto, and that the timber so cut did not vest in Moung Shoay Gaw.

7. [The Chief Justice then commented on the evidence as to cutting, and proceeded thus]:--

I am of opinion that the Recorder was right in finding that Nga Shoay Baw did under a license cut, pay duty for, and mark the timber, which is the subject of this suit; that R.C. Burn and his party, acting in concert with the appellant, marked the said timber, and caused it to be floated to Moulmein; and that neither Burn nor Moung Shoay Gaw, nor the defendant Snadden, had any lawful right to the timber. But I consider it immaterial whether the timber was cut by Moung Shoay Baw under a valid license or not. I am of opinion that it was in his lawful possession when Burn and Moung Shoay Gaw, having no right to it, by means of an armed force forcibly took possession of it in the territory of Zimmay; and that, having marked it with their own mark, they caused it to be floated down to Moulmein, where the defendant Snadden obtained possession of it. I do not believe that Moung Shoay Baw and Yakub Ali would have been allowed by Moung Shoay Gaw or his agents to put their mark upon it, if the timber had been cut by Moung Shoay Gaw. The license from Chow Rajapoot to Moung Shoay Gaw, though ratified by the Zimmay Chief, did not vest in Moung Shoay Gaw or his assignees the timber which had been cut by Moung Shoay Baw. Indeed, Moung Shoay Gaw never made a claim to any of the logs, except those which, according to his statement, had been cut by himself, though in his petition he stated that 3,000 had been cut by others.

8. [The Chief Justice then commented on certain correspondence between the appellant and his agents, and proceeded]:--

I think the Recorder was right in decreeing the suit in favour of the plaintiff; but the decree is merely for the restoration of the timber. By Section 191, Act VIII of 1859, it is enacted that, when the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had. The learned Advocate-General was allowed to add as a cross-objection that the Court ought to have awarded alternative damages, and we think that the decree ought to be amended in that respect.

9. It is, therefore, necessary to fix the amount of damages. The plaintiff has valued the logs at Rs. 80 each; but there is no sufficient evidence to show that they are of that value. By the 6th Article of the agreement of the 26th of January 1865 between R.C. Burn and another, and B. and W. Snadden, the latter bound themselves to purchase the timber at the rate of Rs. 42-8 per log, for all logs of three cubits in girth and upwards. The defendant has got the timber in his possession, and had the means of proving its dimensions and value. Looking to the circumstances under which Snadden bound himself to B.C. Burn and Moung Shoay Gaw to purchase the timber at Rs. 42-8 per log, half the purchase-money to be applied in satisfaction of their demand, on which interest at the rate of 24 and 36 per cent. was reserved, I think we may fairly add as against the defendant, who can return the timber if he pleases, 50 per cent. upon the amount of Rs. 42-8 per log, at which he agreed to purchase. The logs are, therefore, valued at Rs. 63-12 each. It was stated by Moung Shoay Gaw, in his petition dated 3rd March 1863, before he assigned his interests to

Mr. Lenaine, under whom appellant claims, the assignment being dated 30th June 1863, that the market price in Moulmein was Rs. 60 a log. The decree is affirmed, and it is ordered that, if delivery of the timber cannot be had, the defendant shall pay to the plaintiff, as alternative damages for each log of which such delivery cannot be had, the sum of Rs. 63-12. The appellant will pay the costs of this appeal to be calculated upon the value of 122 logs, at Rs. 63-12 each, amounting altogether to Rs. 7,777-8. There is no appeal as to the amount of costs in the lower Court, and, therefore, the costs in that Court will stand as they have been given by the Recorder.