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Court : Himachal Pradesh

Decided On : Mar-27-1952

Reported in : AIR1952HP41

Judge : Chowdhry, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115; ;[Evidence Act, 1872](#) - Sections 57 and 90; ;[Constitution of India](#) - Articles 13 and 19

Appeal No. : Civil Revn. No. 17 of 1951

Appellant : Sihnu

Respondent : Lachman Dass and ors.

Advocate for Def. : Kedar Ishwar, Adv.

Advocate for Pet/Ap. : Rattan Lal Sablok, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Chowdhry, J.C.

1. This is an application in revision by Sinhu, defendant against whom the Senior Subordinate Judge of Mandi passed a permanent injunction restraining him from

working his water-mill because it interfered with the plaintiff's right of running their own mill, known as the Rafi Gharat, and that decree was affirmed on appeal by the District Judge. The decree in question was passed on foot of a Santha, or grant of lessee rights, made in favour of the plaintiffs by the then ruler of Mandi on 9 Har Sambat 72 Kham. The Santha provided that no other water-mill could be run by anyone else within a radius of four kos from the plaintiffs' mill. The water-mill in suit was set up by the defendant-petitioner at a distance of about three quarters of a mile from the plaintiff's mill.

2. The first point urged by the learned counsel for the defendant-petitioner was that the Santha in question had not been proved as required by Section 67, Evidence Act, and that the presumption laid down in S. 90 of that Act could not arise in favour of the document since it does not purport to show who prepared or signed it and no evidence on that point was produced by the plaintiffs. In support of this contention he relied upon 'CHARITER RAI v. KAILASH BEHARI', AIR 1918 Pat 537. It is however to be noted that no objection as to the proof or admissibility of the Santha, which was filed in original in the trial Court, was taken on behalf of the defendant-petitioner either in that Court or in the Court of the District Judge. Accepting the grant of the Santha certain other pleas were taken by the defendant. That being so, the aforesaid objection as regards the proof of the Santha cannot be allowed to be taken for the first time in revision in this Court. The very ruling relied upon by the learned counsel for the defendant-petitioner lays down this principle acting upon the observations of the Privy Council in 'SHAHZADI BEGAM v. THE SECRETARY OF STATE', 34 Cal 1059 (PC), wherein it was laid down as follows:

'Their Lordships are however of opinion that it is now too late for the respondent to take an objection to the admissibility of a document which was received without objection at the trial.'

3. The learned counsel also cited 'HABIB BUX v. SAMUEL FITZ & CO. LTD.', AIR 1926 All 161, where in exercise of its revisional jurisdiction the High Court remanded the case to the lower appellate Court because it had not applied its mind to the question of the admissibility and proof of a document and the petitioner

had no opportunity of meeting it. This ruling has however no application in the present case since, firstly, the Santha was specifically alleged in the plaint and the petitioner merely professed ignorance with respect to it and raised no objection with regard to its admissibility and proof, and, secondly, the trial Court did apply its mind by admitting it in evidence without proof on the ground of its being more than thirty years old.

4. The next point urged was that even if the Santha be held as proved it, should not have been acted upon by the Courts below inasmuch as it was not incorporated in any Act passed by the State or otherwise notified to the people in general affected thereby. The learned counsel cited in this connection S. 57 of the Evidence Act and argued that the Santha did not come under any of the provisions of that section. There is no doubt that the Santha does not fall under any of the categories mentioned in S. 57, Evidence Act of which a Court might take judicial notice; but it is not necessary that a document must fall under one or the other of those categories in order to enable a Court to act upon it. A Court may act upon a document, as it appears to have done in the present case, even though the document does not answer to any of the descriptions mentioned in Section 57 if it can otherwise be acted upon, for example, if it is a document more than thirty years old and satisfies the other conditions laid down in S. 90. This latter point I have already disposed of and held that the petitioner's objection that the Courts below should not have so acted under Section 90 cannot be allowed to be taken at this stage. The Santha not being an enactment, no promulgation of it was necessary. It was merely a private grant in favour of the plaintiffs, and in the case of such a private grant its promulgation or notification to anybody else than the grantees is not necessary. The second objection taken on behalf of the defendant-petitioner has also therefore no force.

5. Lastly, it was contended by the learned counsel for the defendant-petitioner that the Santha offended against the fundamental right of the petitioner under Article 19(1) (g) of the [Constitution of India](#) to carry on any occupation, trade or business, and that it was therefore void under Article 13. There is a threefold fallacy in this argument. Firstly, it cannot be said that the right of the petitioner to carry on his trade of running a water-mill has been interfered with simply because he has not

been allowed to set up a water-mill within a certain radius of the plaintiff's mill; it is open to him to set it up beyond that radius. Secondly, Article 19 does not give a 'carte blanche' to a citizen so as to entitle him to exercise any of the rights mentioned therein even though they might encroach upon similar rights of other citizens. Thirdly, the Santha in question does not come under the ban of Article 13 since it is only a private grant and not a law in force in the territory of India. In this connection the following observations of their Lordships of the Supreme Court in 'P. D. SHAMDASANI v. CENTRAL BANK OF INDIA', AIR 1952 S C 59, may be referred to:

'Neither Article 19(1)(f) nor Article 31(1) on its true construction was intended to prevent wrongful individual acts or to provide protection against merely private conduct.. ...The language and structure of Article 19 and its setting in part III of the Constitution clearly show that the Article was intended to protect those freedoms against State action other than in the legitimate exercise of its power to regulate private rights in the public interest. Violation of rights of property by individuals is not within the purview of the Article.'

6. It is to be noted that it is not, contended on behalf of the defendant-petitioner that the ruler who granted the Santha had not the power to do so.

7. The application in revision is dismissed with costs and the judgment and decree of the lower appellate Court are affirmed.

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