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## Case Comment: Loss of Woodcutting Rights - Unregistered lease and ‘Profit a prendre’: *Shantabai v State of Bombay*

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### INTRODUCTION

The present case of *Shantabai v State of Bombay*<sup>1</sup> is a significant judgment in the Transfer of Property Act of 1882<sup>2</sup>, which specifically highlights the interpretation of Section 3, which provides definitions for important words used in the Act, promoting uniformity and clarity in the understanding of the legislation. This case established several legal precedents for registering documents to validate property rights in India and the government's authority to acquire land for public purposes under relevant legislation.

In the year 1951, The Madhya Pradesh Abolition of Proprietary Rights Act<sup>3</sup> was enacted, which resulted in a change of laws creating distress among people. Its introduction resulted in the government of Madhya Pradesh gaining direct authority over forests, mahals, alienated lands, and estates.

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<sup>1</sup> *Shantabai v State of Bombay* AIR 1958 SC 532

<sup>2</sup> Transfer of Property Act 1882, s 3

<sup>3</sup> The Madhya Pradesh Abolition of Proprietary Rights Act 1950

The primary purpose of introducing this Act was to end the Zamindari System, which was in place then, and the powerful landowners who rendered the general populace powerless. Similarly, in this case, Shantabai, who is the petitioner had claimed her rights and had challenged the administrative authorities under this Act, which had acquired her rights to enter the forest and cut the trees.

## **FACTS OF THE CASE**

In this present case<sup>4</sup>, Shantabai's husband, Baliram Bhau Doye, owned a forest in the year 1948 and had executed an unregistered lease document in favour of his wife Shantabai who is the petitioner in the following case. The consideration against the lease was Rs. 26,000 and this lease document granted the petitioner a few rights, which involved the right to enter specific areas in the forest and to cut, harvest, and take out bamboo, fuelwood, and teak for 12.5 years.

This leasing document, which was created in her favour, also placed certain restrictions on cutting and prohibiting the felling of certain trees, which at that time were under a height of 1.5 feet only. After two years out of the 12.5 years that she was allowed to use this privilege of cutting and taking out such bamboo, fuelwood, and teak, the state acquired the land by adopting 'The Madhya Pradesh Abolition of Proprietary Rights Act 1950<sup>5</sup>' After the introduction of this above-mentioned statute, Shantabai was prohibited from cutting the trees, and as per this statute, the government was to get the ownership of all property rights on land located within that state. As a result, the State of Bombay acquired possession of the forest area from Shantabai's husband.

Shantabai as a result had to suffer from obstruction and legal challenges and therefore, she claimed compensation from the government for being ousted for 4 years, however, she gave up her claim on the sole understanding that she would be allowed to work in the forest for the remaining period, and then applied for the same and obtained an 'order' from the Deputy Commissioner allowing her to continue working in that forest.

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<sup>4</sup> *Shantabai v State of Bombay* AIR 1958 SC 532

<sup>5</sup> The Madhya Pradesh Abolition of Proprietary Rights Act 1950

She started cutting trees based on this permission. However, the Divisional Forest Officer took action against her, directing the cancellation of her permission and forfeiture of any cut materials, which led her to challenge this order and file a petition under Article 32 of the Indian Constitution<sup>6</sup>.

## ISSUES RAISED

1. Whether the Lease document conferred any proprietary rights or interests to the petitioner.
2. Whether or not the Fundamental Rights of Shantabai were violated in the present case.

## ARGUMENTS BY PETITIONER (SHANTABAI)

Shantabai in the present case had argued that the Forest Officer's action infringed upon her fundamental rights under Articles 19(1)(f) and 19(1)(g) of the Indian Constitution.<sup>7</sup>

### **These articles guaranteed citizens the right to:**

- Acquire, hold, and dispose of property under (19(1)(f)).
- Practice any profession or carry on any occupation, trade, or business (19(1)(g)).

She claimed that her fundamental rights were violated on the basis that, she was barred from exercising her proprietary rights vested upon her on the uses of land. This included cutting and taking out bamboo, fuel wood, and teak. Under the Madhya Pradesh Abolition of Proprietary Rights Act 1950<sup>8</sup> all the proprietary rights in the land were now vested in the state and therefore the petitioner in this case, i.e., Shantabai, was prohibited from cutting the trees.

Therefore, she had claimed the rights granted to her from her husband through the lease document, which included, the right to standing timber from that land and also compensation from the Government for being ousted from that land.

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<sup>6</sup> Constitution of India 1950, art 32

<sup>7</sup> Constitution of India 1950, arts 19(1)(f) and 19(1)(g)

<sup>8</sup> The Madhya Pradesh Abolition of Proprietary Rights Act 1950

## **ARGUMENTS BY RESPONDENT**

It was highlighted that 'Shantabai's claim regarding the infringement of her fundamental rights holds no value since the lease deed for the property was unregistered. Therefore, Shantabai could have never claimed ownership rights under the lease document.

The Respondent also contended that the property under question was 'Immovable property' under section 3(26) of the General Clauses Act<sup>9</sup>, and not standing timber since the trees of only a certain height could be cut, which means that they required nourishment from the soil to grow. Therefore, from these above-mentioned facts, it becomes clear that the property in question was not standing timber, which falls under the definition of movable property, but instead, it was immovable property gaining nourishment from the soil i.e., the timber came under the category of 'benefits to arise out of land'.

## **JUDGMENT BY COURT**

The Supreme Court, by a 5-judge bench in the present case, with one separate judgment, dismissed Shantabai's petition. Although all the Judges had the same view about dismissing the petition, Justice Bose had decided to conclude with a different reasoning. Justice Bose stated that one could enjoy the property even if it is a lease agreement, however, it does not give them the right to take it away or remove any property from its original location.

The decision of the court was focused on two important factors. Firstly, the lease document that gave Shantabai the exclusive right to cut wood and was the basis for all of her claims was unregistered. Furthermore, since under the Transfer of Property Act, these documents must be registered to assert certain rights about the immovable property, she would be unable to assert her rights about the land.

Secondly, the court held that even if the lease document was considered to be valid, it did not grant the petitioner a permanent transferable interest in the land. The court came to this

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<sup>9</sup> General Clauses Act 1897, s 3(26)

conclusion since the right was more akin to a 'profit a prendre' i.e. benefits to arise out of the land.

Profit-a-prendre, in simple language, basically creates a temporary arrangement that is generally created for a short period, which makes the use restricted in nature only to do certain specific activities and nothing more than those specified activities.

'Benefits to arise out of Land' is included and considered to be a part of the definition of immovable property under Section 3(26) General Clauses Act 1897<sup>10</sup> which allows someone to take something from another's land (e.g., minerals, crops) and is also termed as '*profit a prendre*'. Since the nature of the property was immovable property and was not registered under her name, her right was for 12.5 years, implying that she could not have cut the trees immediately because they needed the soil's nutrition. However, the land itself belonged to the state now, and Shantabai's permission to take wood no longer held any ground.

Additionally, the court determined that the grantee had 12.5 years to benefit from the soil. Thus, it may be argued that at the time the privilege was granted to her, the trees were not prepared for cutting down or were fully grown. In addition to the objective of avoiding cutting trees too soon, there were also nutrients in the soil to support the tree's growth, which was distributed over 12.5 years. Therefore, no remedy was granted to her.

It was observed by the judges that there was neither a violation of any fundamental right in the present case nor the petitioner could claim anything because the lease document was an unregistered document, which is a prerequisite for the establishment of rights under Indian law.

## **ANALYSIS OF THE JUDGEMENT**

Immovable property is mentioned under Section 3 of the Transfer of Property Act 1882<sup>11</sup>, however, it has not been defined there. It only says that immovable property is said not to include- standing timber, growing crops, or grass. Since these aren't considered immovable

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<sup>10</sup> General Clauses Act 1897, s 3(26)

<sup>11</sup> Transfer of Property Act 1882, s 3

property as per the statute, the items mentioned therein will come under the purview of movable property.

Therefore, we refer to the definition of immovable property from Section 3(26) General Clauses Act, 1897<sup>12</sup> which defines immovable property as including land, benefits to arise out of the land, and things attached to the earth and also the definition under the Registration Act<sup>13</sup>, which defines Immovable Property to include- land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass. However, it was decided in **Sukry Kurdepa v Goondakull**<sup>14</sup> that a piece of property shall be considered immovable property if it is not moved/changed or altered from its initial place of existence destroying the property.

Movable property is also in legal terms called 'chattels', and is anything of value that can be readily removed from one particular place and be put in another place without destroying the nature of such property or losing its value.

In the present case, if her right is to immovable property, then she would be entitled to realize the right with the help of a document capable of taking effect of law. In such a case, the document should be properly registered, i.e., executed, written, and attested in her favour. However, if the document is not properly registered, then it will not pass the right of title in her favour. Since it was an unregistered instrument, it could not be enforced according to laws, thereby dismissing the petition by Shantabai. However, if her right is of movable property, under the lease deed, and she was prevented from collecting the cut trees during the period under that document, she might have been entitled to compensation for the lost benefit, but since the lease document was itself unregistered, she could have never proved herself of being the owner. In a situation where she could even prove herself to be the owner, without a legally recognized right to enter the forest due to the unregistered document, she would not be able to entitled to compensation for being prevented from collecting the logs (movable property).

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<sup>12</sup> General Clauses Act 1897, s 3(26)

<sup>13</sup> Registration Act 1908, s 2(6)

<sup>14</sup> *Sukry Kurdepa v Goondakull* (1872) 6 Mad HC 71

Therefore, what has to be seen and understood is whether trees can be regarded as movable or immovable which depends upon the circumstances of the case and the intention of the parties involved, which implies that whether the property is to be kept and used for a long time or is it for a small period and temporary need has to be seen.

We can therefore conclude this issue by saying that, Shantabai would have never succeeded in pleading the right of immovable property as the lease document on which she relied was in writing but was not registered or attested, she therefore tried to prove that it was movable property. However, from the definition of immovable property under the General Clauses Act<sup>15</sup>, we know that ‘benefits to arise out of the land’ are covered under the definition of immovable property. Therefore, her pleading for that property to be movable property was entirely wrong.

Similarly, in **Bihar Eastern Gangetic, Fishermen Cooperative Society Limited v Sipahi Singh**<sup>16</sup>, the Supreme Court decided that the right to catch fish is to be considered a ‘profit-a-prendre’, i.e. benefits arising out of the land, and so it has to be regarded as ‘immovable property’ under the Transfer of Property Act, 1872<sup>17</sup>.

The test is to determine whether the intention is to benefit from the further growth of the plant, i.e., whether the tree/plant is drawing nourishment from the land or uses the land just as a warehouse. In this instance, it was evident that the trees needed to develop and receive sustenance from the soil for 12.5 years, as this was a significant amount of time during which she was granted privileges. Moreover, not all the trees were at a stage of growth where they could be immediately cut, and she could exercise all her rights. Additionally, a requirement was set where trees over the height of 1.5 feet could only be cut. Thus, due to the aforementioned reasons, the court declared the property to be immovable property.

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<sup>15</sup> General Clauses Act 1897, s 3(26)

<sup>16</sup> *Bihar Eastern Gangetic Fishermen Cooperative Society Ltd v Sipahi Singh* (1977) 4 SCC 145

<sup>17</sup> Transfer of Property Act 1882

## CONCLUSION

The case of *Shantabai v State of Bombay* (1958)<sup>18</sup> established a precedent for understanding the importance of registering documents to validate property rights in India and the government's authority to acquire land for public purposes under relevant legislation. When the subject matter relates to immovable property, it becomes extremely important or rather mandatory for the property documents to be registered for a claim to be raised and for claiming such rights under it. Therefore, the dismissal of the claim filed by the petitioner i.e. Shantabai, here, reiterates the fact that enforcement of fundamental rights requires valid legal grounds.

The court observed the facts of the case and its nuances and concluded that since the property came under 'benefits arising out of land', it will be an immovable property. The distinction between ownership rights in land and rights to take something from the land ('profit a prendre') was also visible in this case. This distinction is very important to be understood in clarity that in the case of someone having ownership rights over a piece of land, the complete control over that land, which includes the right to use the land, exclude others from using it, and potentially sell or lease it remains with the owner. However, in the case of profit a prendre, it is a right to remove something of value from someone else's land.

This can be witnessed from what happened here with the petitioner. The Lease deed only granted Shantabai, the right to cut wood from the forest. Therefore, she was granted the right of 'profit a prendre', and not the ownership rights in land.

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<sup>18</sup> *Shantabai v State of Bombay* AIR 1958 SC 532