

Pt Shyam
Krishan
v.
The State of
Punjab and
others
E. Weston C. J.

contravening an essential requirement of section 299 of the Government of India Act.

Certain subsidiary points were raised which have been dealt with in the judgment of my learned brother, which I have had the benefit of reading. I agree with his conclusions and the reasons therefor and I agree with the final orders proposed.

REVISIONAL CIVIL

Before Eric Weston, C.J., and Falshaw, J.

RANA BASHISHAT CHAND RAI,—*Petitioner,*

versus

SARDARNI RADHIKA DEVI,—*Respondent.*

1951

Aug. 1st

Civil Revision No. 130 of 1949

Constitution of India, Article 14—Interpretation of—Code of Civil Procedure (V of 1908), Section 133—High Court Rules and Orders Vol. I. Ch. VII, footnote 3—Ruler of an Indian State—Whether exempt from personal appearance in court—Constitution of India.

Held, that Article 14 of the Constitution does not offend against the continuance of the privilege of immunity from appearance in court and the Ruler is exempt from personal appearance.

Held also, that it being well settled that classification or discrimination based upon reasonable distinction is valid, it is incumbent upon courts to take notice of actual circumstances, including matters of High Policy and solemn obligations of the Government, in deciding what is a reasonable classification or discrimination.

(Case referred by Mr Justice Kapur to the above Division Bench,—*vide* his order, dated the 22nd September 1950.)

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Chand Rai

v.

Petition under section 115, Civil Procedure Code, for revision of the order of Shri Rameshwardial, Extra Sub-Judge, 1st Class, Ambala, dated the 5th April 1949, dismissing the application of the petitioner.

Sardarni
Radhika Devi

TEK CHAND, for Petitioner.

M. C. SUB, for Respondent.

JUDGMENT

ERIC WESTON, C. J. This matter termed a civil revision has come before us from an order of Mr Justice Kapur made on the 22nd of November 1950. The learned Judge considered that the question arising before him should be determined by a Division Bench. The question is this :—

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“ Whether the Rana of Koti, who by a notification of the Punjab Government made on the 1st of January 1909, under section 133 of the Code of Civil Procedure, was exempted from personal appearance in Court is still so exempted after the coming into force of the Constitution.”

The circumstances giving rise to this question are that an interpleader suit was filed against the Rana and against his grandmother by a tenant. This tenant, who was a Muslim, afterwards went to Pakistan and the Rana at his own request was substituted as plaintiff against his grandmother defendant, the question in dispute being of course title to the property. After issues it appears the defendant applied that the plaintiff Rana be summoned to admit or deny certain documents and the privilege then was claimed on behalf of the Rana.

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Following the coming into force of the Constitution there has been no withdrawal of the notification issued under section 133 of the Code of Civil Procedure. The Koti State acceded to the Dominion sometime in 1948 as we understand. There was a general form of instrument of accession signed by the Rulers of States in the Himachal Pradesh. This form appears at page 219 of the White Paper on Indian States issued by the Government of India, Revised Edition, in March 1950. Article 4 of the form of instrument reads as follows :—

“ Article 4

The Raja, the Rani, the Rajmata; the Yuvraj and the Yuvrani shall be entitled to all personal privileges enjoyed by them whether within or outside the territories of the State, immediately before the 15th day of August 1947.”

From a memorandum titled “ Memorandum on the Personal Privileges of the Rulers of the Merged and Integrated States,” issued by the Government of India apparently in August 1949, it is clear that the exemption from appearance in Court granted under section 133 of the Code of Civil Procedure was regarded as a substantial privilege coming under the guarantee of Article 4 of the Instrument of Accession. The reason for the issue of the memorandum appears to have been that during the discussions preceding the execution of the agreements of merger it had been urged on behalf of the Rulers that the privileges guaranteed to them by those agreements should be more clearly defined, and the memorandum set out 34 separate privileges. No. 21 in this list is styled “ Immunity from the process of Courts of law.” In respect of this the Government of India stated that they did not consider that any statutory provision for the continuance of this privilege was necessary. They said :—

“ The Government of India have no doubt that such immunity as the Rulers enjoyed before

the 15th of August 1947, in British Indian Courts would be regarded as a personal privilege of the Rulers, and in view of the express provision in the merger Agreements and Covenants, it will continue to be granted to them by all Courts in India."

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The Government, however, presumably in view of the fact that the matter must be one for the Courts to consider whether under the Constitution a privilege of this nature could exist, added :—

" It would be for the Courts to decide whether a Ruler is immune from Civil and Criminal process and if so to what extent and under what circumstances. "

When the application for exemption from appearance was made in the present matter the Subordinate Judge to whom it was made considered that by reason of the memorandum of the Government of India mentioned above any immunity formerly existing by reason of order made under section 133 of the Code became a matter entirely in the discretion of the Court to allow or to disallow according to the circumstances of the particular case. In the circumstances of this case the learned Judge thought that the immunity should not be allowed and it is from this order that the revision application has arisen.

The statement made by Government in this memorandum of course has no binding force and is not to be taken as more than an expression of opinion.

Before us the immunity is attacked on the ground that it offends against the provisions of Article 14 of the Constitution. Article 14 reads :—

" The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. "

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There can be no doubt that immunity from appearance in Court granted to any person or class of persons appears to offend the provisions of this Article. It is well established, however, that classification or discrimination based upon reasonable distinction is valid. This has been held by the Supreme Court in *Charanjit Lal v. Union of India* (1). In the judgment of Mr Justice Fazal Ali the following dictum of Prof. Willis is quoted with approval :—

“ Many different classifications of persons have been upheld as constitutional. A law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it.”

I understand this principle has been applied in the recent prohibition case from Bombay, the report of which is not yet available.

As soon as the matter comes to a question of reasonable classification, it seems to me incumbent upon the Courts to take notice of actual circumstances, and among such circumstances are matters of the High Policy of Government, and solemn obligations into which Government have entered. The preamble to the memorandum already mentioned shows that the continuance of privileges to Rulers was made in recognition of the great contribution which the Rulers had made towards the unification and democratization of India, and there can be no doubt that the guarantee of continuance of privileges was an important factor in securing the voluntary surrender of sovereignty by the Rulers. It may be mentioned that Article 362 of the Constitution in terms provides that in exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State,

(1) 1951 A. I. R. (S. C.) 41.

due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

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I consider, therefore, that sufficient reason exists for the continuance of the privilege granted to Rulers under section 133 of the Code of Civil Procedure, which section has not been repealed, and that the privilege has not been abrogated by the coming into force of the Constitution. The matter is not one of discretion having regard to the facts of a particular suit before the Court. The privilege exists as it existed when it was granted.

I think, therefore, that this revision should be allowed, and the order of the Subordinate Judge disallowing the claim of privilege set aside. Costs to be costs in the suit.

FALSHAW, J. I agree.

APPELLATE CIVIL

Before Eric Weston, C.J., and Harnam Singh, J.

S. HARJANG SINGH,—Appellant,

versus

GOWARDHAN DAS AND OTHERS,—Respondents.

1951

Sept. 24th

Letters Patent Appeal No. 34 of 1948

Civil Procedure Code, Act V of 1908, Sections 2 (3) and 49—Decree-holder if includes transferee of a decree—Whether a judgment-debtor can claim equities under section 49 arising against the transferee from an original decree-holder.