

STATE OF M.P. AND ANR.  
v.  
BRIJESH KUMAR AWASTHI AND ORS.

MARCH 10, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure, 1908 :*

*Order XXXIX, Rules 1 and 2—Temporary Injunction—Land of respondent acquired under Forest Act—In lieu of compensation land given to respondent—Award became final—Possession taken over—Later, suit by respondent for declaration of title to the acquired land and for compensation—Conservator of forest without any sanction from Government suffered a compromise decree in collusion with the respondent—Suit by Government for declaration and to set aside the decree on ground of collusion and fraud—Application for interim injunction dismissed by all the courts below—Held, at the time of the first suit, State being in possession of the land and when the State is agitating the right on the ground of fraud and collusion, pending suit State was entitled to an injunction restraining the respondents from getting the fraudulent decree executed—There would be an interim injunction pending suit.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1977 of 1997.

From the Judgment and Order dated 11.4.96 of the Madhya Pradesh High Court in M.A. No. 414 of 1996.

B.S. Banthia and S.K. Agnihotri for the Appellants.

S.S. Tiwari for the Respondents.

The following Order of the Court was delivered :

Delay condoned.

Leave granted.

A We have heard learned counsel for the parties.

This special leave petition arises from the judgment of the High Court of Madhya Pradesh, Jabalpur Bench, made on April 11, 1996 in M.A. No. 414/96. Respondent No. 2, Shivshankar Shukla was the owner of the land from Khasra No. 336, Peesajhodi, Tehsil in District Betul. The said property was acquired and an award came to be made under Section 16 of the Indian Forest Act by the Forest Superintending Officer. In lieu of compensation, the land to an extent of 4.50 acres of Khasra No. 282/1 and 292 was given to them. That award became final. After taking over possession thereof, the standing timbers (bamboos) were removed. The respondents filed Civil Suit No. 4A of 1988 for a declaration of title to the land in Khasra No. 336 and for compensation of Rs. 39,000. After filing the written statement contesting the suit, Narendra Kumar, the Conservator of Forest, the third respondent colluded with the respondents 1 and 2 without any sanction of the State Government and appears to have suffered a compromise decree in that suit. The additional District Judge, Betul, accordingly, passed a decree on May 8, 1992 setting aside the award. After one and a half years, the respondents filed an execution application upon which the appellants came to know of the decree for the first time. Consequently, they filed an application under Section 47, CPC, objecting to the execution on the ground of fraud. The application was dismissed. The writ petition filed by the appellants was dismissed by the High Court with liberty to agitate their right in an appropriate suit. Consequently, the suit was filed for declaration and to set aside the decree on the ground of collusion and fraud played upon the Government. Along with the suit, an application under Order XXXIX, Rule 1 and 2, CPC came to be filed. The application for injunction was dismissed and the appeal has also been dismissed by the High Court. Thus, this appeal by special leave.

From the above narration of the facts, it is seen that there was a valid award passed under the provisions of the Forest Act and the award came to be set aside on a compromise by third respondent though having no authority from the State Government. It is the admitted position that when the first suit was filed by them, the State was in possession of the property. On that premise, they sought damages against the State. Under these circumstances, when the State is agitating the right on the ground of fraud and collusion, it is obvious that, pending suit, the appellants were entitled

to an injunction restraining the respondents from getting the fraudulent A  
decree passed against the State, executed.

Under these circumstances, the trial Court as well as the High Court  
has committed manifest error of law in not granting the injunction.

The appeal is accordingly allowed. The order of the High Court and B  
also of the Civil Courts stand set aside. There should be an interim  
injunction pending suit. The trial court is directed to dispose of the suit  
expeditiously. No costs.

R.P.

Appeal allowed.