(1964) 08 AP CK 0010

In the Andhra Pradesh High Court

Case No : Appeal No. 228 of 1962 and A.A.O. No. 470 of 1962

Dasari Satyanarayana, being minor represented by guardian A. Venkataramaiah — APPELLANT

Vs

Kanchupatla Appa Rao and Others — RESPONDENT

Date of Decision : 07-08-1964

Acts Referred:
Contract Act, 1872 — Section 23

Citation : AIR 1966 AP 209

Hon'ble Judges : P. Chandra Reddy, C.J;Narasimham, J

Bench : Division Bench

Advocate : M. Krishna Rao and M.S.K. Sastry, for the Appellant; K. Mangachary, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, J.—The appeal arises out of O. S. 32 of 1957 filed in the Court of the Subordinate Judge, Rajahmundry for dissolution and rendition of accounts of a partnership in motor transport run under the name and style of Sri Venkateswara Motor Transport, Rajahmundry or alternatively for recovery of the share capital advanced by the plaintiff.

2. The suit failed for accounts on the finding of the learned Subordinate Judge that the partnership was illegal and void ab initio as contravening the provisions of Section 59(1) of the Madras Motor Vehicles Act. But, the learned Subordinate Judge granted the relief prayed for in the alternative by decreeing the suit For Rs. 40,000 with subsequent interest thereon at 5 1/2 per cent per annum from 29-9-1958 till date of payment.

3. The appeal has been preferred by the 9th defendant, who is the legal representative of the 1st defendant, against the said judgment and decree. The dismissal of the main relief of dissolution of partnership and accounts became final.

4. The short question before ns is whether the moneys advanced by way of capital for an illegal partnership could be recovered.

5. It is contended before ns that the partnership business having been run for about 2 years, which is tantamount to carrying on an illegal partnership, none of the parties to the partnership could lay an action inter se for recovery of moneys invested thereunder.

6. Sri Krishna Rao has invited our attention to Immani Appa Rao and Others Vs. Gollapalli Ramalingamurthi and Others, which adopted the rule enunciated by Lord Mansfield. C.J. in dolman v. Johnson, (1775) 1 Cowp 341 as the true principle which should govern the decision in such cases. Mansfield. C.J. said thus;

"The objection that a contract is immoral or illegal as between plaintiff and defendant sounds at all times very ill in the month of the defendant. It is not for his sake, however, that the objection is ever allowed: but is founded on general principles of policy which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if E may say so. The principle of public policy is this: ex dolo malo non oritur actio. No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiffs own stating or otherwise the cause of action appears to arise ex turpi causa or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the Court goes: not for the sake of the defendant, but because they will not lend their aid to such a plaintiff."

7. That was a case of a transfer of property in fraud of the creditors of the transferor. The transferor retained possession and so the suit was laid for possession by the transferee. The suit failed. The learned Judges observed that out of the two confederates in fraud, one wanted a decree to be passed in his favour and that meant he wanted the active assistance of the Court in reaching the properties, possession of which had been withheld from him by the oter. The defence of fraud was set up. It was observed that if the defence was shut out, the party to the fraud would be entitled to a decree, and that meant assisting a party to the fraud and the Court would be used as an instrument of fraud, which is clearly and patently inconsistent with public interest. It was observed that there was no question of estoppel in such a case. The learned Judges concluded thus (at page 376):

"Therefore, we are inclined to hold that the paramount consideration of public interest requires that the plea of fraud should be allowed tn be raised and tried, and if it is upheld the estate should be allowed to remain where it rests. The adoption of this course, we think, is less injurious to public interest than the alternative course of giving effect to a fraudulent transfer."

8. This statement of the law puts an end to the controversy with regard to the claim made by one of the parties to an illegal partnership.

9. Sri Mangachari argued that the plaintiffs knowledge of the illegal nature of the partnership was not specifically put in issue. We consider that that may not arise when it is made clear that the plaintiff entered into a partnership with the defendants which was illegal in its inception.

10. We may refer to a decision of a Division Bench of this Court in Peddi Virayya Vs. Doppalapudi Subba Rao and Another, where the same view was expressed with regard to the enforceability of obligations by either party to an illegal contract. The legal position has been stated in the said judgment (at page 649) which may be extracted:

"On this premise the contract entered into between the 1st defendant and the plaintiff for making purchases of tobacco is illegal being prohibited by the relevant sections of the Act, the true legal position has to be appreciated. It is now weft settled that a party to an illegal contract cannot invoke the aid of a Court to have such a contract carried into effect as law will not tolerate any party to violate any moral or illegal duties. As a corollary from this principle, if money is advanced for a purpose which is either opposed to morals or law or in furtherance of an illegal transaction such advance is not recoverable having regard to the maxim ex turpi causa non oritur actio. But this is subject to an exception. The law allows locus penitential. So before Fraud or an illegal purpose is carried out, the money may be recovered from the person t whom it was advanced. But the Court will not render any assistance in the recovery of the money if there is even a part performance of the illegal contract."

11. We have, therefore, no doubt that the plaintiffs unit to recover any money advanced by way of capital must also, fail. In any view, amounts invested as capital in the partnership business form items of account between partners, so that when a suit for accounts fails, they cannot be the subject-matter of independent adjudication its amounts recoverable apart from accounting.

12. We, therefore, set aside the judgment and decree of the learned Subordinate Judge and dismiss the suit with costs. The appeal is allowed with costs throughout.

