

(1922) 06 CAL CK 0078
In the Calcutta High Court

Dhirendra Kumar Bose by His Guardun, Mother, Sarojini Bose	APPELLANT
Vs	
Chandra Kanta Roy and Others	RESPONDENT

Date of Decision : 14-06-1922

Acts Referred:

Contract Act, 1872 — Section 23

Citation : AIR 1923 Cal 154 : 68 Ind. Cas. 648

Hon'ble Judges : Chotzner, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. The subject-matter of the litigation which has culminated in this appeal, is a tenure covered by a Kabuliyat executed by one Sasbi Kumar Bose in favour of the Secretary of State on the 3rd July 1906. The case for the plaintiff is that, on the 20th April 1905, he obtained an amalnama in respect of the disputed land, in the name of Sashi Kumar Bose, from Narendra Kishore Roy and others who were, at the time, ijaradars under the Secretary of State, and that, upon the expiry of their tiara, when a fresh settlement was made by the Revenue Authorities, Sashi Kumar Bose, as the ostensible tenure holder, executed the kabuliyat previously mentioned, Sashi Kumar Bose died in 1912. The plaintiff alleges that, since then, the first defendant, the minor son of Sashi Kumar Bose, and the second defendant, his widow, have set up an unfounded claim to the tenure, though the plaintiff has been in possession throughout. The result was a proceeding u/s 145 of the Criminal Procedure Code, which terminated on the 19th April 1915, in an order adverse to the plaintiff. The plaintiff was thus constrained to institute this suit on the 19th September 1916 for establishment of his title and for recovery of possession. The defendants resisted the claim on the allegation that the plaintiff had no title and repudiated the assertion that Sashi Kumar Bose held the property for the benefit and on behalf of the plaintiff. The court of first instance held upon the evidence that Sashi Kumar Bose was the real tenure-holder, and dismissed the suit. Upon appeal, the District Judge has reversed the decision and decreed the suit, finding that Sashi Kumar Bose was benamidar for the plaintiff. On the present appeal, the decree of the District

Judge has been assailed, substantially on the ground that, on the allegations of the plaintiff himself, the mode of acquisition of his title was so tainted with fraud that it would be opposed to public policy to assist him in its enforcement. The facts, which form the basis of this argument, are not disputed and may be concisely stated.

2. The plaintiff was an amin and an Inspector in the Survey and Settlement Department under the Government from 1899 to 1907. He was consequently subject to the operation of the following rule framed by the Governor General-in-Council for regulating the Conduct of Public Servants:

Any Government servant belonging to the Provincial or Subordinate Civil Services may continue to hold any Immovable property actually held by him at the time of his entry into Government service and may thereafter acquire any Immovable property by succession, inheritance or bequest, or, with the previous sanction of the Local Government or such Heads of Departments as may be specially empowered by the Local Government in this behalf, by purchase or gift. He will, however, be liable to be debarred from employment within the district or other local limits within which such Immovable property is situated. Any Government servant may hold or acquire Immovable property in good faith for the purpose of residence.

Every Government servant must make to the Government, through the usual channel, a declaration of all Immovable property which may from time to time be held or acquired by him or by his wife or by any member of his family living with or in any way dependent upon him. Such declaration should state the district within which or the Native Prince or Chief within whose territories, the property is situated and should, give such farther information as the Government may, by general or special order, require

3. The plaintiff, it cannot be disputed, took the settlement of the disputed land from the Government, in the name of Sashi Kumar Boss, with a view to evade the rule mentioned. The defendants contend that such acquisition of interest in land was illegal, and that it would be contrary to public policy to allow the plaintiff to enforce a title acquired in such circumstances. In support of this position, reliance has been placed upon the decision of the Judicial Committee in *Petherpermal Chetty v. Muniandy Seroui* 35 C. 551 PC : 35 I. A. 98 : 10 Bom. L. Rule 590 : 12 C. W. N. 562 : 5 A. L. J. 290 : 7 C. L. J. 528 : 14 Bur. L. Rule 108 : 18 M. L. J. 277 : 4 M. L. T. 12 : 4 L. B. Rule 266 (P. C.) which is an authority for the proposition that although where an intended fraud has been carried into effect, the Court will not allow the true owner to resume the individuality which he has once cast off in order to defraud others, yet, if he has not defrauded any one, the Court will not punish his intention by giving his estate away to another, whose retention of it is an act of gross fraud. This principle has clearly no application to the circumstances of the present case.

4. The history of the rule recognized by the Judicial Committee in *Petherpermal*

Chetty v. Muniandy Servai 35 C. 551 PC: 35 I. A. 98 : 10 Bom. L. Rule 590 : 12 C. W. N. 562 : 5 A. L. J. 290 : 7 C. L. J. 528 : 14 Bur. L. Rule 108 : 18 M. L. J. 277 : 4 M. L. T. 12 : 4 L. B. Rule 266 (P. C.) was fully examined in the case of Jadu Nath Poddar v. Rup Lal Poddar 83 C. 967 : 4 C. L. J. 22 : 10 C. W. N. 650. That principle is based on the doctrine that where a party admits that he has made a fictitious transfer of his property to another with a view to effect a fraud, but asks to have his act undone, the Court would refuse relief and would leave the parties to the consequences of their misconduct, dismissing the claim when the suit was brought by the real owner to get back possession of his property and refusing to listen to the defences when he set it up in opposition to the person whom he had invested with the legal title. Upon this rule has been engrafted the distinction that although where the intended fraud has been carried into effect, the Court will not assist the true owner, yet if he has not defrauded any one, and the purpose for which the assignment was made has not been carried into execution, the mere intention to effect an illegal object does not deprive the assignor of his right to recover the property from the assignee who has given no consideration for it. This distinction between fraud merely intended and a fraudulent purpose actually accomplished, is recognized in Section 84 of the Indian Trusts Act, 1882, and is illustrated by the cases of Akhil Proddhan v. Manmatha Nath Kar 22 Ind. Cas. 36 : 18 C. L. J. 616. and Rojab Ali v. Hedayet Ali 29 Ind. Cas. 699 : 22 C. L. J. 197 : 19 C. W. N. 1151, These well-established rules are of no assistance to the defendants, because the conduct of the plaintiff, howsoever reprehensible by reason of his violation of the rules prescribed for the conduct of Public Servants, cannot be described as a fraudulent transfer of property.

5. This view is supported by the decision in Lobo v. Brito 21 M. 231 : Ind. Dec. (n. s.) 518, In that case, the plaintiff sued for declaration of his title to land which had been purchased by him in the name of the defendant. The object of the transaction was to conceal from the Collector the fact that the plaintiff, who was a Tahsildar, had acquired property in his Taluq contrary to the rules of his Department, Shephard and Subramaniya Iyer, JJ. held that the plaintiff was entitled to the declaration sought, he may have acted dishonestly and in contravention of the rules of his Department, but he could not be said to have acted illegally to as to bring the case within the scope of the rule that a man is precluded from obtaining relief in respect of a transaction, the purpose of which was illegal and has been accomplished.

6. We are not unmindful that a different view was adopted by the Allahabad High Court in the cases of Shiam Lal v. Chhaki Lal 22 A. 220 : A. W. N. (1900) 30 : 9 Ind. Dec. (n. s.) 1177. and Sheo Narain v. Mata Prasad 27 A 73 : I. A. L. J. 412 : A. W. N. (1904) 167. where it was held that the contract made by a Public Officer for the purchase of land in his Circle, contrary to the rules, is opposed to public policy, specially when, with a view to conceal that purchase from his superiors, he takes the conveyance in the name of another person. These cases were, however, overruled by the decision of a Full Bench in Bhagwan Dei v. Murari Lal

36 Ind. Cas 259 : 39 A. 51 : 14 A. L. J. 962, which was followed by another Full Bench in Kamala Devi v. Gur Dial 36 Ind. Cas 319 : 39 A. 58 : 14 A. L. J. 669. Sir Henry Richards, C. J., declined to hold that the transfer or assignment, in contravention of the rule, was void as against public policy, though a prohibitory rule made it objectionable for the Public Officer concerned to acquire property or interest in property in his Circle. Walsh, J., pointed out that the case did not fail within the terms of Section 23 of the Indian Contract Act and that the earlier cases overlooked the distinction between the conduct of a person and the subject-matter of a contract. The Section provides that the consideration or object of an agreement is unlawful, if the Court regards it as opposed to public policy, and every agreement, of which the object or consideration is unlawful, is void. The section thus provides for cases where the consideration or object of the agreement is opposed to public policy. There can be no question that having regard to the Regulations governing the appointment of the officer his conduct was reprehensible, but that does not show that the creation of the tenure was opposed to public policy. Rafique, J., emphasised the well-known principle affirmed by the House of Lords in Janson v. Driefontein Consolidated Mines (1902) A. C. 484 : 71 L. J. K. B. 857 : 87 L. T. 372 : 51 W. Rule 142 : 7 Com. Cas. 268 : 18 T. L. Rule 796. namely, that no Court can invent a new head of public policy or condemn an agreement, because, in its opinion, it is not consistent with public interest. The case could not thus be brought within one or other of the recognized heads in the classification of agreement to do that which it is the policy of the law to prevent:

- (i) agreements which injure the State in its relations with other States;
- (ii) agreements tending to injure the public service;
- (iii) agreements which tend to prevent the course of justice;
- (iv) agreements which tend to abuse of legal process
- (v) agreements which are contrary to good morals;
- (vi) agreements which affect the freedom or security of marriage;
- (vii) agreements in restraint of trade.

7. The case before us cannot be placed in the same category as agreements whose object is to induce an officer of the State whether Judicial or Executive, to act partially or corruptly in his office as happened in the case of Egerton v. Brownlow (1853) 4 H. L. C. 1 : 94 Rule R. 1 : 23 L. J. 348 : 18 Jur. 71 : 8 St. Tr. 194 : 10 E. Rule 359. decided by the House of Lords or of Marshall v. Baltimore and Ohio Railroad Co. (1863) 16 Howard 314 : 14 Law Ed. 953. decided by the Supreme Court, of the United States. The decision in Mohun Lai Babu v. Udai Narain Bhaduri 7 Ind. Cas. 2 : 14 C. W. N. 1031. is clearly distinguishable. There, the Court invalidated a contract by the intending purchaser to re convey the property to the defaulter; such a contract, if permitted, would clearly defeat the provisions of Section 9 of the Patni Regulation and would thereby attract the

operation of Section 23 of the Indian Contract Act. Nor is there any analogy between the present case and that of *Sitarampur Coal Co. Ltd. v. Colley 1 Ind. Cas. 351 : 13 C. W. N. 59.* which holds that a contract with a Public Servant, which might cast upon him obligations inconsistent with his public duty, is void. In view of these principles we are unable to hold that the plaintiff is disentitled to the assistance of the Court on grounds of public policy. It may be conceded that there is room for argument on both sides, as is sufficiently indicated by the circumstances that the two Full Bench decision of the Allahabad High Court in *Bhagwan, Dei v. Murari Lal 36 Ind. Cas 259 : 39 A. 51 : 14 A. L. J. 962*, and *Kamala Devi v. Gur Dial 36 Ind. Cas 319 : 39 A. 58 : 14 A. L. J. 669.* were disapproved of in the Court of the Judicial Commissioner of Oudh in *Sajjad Mirza. Nanhi Khanam 47 Ind. Cas. 694.* but approved of without hesitation, shortly afterwards, in the Court of the Judicial Commissioner of Nagpur in *Balkissen v. Bebi Singh 52 Ind. Cas. 153 : 16 N. L. Rule 25.* There is, however, much to be said in favour of the view maintained by Sir Basil Scott, C. J., in *RamaKrishna Trimbak v. Narayan Shivrao Aras 31 Ind. Cas. 301 : 40 B. 126 : 17 Bom. L. Rule 965*, namely, that Government Servants Conduct Rules are rules of Conduct and not statutory prohibitions, so that a disregard of these rules does not necessarily taint transactions by Government servants with immorality or illegality. We are not, on the whole, much impressed by the argument that the cause of good Government would be seriously prejudiced, if a Government servant in the position of the plaintiff were not deterred from trusting knaves like the predecessor of the defendants, and that consequently in the interest of the public good, as it were, they should be permitted to keep for themselves the property into the possession of which he was so unwisely and unrighteously put. The obvious answer is that the plaintiff in suing to recover possession of his property is not carrying out an illegal transaction but is seeking to put every one, as far as possible, in the correct position. The plaintiff has already intimated to the Revenue Authorities that he was the beneficial owner under the Settlement. They have raised no objection, and are content to register his name in their records. They have not taken steps for cancellation of the settlement, as they might have done if it were shown, for instance, that the plaintiff had abused his position as a Government servant and had successfully conspired with his fellow officers to obtain a benami settlement on terms unfair to the State and unduly advantageous to himself, It is the defendants who are anxious to utilize the breach of the Conduct Rules by the Plaintiff, to enable them to retain possession of the property to which they cannot make cut a vestige of title; plainly, they cannot be permitted in to effect great moral ends and to secure the purity of the public services. We hold accordingly that the Court should not refuse to assist the plaintiff in the defendants.

8. The result is that the decree made by the District Judge is affirmed and this appeal dismissed with costs.