

(1926) 12 AHC CK 0006
In the Allahabad High Court

Hardeo Das, Nanak Chand

APPELLANT

Vs

Ram Prasad, Shyam Sundar Lal and Others

RESPONDENT

Date of Decision : 23-12-1926

Acts Referred:

Contract Act, 1872 — Section 30
Contract Act, 1872 — Section 30
Contract Act, 1872 — Section 30

Citation : AIR 1927 All 238(1) : (1927) ILR (All) 438

Hon'ble Judges : Dalal, J

Bench : Division Bench

Judgement

Dalal, J.—The finding of the lower appellate Court is that the defendant was an agent of the plaintiff to carry out wagering contracts. There was no evidence of the defendant having derived any profit under those contracts and so the plaintiff's suit as to profits was rightly dismissed. The question, however, remains regarding the recovery of Rs. 400 deposited by the plaintiff with the defendant by way of security. The lower appellate Court dismissed this portion of the suit also, referring to a single Judge case of this Court, Changa Mal v. Sheo Prasad [1920] 42 All. 449. We are not in agreement with that decision. It rested on a ruling of the Bombay High Court, Daya Bhai, Tribhovan Das v. Lakhmi Chand, Pant Chand [1885] 9 Bom. 358. The Bombay case was decided on the basis of a special Act, Bombay Act III of 1865, which has no operation in these provinces. As far back as 1903 a Bench of this Court held that an agent, who has received money to the use of his principal on an illegal contract between him as such agent and a third party, cannot be allowed to set up the illegality of the contract as defence in an action brought by the principal to recover from the agent the money so received, Bhola Nath v. Mul Chand [1903] 25 All. 639. Recently another Bench of this Court has construed Section 30 of the Indian Contract Act. According to that decision the provisions of that section did not prevent a person who is employed as an agent in connexion with a wager from recovering the sums due to him by his principal. The present is a converse case.

Rs. 400 is due to the principal from the agent and the agent cannot plead the illegality of the contract. The lower appellate Court admitted that the agent would have to pay any profit made by him under such a contract. There is the greater reason for asking the agent to refund any sum received by him from the principal to carry out such a contract.

2. We decree the appeal for Rs. 400. The rest of the appeal is dismissed. Parties shall receive and pay costs of all Courts according to their success and failure.