

(1920) 08 MAD CK 0038
In the Madras High Court

Palaniyappa Chettiar

APPELLANT

Vs

Chockalingam Chettiar

RESPONDENT

Date of Decision : 02-08-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16
Contract Act, 1872 — Section 23

Citation : (1921) ILR (Mad) 334

Hon'ble Judges : Oldfield, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—The plaintiff's suit has been dismissed on the ground that, according to Section 23 of the Contract Act, the agreement on

which the suit is based as contained in Exhibit A is illegal and that therefore the plaintiff cannot recover the money which the defendant had

collected under certain decrees. The plaintiff himself is the judgment-debtor under the decree and he apparently asked the defendant to take an

assignment of the decree on his behalf and to execute the decree against the other judgment-debtors and the defendant realized in execution certain

assets. By Exhibit A it is provided that the defendant will submit accounts to the plaintiff of the amount spent in collecting the money, and of the

amount realized, and after deducting a commission of 20 per cent pay over the balance to the plaintiff.

2. Order XXI, Rule 16, Civil Procedure Code, says that:

Where a decree for the payment of money against two or more persons has been transferred to one of them it shall not be executed against the

others.

3. It is not contended that on such transfer, the liability under the decree becomes altogether discharged but that the decree shall not be enforced in execution; it is open to the judgment debtor who has obtained a transfer of the decree to sue his, co-debtor upon it for contribution, as held in *Anant Vinayak v. Nagappa Subraya I.L.R., (1908) 32 Bom., 195*. In this case the judgment-debtors did not raise any objection to execution on the strength of Order XXI, Rule 16. The defendant must be taken to be an agent of the plaintiff for the actual realization of the money. But it is argued on behalf of the respondent that it was the duty of the Court to refuse execution and the Court would have done so if it had been brought to its notice that the defendant was merely an agent or benamidar of the plaintiff, who was one of the judgment-debtors. Having regard to the language of Order XXI, Rule 16, we may proceed on the assumption that if the facts were known to the executing Court, it would have been bound to reject the application for execution.

4. Then it is contended that if the Court were now to help the plaintiffs in recovering the moneys realized by the defendant by means of the execution of the decree in spite of the prohibition of the law, that would be a violation of the rule laid down in Section 23 of the Contract Act. Mr. Bhashyam Ayyangar in support of the judgment of the lower Court has referred us to a number of rulings of the English Courts. The English authority on which much emphasis was laid was the case of *Sykes v. Beadon (1879) 11 Ch. D., 170*. There Jessel, M.R., upheld the proposition that the Court of law or equity will not lend its assistance in any way towards carrying out an illegal contract; therefore such a contract cannot be enforced by one party to it against the other, either directly by asking the Court to carry it into effect, or indirectly by claiming damages or compensation for breach of it. The case before us does not fall within the proposition laid down in *Sykes v. Beadon (1879) 11 Ch. D., 170*. In the first place the purchase of a decree by one of the judgment-debtors is not illegal, and in the second place this case comes within the class of cases mentioned in the judgment of the Master of the Rolls, page 193-- but in cases where the contract is actually at an end, or is put an end to, the Court will interfere to prevent those who have, under the illegal contract, obtained money belonging to other persons on the representation that

the contract was legal, from keeping that money.

5. If the plaintiff in the present suit were suing the defendant to enforce the contract and to compel him to execute the decree against the co-

judgment debtors or to recover damages for having failed to do so, it would be asking the Court to carry out an illegal contract. But that is not the

case here. The same answer is to be given *Booth v. Hodgson* (1795) 6 T R, 406 and *Battersby v. Smyth* (1818) 3 Madd., 110. On the other

hand, this case in my opinion is governed by the class of cases of which *Bridget v. Savage* (1885) 15 Q.B.D., 368, is a leading example. There

the plaintiff had employed the defendant for a commission to make bets for him on horses. The defendant accordingly made such bets, and he

received the winnings from the persons with whom he had so betted. In an action by the plaintiff for the amount which the defendant had so

received, it was held that 8 & 9 Vic., c. 109, Section 18, which makes null and void all contracts by way of wagering, did not apply to the contract

between plaintiff and defendant and that, therefore, notwithstanding that statute the plaintiff was entitled to recover in respect of the bets which had

been so paid to the defendants. The learned Judges of the Court of Appeal point out that the principle is that a:

person who has received money from another under an illegal contract cannot be allowed to retain it,

to quote the language of Eyre, C.J., in *Tenant v. Elliott* (1797) 1 Bom.& P., 3. Bowen, L.J., observed as follows in *Bridger v. Savage* (1885) 15

Q.B.D., 368:

If the person who has betted pays his bet he does nothing wrong, he only waives a benefit which the statute has given to him, and confers a good

title to the money on the person to whom he pays it. Therefore, when the bet is paid the transaction is completed and when it is paid to an agent, it

cannot be contended that it is not a good payment for his principal. If not, how monstrous it would be that the agent who has received the money

which belonged to his principal and which he received for his principal, and only on that account should be allowed to say that the payment was

bad and void. The truth is that the contract under which he received the money for his principal is not affected by the collateral contract under

which the money was paid to him.

6. It seems to me that these observations apply to the present case; I may also point out that in *Bridger v. Savage* (1885) 15 Q.B.D., 368 , which

was argued by eminent counsel on both sides, *Sykes v. Beadon* (1879) 11 Ch.D, 370 was not cited at all as establishing a contrary proposition

nor the cases in Term Reports cited by the respondent. So far as the Indian Courts are concerned, there are two decisions directly against the

contention of the defendant: *Bhola Nath v. Mul Chand* I.L.R., (1903) All., 639 and *Nagendrabala Dassi v. Guru Doyal Mukerji* I.L.R.(1903)

.Calc., 1011. In the former decision, Stanley, C.J., takes the law as quite settled on the authority of the English decisions. On the other hand, we

have been referred to a decision of the Bombay High Court in *Gosvami Shri Purushothamji Maharaj v. B. Robb* I.L.R.,(1884) 8 Bom., 398. But

as I read the case, it does not lay down anything different from the law enunciated in *Bridget v. Savage* (1885) 15 Q.B.D., 363 . All that it lays

down is that a suit could not be sustained for levying a cess prohibited by law.

7. I am therefore of opinion that the judgments of the lower Courts are wrong. I must reverse them and remand the case to the Court of first

instance for disposal on the other issues. Costs will abide the result. The Court fees paid on the Second Appeal Memorandum and on the appeal

to the lower Appellate Court will be refunded to the appellant.

Oldfield, J.

8. If it were necessary to consider whether Section 23 of the Contract Act were applicable to the contract between the plaintiff and the defendant,

I should have no difficulty in holding that the plaintiff's object, which he has unlawfully accomplished, was to defeat the provisions of Order XXI,

Rule 16. It is not disputed that the defendant entered into the contract with full knowledge of the circumstances and of the character of the plaintiffs

intention in making it. That, however, is not enough to justify the defendant in repudiating the liability for what he realized on plaintiff's behalf. His

agency to execute a decree was, it should be remembered, in itself innocent. His knowledge that the execution of the decree on plaintiff's behalf

might defeat Order XXI, Rule 16, will no more make his agency guilty than did the similar knowledge of the brokers referred to in *Bhola Nath v.*

Mul Chand ILR (1903) All., 639, that they were engaged in wagering transactions. See also *Nagendrabala Dassi v. Guru Doyal Mukerji* I.L.R.,

(1903) Calc., 1011. Mr. Bhashyam Ayyangar for respondent has put the case in this way. The creation of an agency by the plaintiff was part of the machinery, by which he intended to deceive the Court and thus to secure the successful execution of his unlawful design. That he contends is enough to bring the agency and the contract, by which it was created, within the principle of Section 23 and to make the latter unenforceable. He cited in support of this Booth v. Hodgson (1795) 6 T R., 405, Battersby v. Smyth (1818) 3 Madd., 110 and Sykes v. Beadon (1879) 11 Ch.D., 170 , besides Indian cases of less importance. It does not seem to me that these authorities go to the length which he requires. In them the relation between the parties was not merely the means employed to carry out the unlawful transaction, but it was the transaction itself. In the three English cases, the material fact was that something was done by a number of persons, which according to law either could not be done by that number of persons without some formality being complied with or could not be done by that number of persons at all. It was the association, which was in fact the unlawful element and which made the transaction unlawful. Here, there is nothing of that sort, because the contract by which the parties were associated, one of agency, was not in itself unlawful and was not what made the whole transaction unlawful, since the unlawfulness would have been the same had plaintiff succeeded in carrying through his execution himself without ever employing the defendant at all.

9. For these reasons I agree with my learned brother and concur in the order proposed by him.