(1920) 08 MAD CK 0055

In the Madras High Court

Pl.Pl. Palaniyappa Chettiar APPELLANT

Vs

N.S.P. Chockalingam Chettiar RESPONDENT

Date of Decision : 02-08-1920

Acts Referred:
Contract Act, 1872 — Section 23

Citation : AIR 1921 Mad 334 : (1920) 12 LW 609 : (1920) 39 MLJ 692

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

Bench : Full 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 Ex. 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 those decrees 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 Ex. 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 commission of 20 per cent, to pay over the balance to the plaintiff.

2. Order 21 Rule 16 says that "where a decree for the payment of money againsttwo or more persons has been transferred to one of them, it shall not be executed against the others." 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 I.L.R.(1907) 32 Bom. 195. In this case the judgment debtors did not raise any objection to execution on the strength of Order 21 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 was 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 21, Rule 16 of the CPC 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.

3. 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 Aiyangar 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 bf Sykes v. Beadon (1879) 11 Ch. D. 170. There Jessell 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." In the first place the purchase of a decree by one of the judgment-debtors is not illegal and nextly this case comes within the class of cases mentioned in the judgment of the Master of Rolls "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." 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, in that case, 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 to the cases in Booth v. Hodgson (1795) 6 T.R. 405 and Battersby v. Smith 3 Madd. 110. On the other hand, this case in my opinion is governed by the classes of cases of which Bridget v. Savage (1885) 15 Q.B.D. 363 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 and 9 Vic. Ch. 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 defendant. 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 Band P. 3 . Bowen L.J., observes as follows :--" 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." It seems to me that these observations apply to the present case. I may also point out that in Bridget v. Savage (1885) 15 Q.B.D. 363 which was argued by eminent counsel on both sides, Sykes v. Beadon (1879) 11 Ch. D. 170 was not cited at all as establishing a contrary proposition nor the cases in Term''s Reports cited by the respondent. So far as the Indian Courts are concerned, there are two decisions directly against the contention of the plaintiff Bhola Nath v. Mulchund ILR (1903) All. 639 and Nagendrabala Dasi v. Gurudayal Mukherji ILR (1903) Cal. 1011. In the former decision Chief Justice Stanley 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, Goswamishri Purushottanj Maharaj v. 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 Bridger 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.

4. I am therefore of opinion that the judgments of the lower Court are worng. I must reverse them and remand the case to the court of first instance for disposal on other issues. Costs will abide the result. The Court fee paid on the second appeal memo and in the appeal to the lower appellate Court will be refunded to the appellant.

Oldfield, J.

5. If it were necessary to consider whether Section 23 of the Contract Act was 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 21 Rule 16. It is however not disputed that the defendant entered into the contract with full knowledge of the circumstances and of the character of the plaintiff''s intention in making it. That however is not enough to justify the defendant in repudiating the liability for what he realised 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 21 Rule 16 will no more make his agency guilty than similar knowledge of the brokers referred to in Bhola Nath v. Mulchand ILR (1903) All. 639 that they were engaged in wagering transactions. See also Nagendrabala Dasi v. Gurudayal (1903) 30 Cal. 1011. Mr. Bhashyam Aiyangar for the 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 this unlawful design. This 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. Hecited to support this Booth v. Hodgson (1795) 6 Term''s Reports 405 Battersby v. Smith (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, here one of agency, and 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.

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

