

(1927) 05 AHC CK 0013
In the Allahabad High Court

Ram Prasad-Shyam Sundar Lal and Others

APPELLANT

Vs

Ramji Lal

RESPONDENT

Date of Decision : 11-05-1927

Acts Referred:

Citation : (1927) 05 AHC CK 0013

Judgement

1. This is a defendant's appeal arising out of a suit for money that is, certain profits on "khatti" transactions, a sum of money deposited by the plaintiff with the defendant, his commission agent, by way of cover or security, and lastly, interest on the above sums. The facts are simple. The plaintiff employed the defendant as his agent to carry on what were admittedly wagering transactions dealing with the nominal purchase and sale of khattis." We are not concerned with considering the nature of the transactions between the plaintiff and the third party. So far as they were concerned the transactions were admittedly of a wagering nature, The suit is between the plaintiff, principal, and the commission agent, and in view of the decision of their Lordships in Sobhagmal Gianmal v. Mukundchand Balia AIR 1926 P. C 119 it is only with the nature of the transaction as between the plaintiff, principal, and the defendant commission agent, that we are concerned.

2. In the Privy Council case to which we have referred, the plaintiff-respondent was an agent on commission suing the defendant, who had instructed him to make certain contracts on his behalf. It was found by their Lordships that as between the agent (who did not disclose his principal's name to the third party) and the third party

the contracts were genuine transactions and not wagering contracts

at all, but in the matter of the dispute between the commission agent and the defendant their Lordships clearly based their decision solely on a consideration of the nature of the contract between the commission agent and his principal. They found that though the agent, as acting for an undisclosed principal, was liable to the third party, yet as between the agent and his principal the former had no

financial interest except in his commission, and the fact that there was a further collateral understanding between the agent and his principal that the former would, by covering contracts, or otherwise, provide for or take the goods or pay the difference on the principal a behalf did not render the contract between the principal and agent a wagering contract. Their Lordships concluded.:

As between them neither party stands to win from or lose to the other according to fluctuation of price or any other event. The very essence of a wager between them is thus absent.

3. Those remarks apply wholly to the present case. There is nothing to show that according to the contract as between the plaintiff and the defendant commission agent either party stood to win from or lose to the other according to the fluctuation of price or in any other event. Regarded from this standpoint, then, the contract as between the plaintiff and the defendant was wholly legal.

4. Nor in a case arising in these Provinces is the contract between the plaintiff and the defendant commission agent affected with illegality by reason of the fact that the contract as between the plaintiff and the third party is void as a wagering contract. In Bombay there is the special local Act, Bombay Act 3 of 1665, and in England there is the Gaming Act, 1892, (55 Vic. Chap. 9) according to which Acts the fact that the principal contract is a wagering contract affects prejudicially all collateral contracts. We are not concerned here to pursue the question whether in such cases money paid or received in pursuance of the collateral contract so affected can be recovered or not. There being no such Acts in force in this Province the contract as between the plaintiff and the commission agent being itself legal is not affected by the fact that the contract between the principal and the third party was a wagering contract.

5. The local Bombay Act 3 of 1865 was followed after seven years by the Contract Act of 1872. This latter Act does not in any way specifically embody such provisions as are to be found in the local Bombay Act and the English Gaming Act of 1892. It is certainly arguable that, though Section 30, Contract Act,, only makes all wagering contracts void and not illegal, such contracts are further illegal in view of Section 23, Contract Act, in that they are opposed to public policy. That particular view has, however, never been given effect to by the Courts in this Province, and its correctness is not beyond doubt. We prefer, therefore, to follow the current of authority in this Court and applying to the case the remarks that we have quoted from the judgment of their Lordships of the Privy Council we hold that the plaintiff in this case is entitled to have his contract with the commission agent, the defendant, regarded as a perfectly legal contract and to be entitled to the return of his earnest money.

6. Further, as to profits received from the third party for payment to the plaintiff, it is clear that the fact that the third party could not have been sued on the wagering contract does not entitle the agent to refuse to hand over profits actually paid to him by third party. Emperor Vs. Ishwar Dayal Pandey and

Another, is the latest of a series of authorities based on English decisions.

7. It is admitted that the amount of security was Rs. 200. We have only to consider then whether the receipt of profits by the agent has been proved or not. That is a Question of fact, but, were it not for a special circumstance, it might have to be considered whether the inference which the lower appellate Court drew from the parches written by the defendant and from his account books that the defendant had received the money was a justifiable inference in law. It is clear that if the parches only stated, as is contended by the appellant, what the result of the transactions would be when one or other party paid, i.e., only set out liabilities, it could not be regarded as proof of actual receipt by the agent of the money. Such was the situation in the case before their Lordships of the Privy Council to which we have referred. But here we are absolved from determining whether it was a reasonable and permissible inference from the evidence that the defendant actually received the money or not, for in this particular case it has been found that, while the plaintiff believed the defendant to be entering into transactions with third parties, the defendant was actually entering into the transaction on his own account. There was, therefore, no actual third party in this particular case who could offer the money to the defendant for payment to the plaintiff. The statement of accounts, therefore, given by the defendant to the plaintiff must be taken as evidencing not only that a certain amount of profits were due from the defendant on his own account to the plaintiff but that such amount of profits had been transferred from the defendant's own private purse to the defendant as agent for the principal. We hold, therefore, that the plaintiff was entitled in this suit to recovery of the earnest-money and of the profits actually received, and we see no reason to differ from the view of the lower Court as to the rate of interest which should be allowed to him. The result is that the appeal is dismissed with costs.