

(1958) 08 AP CK 0010

In the Andhra Pradesh High Court

Case No : Second Appeal No. 86 of 1955

Tavva Venkata Gurunadha Rao

APPELLANT

Vs

Badam Rosaiah (died) and Others

RESPONDENT

Date of Decision : 07-08-1958

Acts Referred:

Contract Act, 1872 — Section 65, 72

Citation : AIR 1959 AP 277

Hon'ble Judges : P. Chandra Reddy, C.J.;Kumarayya, J

Bench : Division Bench

Advocate : Sankara Sastry and J. Veerabhadrayya, for the Appellant; V. Venkatarama Sastry, J. Ramachandra Rao, P.S.S. Rama Rao and P. Ramachandra Rao, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—The applicability of Sections 65 and 72 of the Indian Contract Act is involved in the 2nd appeal.

2. The facts contributing to this litigation may be briefly stated. The appellant before us took a wife in 1941. She deserted him for reasons which are not quite explicable and which need not be gone into in this appeal. So, he instituted a suit for restitution of conjugal rights and also obtained a decree in that behalf. But she did not obey the decree and the plaintiff did not seek to execute it.

Eight years thereafter, i.e., on 19-6-1949, he married again the third defendant, who was at that time about fourteen years old. The marriage was consummated and they lived as man and wife for some months. Later on, he filed a petition for the custody of his minor wife under the Guardians and Wards Act alleging that her parents took her away without his knowledge and consent.

This petition was opposed inter alia on the ground that as the marriage of the plaintiff with the third defendant took place after the coming into force of the Madras Act VI of 1949, it was void and consequently the petition was not

maintainable. This objection prevailed with the District Judge, Krishna, before whom the petition came up for hearing, with the result that the petition was dismissed.

3. The suit out of which this second appeal arises was instituted for recovery of jewels and a sum of Rs. 2,000 said to have been deposited with one of the defendants for purposes which need not be detailed here. The answer to the suit was that the jewels and the money were not recoverable for the reason that the plaintiff induced the first and second defendants to give their daughter, the 3rd defendant, in marriage to him on the false representation that he was a bachelor and had the marriage consummated.

The courts below dismissed the suit, holding that the plaintiff was not entitled to get back either the jewels or the cash because knowing full well that the marriage was prohibited he entered into a contract of marriage with the third defendant and the plaintiff had no cause of action for the return of the jewels or the sarees or the sum of Rs, 2,000/- presented by him to the bride, the third defendant, and this is not a case where an agreement is discovered to be void or a contract becomes void, but is a case of a contract which is void as being contrary to and prohibited by statute. The aggrieved plaintiff has brought this second appeal.

4. The decision of this appeal turns upon the construction of Section 65 and Section 72 of the Indian Contract Act. Section 63 is in these words:

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it, to the person from whom he received it.

ILLUSTRATIONS.

(a) A pays B Rs. 1000/- in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void but B must repay A the Rs. 1,000/-.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after, B retains the 130 mounds after the first of May. He is bound to pay for them.

(c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the 6th night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for one thousand rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of profits which B would have made if A had been able to sing but must

refund to B the thousand rupees paid in advance.

Section 72 reads:

"A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it."

Obviously, Section 72 has no application to a case like this as it is not the appellant's case that he was under a mistaken belief that in law he was bound to give either the jewels or the money to the bride at the time of the marriage. All that was put forward on his behalf was that he was ignorant of the provisions of Act, VI of 1949 which prohibit a second marriage, and took the third defendant as a second wife.

In other words, it is the mistake of law that induced him to enter into a contract and not that he had believed that he was in law bound to make any presents to the bride at the time of the marriage. There is, therefore, no scope to resort to Section 72 of the Indian Contract Act. The decision in AIR 1949 297 (Privy Council) could have no bearing on this enquiry.

In the cited case, one of the parties made an excessive payment on a misinterpretation of one of the clauses of the lease. He thought he was bound to pay certain amounts under the terms of that lease. Later on, it was discovered that so much as was paid was not due to the lessor but something less than that: and the question arose whether Section 21 of the Contract Act was a bar to the recovery of the amount and whether Section 72 was applicable to a case of that type.

The Privy Council has laid down that Section 72 of the Contract Act governed that case, as this section makes no distinction between mistakes of fact and mistakes of law but it must be read together with the rest of the Act and in particular with Sections 21 and 22 which also deal with mistake.

5. Turning to Section 65 of the Contract Act, the provisions make it abundantly clear that it applies only to a case where the agreement is discovered to be void or when a contract becomes void. It may be that cases of contracts which are ab initio void fall within the ambit of this section. But the essential ingredient of this Section is that the party claiming restitution should establish that he was not aware of the nature of the contract at the time when he entered into it.

It could not come into operation in a case where the contract was entered into for an unlawful object, i.e., with the knowledge that it was a void contract. If the parties are in part delicto, the applicability of Section 65 cannot be attracted. That being the case, none of the decisions cited by Sri Veerabhadrayya, the learned counsel for the appellant, has any relevancy.

In *Thakurain Harnath Kuar v. Indar Bahadur Singh*, AIR 1922 PC 403, the next presumptive reversioner transferred an expectancy of an estate. After the death of the widow, the heir of the purchaser brought a suit for recovery of the lands in

question against the transferor, or, in the alternative for return of the consideration paid to the transferor.

The Privy Council while upholding the objection that the properties could not be recovered as what was transferred was only expectancy which was prohibited by law, ruled that he could recover the price paid for the transfer notwithstanding that, the contract was ab initio void, as it was only subsequently that it was discovered.

The principle of *Budhulal v. Deccan Banking Co., Ltd*, AIR 1955 Hyd 69 is not in any way inconsistent with what we have stated above. There, it was found that the parties did not know the nature of the contract at its inception but discovered it only subsequently.

6. It is urged by Sri Veerabhadrayya that there is no evidence on record to warrant a finding that the plaintiff was aware of the existence of the Madras Act VI of 1949 prohibiting bigamous marriages and that this has viliated the findings of the courts below. We cannot accede to this contention. Every man is presumed to know the law and unless it is established affirmatively that any man was not aware of the provisions of law, the pre sumption would take effect.

In this case, far from rebutting the presumption, the conduct of the plaintiff proves that fie was not unaware of the prohibition enacted in Madras Act VI of 1949. As pointed out by the trial court, it was asserted by him in O. P. No. 178 of 1949 that his second marriage with the present third defendant was valid since the whereabouts of his first wife were not known for some time, and she must be deemed to he dead. Both the courts found as a fact that the plaintiff had not succeeded in making out a case of his ignorance of law. On that ground alone this Second Appeal has to be dismissed.

7. There is another reason why his Second Appeal cannot meet with success. Admittedly, the marriage had been performed and the plaintiff and the 3rd defendant lived as man and wife for some months. In other words, the contract had been performed and both sides had received some advantage. The question is whether Section 65 of the Contract Act would come into play when the contract is performed.

That Section confers a right of restitution in cases where the contract is unperformed and has no application where the parties cannot be restored to their original position. There should be *restitutio integrum* in order to invoke Section 65. In this case, it is impossible to restore the parties to their original status for the reason that the marriage of the third defendant was consummated and she lived with the plaintiff as his wife for some months.

The fact that she could marry again would not put back the third defendant in the position in which she was before her marriage was consummated. This is not a case where only one party has received an advantage which could be directed to he returned to the other one who has not received any benefit. The plaintiff

also had an advantage in that he had the marriage consummated and had the third defendant living with him as his wife for some time. On this ground also the plaintiff has to be non-suited.

8. It is unnecessary for us to go into the question whether Section 65 of the Contract Act applies to cases where the contracts are not only prohibited by law but would amount, if performed, to an offence, in the view we have taken on the other two points.

9. It is also very doubtful, whether he could obtain any decree against the third defendant, who had no capacity to enter into a contract, being only 14 years of age at the relevant time.

10. In the result, the Second Appeal is dismissed with costs -- one set to be divided amongst the various respondents.

11. The appellant will pay the court-fee payable to the Government.