

(1955) 12 AP CK 0018

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1549 of 1950

Vejinepalli Krishna Rao Batchu Guravayya Co.

APPELLANT

Vs

Ghouse Ahmed Khan and Others

RESPONDENT

Date of Decision : 05-12-1955

Acts Referred:

Oil Seeds (Forward Contracts Prohibition) Order, 1943 — Section 2, 3

Citation : AIR 1957 AP 37

Hon'ble Judges : Viswanatha Sastri, J

Bench : Single Bench

Advocate : P.V. Chalapathi Rao, for the Appellant; P. Ramakrishna, for Nos. 3 and 10, for the Respondent

Judgement

Viswanatha Sastri, J.—The Plaintiff, a registered partnership carrying on business at Amravathi in Guntur District is the Appellant in this second appeal Defendant 1 is a firm carrying on business at Bezwada and originally consisted of Defendant 2 and Defendant 9 as partners. Defendant 2 is dead and his legal representatives are Defendants 3 to 8. The suit was filed for the recovery of Rs. 1,635/-from the Defendants on foot of a contract for the sale of, 636 bags of groundnut kernels, Ex. A-I dated 5-10-1944.

Under this contract Defendant 1 agreed to sell to the Plaintiff 636 bags of groundnut kernels at Rs. 18-4-0 per bag, delivery to be effected before 31-12-1944. This contract was therefore a forward contract as defined in Section 2, Clause (2) of the Oil Seeds (Forward Contract Prohibition) Order, 1943.

Before the due date for delivery had arrived the parties settled and under Ex. A-2 dated 18-12-44 the Plaintiff agreed to sell to Defendant 1, 636 bags of groundnut kernels at Rs. 20-2-0 per bag. The difference between the rates under the two contracts is Rs. 1-14-0 per bag and the Plaintiff claims a sum of. Rs. 1192-8- 0 in respect of 636 bags at Rs. 1-14-0 Per bag. A sum of Rs. 442-8-0 is claimed as interest upon the principal sum of Rs. 1,192-8-0.

2. The Defendants pleaded that the contract between the parties was a wagering contract and therefore incapable of being enforced. Secondly, the Defendants pleaded that the contract was void u/s 3 of the Oil Seeds (Forward Contracts Prohibition) Order, 1943.

3. The trial Court overruled the defence and decreed the suit of the Plaintiff. Though a ground of appeal was raised before the lower Appellate Court that the contract was a wagering contract and therefore unenforceable in law the point does not appear to have been argued or maintained in appeal and it is not urged before me here. The point on which the Courts below differed was whether the contract was within the exemption contained in the notification by the Central Government No. 1181 dated 16-2-1944.

Under the terms of the notification (omitting those that are not now relevant) forward contracts for groundnut not transferable to third parties are excluded from the provision of the Oil Seeds (Forward Contracts Prohibition) Order, 19-1-3. It has been held in the decisions of the Madras High Court followed by a learned Judge of this Court that in order to attract the conniption contained in the notification above Referred formability to should be a term of the contract. If it could not be withered from the experts language of the document or by necessary implication from the terms in which the contract, is embodied that the contract should be non trafficable then file exemption containing in the nomination would not be attracted.

The question is whether on the language of Exs. A-1 and A-2, it is possible to say that the contract was not transferable. The words "swan. The chalamani which occur in Exs. A-1, and A-2 are not usually inserted in mercantile contracts and they have been introduce into Exs. A-1 and A-2 obviously with some specific purpose or object. The Oil Seeds (Forward Contracts Prohibition) Order 1943 came into force on 29-5-1943 and must have come to the knowledge of merchants trading in groundnuts in this locality before 5-10-1944, when the contract Ex. A-1 was entered into.

The introduction of the words "swantha chalamani" in Ex. A-1 was evidently intended to attract the provisions of the notification No. 1161 dated 16-2-1944 to the suit contract and exempt it from the operation of Section 3 of the Oil Seeds (Forward Contract Prohibition) Order, 1943. The word "chalamani" does not appear to be of indigenous Telugu origin but appears to have been imported into the Telugu and other South Indian languages. "Chalamani" may have several shades of meaning in different contexts.

With reference to coins, coins which are no longer legal tender or which have, ceased to be current are stated to have lost their "Chalamani". The learned Subordinate Judge translates the words "Swantha Chalamani" as personal delivery. In my view, there is no need to interpret that expression in this limited sense. It might mean that the contract has force as between the parties only or that the rights and obligations under the contract are of a personal nature,

personal to the parties concerned.

The learned District Munsif was inclined to interpret the term as negating the transferability of the contract, and in my opinion, he is right. It is difficult to express in one or two pure Telugu words all the ideas connoted by the English expression "Non-transferable" and the parties seemed to have introduced the expression "swantha Chalamani" as a concise method of expressing the conception of non transferability of rights and obligations under the contract.

4. For these reasons, I reverse the decision of the leaned Subordinate Judge and restore that of the District Munsif with costs here and below; leave to appeal is asked for and is granted.