

Sk. Umar Vs. Shivdansingh and ors.

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Court : Madhya Pradesh

Decided On : Jul-24-1957

Reported in : AIR1958MP88

Judge : Dixit and ;Newaskar, JJ.

Acts : [Contract Act, 1872](#) - Sections 23 and 65

Appeal No. : First Appeal No. 42 of 1952

Appellant : Sk. Umar

Respondent : Shivdansingh and ors.

Advocate for Def. : S.V. Fadnis, Adv.

Advocate for Pet/Ap. : S.D. Sanghi, Adv.

Judgement :

Dixit, J.

1. This is an appeal from a decision of the District Judge of Ratlam dismissing the plaintiff-appellant's suit for the refund of the amount of consideration in respect of a contract, and for the recovery of the amount of expenses incurred by him in connection with the contract and the amount of damages sustained by him on account of defendant's certain actions.

2. The plaintiff's case was that on 9th January 1949, the defendant granted him a lease of a forest area in his Jagir in consideration of a premium of Rs. 3,325 payable in three instalments, namely, one of Rs. 1,125 on 9th January 1949; the other of Rs. 1,100 on 9th March 1949; and the third of Rs. 1,100 in September 1949; and, that under the lease he, that is the plaintiff, was granted the right to fell trees growing in the forest area for a period of eighteen months, and to remove the wood from the area at any time at his own convenience.

The plaintiff averred that he paid Rs. 1,125 to the defendant on 9th January 1949, and also an amount of Rs. 1,100 on 13th March 1949, and worked the forest area till 20th March 1949, when he was resisted by the defendant in felling the trees and removing the wood; that thereupon he gave a registered notice to the defendant which was refused by him; and that when he approached the defendant for ascertaining the reason for stopping him from felling the trees in the forest area and removing the wood, the defendant made a demand for the payment of the amount of the third instalment even before the due date and told him that he had no right to give the lease and that if the plaintiff were to pay the balance of Rs. 1,100 he would help him in getting the felled trees and wood removed from the forest area.

The plaintiff further stated that he declined to pay the amount of the last instalment as demanded by the defendant and that when he made enquiries, he learnt that, under two Rob-kars of the sovereign authority of the Ratlam State, the defendant who was 'a third grade Jagirdar' of the Ratlam State had no right to lease out the forest area and that by suppressing this fact the defendant had fraudulently induced him to enter into the contract.

On these allegations, the plaintiff claimed the refund of Rs. 2,225 being the amount of consideration paid by him, and the recovery of Rs. 3,830-2-6 as the net amount expended by him for working the contract and Es. 10,000 as damages computed on the basis of profit he would have made if he had been allowed to fell trees and remove the wood according to the contract.

3. The defendant admitted the contract as also the receipt of the consideration of Rs. 2,225. He denied that he ever made a demand for the amount of the third

instalment before it was due or that he obstructed the plaintiff at any time in the cutting of the trees or the removal of the wood.

He further pleaded that if, according to the plaintiff's own allegation he had no right to lease out the forest area under the law of the Ratlam State, then the contract was illegal and the plaintiff was not entitled to recover any amount in respect of this illegal contract. The defendant denied the plaintiff's allegation of fraud and disputed the amount of expenses incurred by him in working the forest area and of the loss of profits incurred by him.

4. The trial Judge has held that from 20th March 1949, the defendant did not allow the plaintiff to fell the trees or remove the wood; that he made a demand for the payment of the amount of the third instalment before it was due saying to the plaintiff that he had no right to give the lease and that if he were to make the payment he would be allowed to remove the wood; that it was on enquiry that the plaintiff learnt that the defendant was a 'third grade Jagirdar' and as such had no right to lease out the forest area under the two Robkars of the Ratlam State; and further that the defendant illegally and fraudulently obtained from the plaintiff the amount of Rs. 2,225.

The trial Judge found some other issues, which are not material here, also in favour of the plaintiff. He, however, held that as the defendant had no right to grant the lease, the contract between him and the plaintiff was illegal, and that, therefore, the plaintiff was not entitled to recover any of the amounts claimed by him. In view of this finding, the trial Judge thought it unnecessary to decide the issues relating to damages and the expenses incurred by the plaintiff.

But he felt himself compelled to give 'some consideration' to the question of the amount of expenses incurred by the plaintiff in working the contract and found that the plaintiff had not been able to prove that he had incurred a net expenditure of Rs. 3,830-2-6 in connection with the contract. On these findings the plaintiff's suit was dismissed.

5. Before us, the controversy in the appeal centred round the finding of the learned District Judge about the maintainability of the suit, and the question to be decided

in this appeal is a very limited one. It is whether, under the two Robkars of the Ruler of the Ratlam State, if the defendant had no right to grant the lease, the lease is void and the plaintiff is entitled to the return of the money paid by him to the defendant under Section 65 of the Contract Act and to recover the expenses and damages claimed by him.

The reasoning of the learned District Judge is that under the two Robkars issued by the sovereign authority of the Ratlam State, third grade Jagirdars of that State were prohibited from giving the contracts of forest areas in their Jagirs; that, therefore, the contract granted by the defendant was illegal being contrary to the law of the Ratlam State; that the parties must be presumed to have known this law at the time when they entered into the contract; that the parties to the contract were 'in pari delicto' as they knew the unlawfulness of the contract; and that, therefore, the contract being illegal to the knowledge of both parties, the plaintiff could not claim the refund of the amount of consideration paid by him or the other amounts claimed by him.

The learned District Judge derived support for this conclusion from the decision in the case of Abdula Saheb v. Guruvappa and Co., AIR 1944 Mad 387 (A), where it was held that a contract by a person licensed to lead in yarn at Kamalapuram, to sell the yarn to another person in Madras, being contrary to the provisions of the Yarn Control Order, 1942, and Rule 81(2) of the Defence of India Rules, was illegal and unenforceable.

In adopting this reasoning which is fallacious, the learned District Judge has not correctly appreciated the effect of the Robkars and has ignored his own finding that it was on enquiry that the plaintiff learnt that the defendant was a Jagirdar of third grade and that the defendant had illegally and fraudulently obtained Rs. 2,225 from the plaintiff. The equitable maxim of 'in pari delicto' on which the learned District judge relied and the related one of 'ex dolo malo non oritur actio' are limited in their application.

They apply to illegal or immoral transactions, or to others which it would be against public policy to countenance. Now, here, the Robkars issued by the Ruler of the Ratlam State, even if they are regarded as law, did not lay down that leases

granted contrary to the directions contained in the Robkars shall be illegal or unlawful. The Robkars only forbade the Jagirdars of third grade in Ratlam State from giving leases and contracts of forest areas in their Jagirs. They did not impose a general incapacity on third grade Jagirdars to contract. The incapacity was only in relation to the Jagir forests.

It is, therefore, impossible to hold that the consideration or the object of the contract in question is unlawful or illegal or immoral and for that reason the contract is void. The contract is void not because it is hit by Section 23 of the Contract Act but because it was entered into by the defendant who had no authority to grant leases of forest areas in a Jagir. It thus falls within the terms of Section 65 of the Contract Act and the money that the plaintiff advanced on it is recoverable.

The principle followed in AIR 1944 Mad 387 (A) cannot be applied here where the contract is not illegal and void under Section 23 of the Contract Act. Nor can the proposition laid down in *Mohori Bibee v. Dharmodas Ghose*, ILR 30 Cal 539 (B), be extended and applied here, as this is not the case where the defendant was wholly incompetent to contract.

The incapacity imposed by the Robkars was in relation to particular property and not a general incapacity to contract. It cannot even, be argued in this appeal that the plaintiff is precluded from claiming the refund of consideration and damages as he was cognisant of the incapacity of the defendant to lease out the Jagir forests and the incapacity was known to both the parties at the time it was made.

The learned District Judge has himself found that it was only when the plaintiff was stopped from cutting the trees and removing the wood from the forest area on 20th March 1949, that he made enquiries and then learnt that the defendant was a Jagirdar of third grade and had as such no authority to grant any lease of the forest area in a Jagir and that the defendant fraudulently and illegally obtained Rs. 2,225 from the plaintiff by representing to him that he had the right. This finding has not been challenged before us.

6. In observing that the fact, that the defendant was a third grade Jagirdar and therefore incompetent to contract was within the knowledge of the defendant and not that of the plaintiff can be of no assistance to the plaintiff, the learned District judge was overpressed by the fact that the Robkar which imposed the restriction on the Jagirdars' right to grant leases of Jagir forest areas was a law and he was caught by the fiction that everyone is presumed to know law. Now, it is entirely fallacious to say that everyone is presumed to know the law.

In *Bowmaker Ltd. v. Tabor*, (1941) 2 KB 1 (C), Lord Goddard pointed out that the fallacy was exposed once for all by Lord Mansfield in *Jones v. Randall*, (1774) 1 Cowp 37 (D) --when he said: 'it would be very hard upon the profession, if the law was so certain, that everybody knew it; the misfortune is that it is so uncertain, that it costs much money to know what it is, even in the last resort.' In *Martin-dale v. Falkner*, (1846; 2 CB 706 (E), Maule, J., observed :

'There is no presumption in this country that every person knows the law; it would be contrary to common sense and reason if it were so.....The rule is that ignorance of the law shall not excuse a man, or relieve him from the consequences of a crime or from liability upon a contract.'

Again, a distinction has to be drawn between ignorance of law and of fact. Ignorance of a material fact may excuse a party from the legal consequences of his conduit. In the instant case, the Robkars did not impose any disability on the Jagirdars of all grades on their power to grant leases of Jagir areas. The disability was imposed only on the Jagirdars of third grade. The crucial point for consideration therefore was whether the plaintiff was aware of the fact that the defendant was a Jagirdar of third grade and consequently had no right to grant the lease.

From the finding of the learned District Judge himself that the plaintiff learnt the fact that the defendant was a Jagirdar of third grade subsequently, that is after 20th March 1949, it is plain that the ignorance on the part of the plaintiff was of the material fact, namely, that the defendant was a Jagirdar of third grade, and not of law. In our judgment, none of the grounds stated by the learned District Judge in holding that the plaintiff was not entitled to any relief under Section 65 of the

Contract Act is tenable.

7. The proposition that Section 65, Contract Act, applies to cases where the contract is void ab initio and thus to a case of a contract of transfer of property which is void because of the incapacity of the transferor to transfer the property concerned, is now so firmly established as to admit no doubt. In *Thakurain Harnath Kuar v. Thakur Indar Bahadur Singh*, AIR 1922 PC 403 (F), the purchaser of a mere right of reversion sued for the refund of consideration when he discovered subsequently that the sale was void because the vendor was incompetent to convey any title.

The Privy Council held that the vendee was entitled to the purchase money and interest thereon, and observed that Section 65 of the Contract Act applied to the facts of the case as the vendee was not aware of the true nature of the vendor's right till after the date of the sale-deed and it was only on the date when he became aware of the true nature of the transferor's right that he discovered that the contract was void as not being enforceable in law and that even though it was void from its inception the vendee could claim the refund of the consideration from the vendor.

To the same effect is the decision in *Annada Mohan Roy v. Gour Mohan Mullick*, AIR 1923 PC 189 (G). In *Mohan Manucha v. Manzur Ahmed Khan*, AIR 1943 PC 29 (H), their Lordships of the Privy Council pointed out that the incapacity imposed upon a judgment-debtor by para. II of Sch. 3, C. P. Code, was an incapacity to affect that property of his which was under the Collector's management and not a general incapacity to contract and that the covenant to refund or repay was not made void by the operation of that paragraph; and that as the judgment-debtor had borrowed the loan on security but the security was found to be invalid, the creditor could sue for the recovery of the loan advanced under Section 65 of the Contract Act.

8. Following these decisions relief under Section 65 of the Contract Act was given in *Sunderlal v. S. S. Laxmanprasad*, AIR 1949 Nag 292: ILR 1949 Nag 52 (I), where a judgment-debtor, who was incompetent to transfer the property under the Collector's management, received consideration from the vendee and entered into

a contract which was void from its inception, was held liable to refund back the consideration which he had received. A similar conclusion was reached in *Saraswatibai v. Madhukar*, ILR (1950) Nag 467: AIR 1950 Nag 229 (J), relying on the decision in *Sunderlal's case* (I).

9. In our opinion, the plaintiff-appellant is clearly entitled to recover the amount of consideration paid by him and to claim restitution by way of compensation for damages. The learned District Judge has not given any finding on the issues he framed relating to damages. His finding on the question of the amount of money expended by the appellant in connection with the contract is indefinite and unsupported by any reasons or discussion of the evidence. He must decide that question again properly.

In the result, the judgment of the learned District Judge dismissing the plaintiff's suit is set aside and the case is remitted to the lower Court for trial according to law in the light of this decision. Costs of this appeal will be costs in the cause.

Newaskar, J.

10. I agree.

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