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inderjit Singh Vs. Sunder Singh

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Court : Rajasthan

Decided On : Aug-20-1968

Reported in : AIR1969Raj155

Judge : P.N. Shinghal, J.

Acts : Motor Vehicles Act, 1939 - Sections 59 and 59(1); Contract Act, 1872 - Sections 23 and 65

Appeal No. : Civil Regular Second Appeal Nos. 32 and 225 of 1962

Appellant : inderjit Singh

Respondent : Sunder Singh

Advocate for Def. : H.L. Purohit, Adv.

Advocate for Pet/Ap. : M.M. Tiwari, Adv.

Judgement :

P.N. Singhal, J.

1. These two appeals arise out of the judgment and decree of District Judge, Bhilwara, dated December 23, 1961, and will be disposed of together.

2. Defendant Sunder Singh held a permit for plying a bus on the Shahpura-Bhilwara route, but he was apprehensive that the permit might be cancelled

because he could not run the bus for some time. He thought it necessary to secure another bus for his permit and obtained a vehicle for that purpose from the New Laxmi Finance Company Ajmer, for Rs. 21,000, on hire-purchase. The New Laxmi Finance Company asked for security for the arrangement, and it was furnished by the plaintiffs father Cyan Singh at the instance of the plaintiff and the defendant. It was however realised that some more expenditure would have to be incurred in building the body, insuring thevehicle and meeting the registration and other charges which Sunder Singh was unable to finance. He therefore entered into agreement Ex. 1 dated December 28, 1958 for a partnership with plaintiff Inderjit Singh. Under that agreement, Sunder Singh retained a three-fourth share for himself in the vehicle and the permit and decided to give the remaining one-fourth share to Inderjit Singh, Vehicle No. RJL 218 was accordingly run on the Shahpura-Bhilwara route from January, 1059 on the basis of that agreement.

The plaintiff pleaded that he spent more than his share on the vehicle but that the defendant did not allow him to participate in the joint management after a period of one month, and did not give him an account of the profit or loss in the business. He therefore alleged that as the defendant had committed a breach of the terms of the partnership, it had become impossible to carry it on any further. He prayed for dissolution of the partnership and rendition of accounts or, in the alternative, for refund of Rs, 6,900 on account of the money spent by him, and its interest.

3. Defendant Sunder Singh admitted the execution of the deed of partnership (Ex. 1) dated December 28, 1958, but pleaded that it was not acted upon because of its illegality. He also pleaded that bus No. RJL 218 was obtained by him on hire-purchase basis on the security of the plaintiffs father Cyan Singh, but that the plaintiff did not contribute to the purchase. He pleaded that the plaintiff had nothing to do with its ownership, management or accounts and claimed that it was his exclusive property and was running on the basis of his permit. Further the defendant denied that the plaintiff had made any payment to him for the running of the bus, or for any other purpose, and pleaded that the plaintiff was not entitled to recover the money spent by him on account of the partnership business.

In his additional pleas, he specifically pleaded that the partnership agreement was illegal because it contravened the provisions of Section 59 of the Motor Vehicles Act. He gave an account of the money spent by the plaintiff and urged that the plaintiff had spent a much smaller sum in connection with the partnership and was not entitled to recover it because the object and consideration of the partnership agreement were illegal. In the alternative, he pleaded that the partnership was terminated by a mutual agreement between the parties on October 3, 1959. The plaintiff filed a replication, but confined it to the question of the extent of his investment in the partnership business and did not say anything about the plea of illegality of the agreement.

4. A number of issues were framed covering the various points in controversy. Issue No. 8 related to the question whether Section 59 of the Motor Vehicles Act was an impediment in the claim of the plaintiff because of the fact that the permit was only in the name of the defendant. Issue No. 9 specifically dealt with the question whether the partnership agreement was void.

5. The trial court decreed the plaintiffs suit for Rs. 3,800 on account of principal and Rs. 218/8/- by way of interest. Both the parties preferred appeals to the District Judge who reduced the decretal amount to Rs. 3253/10/-, with interest at G per cent per annum from the date of the suit until realisation. It is against that judgment and the consequent decree that these two appeals have been filed by the parties.

6. The learned District Judge took the view that the partnership agreement (Ex. 1) was illegal because it involved the transfer of the permit of the vehicle, but gave relief to the plaintiff by invoking Section 65 of the Contract Act on the ground that the agreement was discovered to be void later. The question is whether this finding is correct? But as Mr. Tiwari, learned counsel for the defendant, has strenuously argued that the partnership agreement did not contravene Section 59 of the Motor Vehicles Act and was quite legal, I shall first consider that argument.

7. Section 23 of the Contract Act brings out the characteristics of an illegal agreement in the following terms,--

'23. The consideration or object of an agreement is lawful, unless-

It is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, as opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.' In the present case the question is whether the agreement in question was 'forbidden by law', so that it is not necessary to consider the other unlawful considerations or objects referred to in the section. To put it simply and directly, the question is whether agreement Ex. 1 could be said to relate to a consideration or object which was forbidden by Section 59 of the Motor Vehicles Act?

8. Chapter IV of the Motor Vehicles Act deals with the control of transport vehicles and while the earlier sections of the chapter deal with the necessity for permits and the mode of obtaining them etc., Section 59 lays down the general conditions attaching to all permits. We are concerned with Subsection (1) and it provides as follows-

'59 (1). Save as provided in Section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted thepermit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.'

Section 61 is of no relevance because itprovides for the transfer of a permit on the death of the holder. Section 59 prohibits the transfer of a permit from one person to another except with the permission of the concerned transport authority, and it further provides that the transfer of a permit without such permission shall not operate to confer on the transferee any right to use the vehicle covered by the

permit in the manner authorised by it. It is conceded that a breach of this provision is an offence punishable under the Motor Vehicles Act. If therefore there is a breach of the provisions of Section 59 (1) by transferring a permit under an agreement between the parties without the permission of the transport authority, or if the 'agreement operates to confer on the transferee any right to use the vehicle covered by the permit, the consideration or object of the agreement would be unlawful because it is forbidden by the law.

9. The genuineness of partnership agreement Ex. 1 has never been in dispute in the sense that its execution has all along been admitted by the parties. The document recites the circumstances in which the partnership was entered into by the parties and I have mentioned them to some extent. It will be sufficient to state here the following four important terms of the agreement,--

(a) It has been stated in the preamble that Sunder Singh would remain a 'partner' in the vehicle, including its permit, to the extent of his three-fourth share, while the remaining one-fourth share would go to Inderjit Singh, so that the two parties would be owners in possession of the vehicle and its permit, and would continue to remain so in future.

(b) Clause (1) of the agreement provides that the two partners would be owners of the permit of the route and the vehicle in accordance with their respective shares mentioned in the agreement and both of them would exercise full ownership rights as long as the partnership continued to remain in existence.

(c) Clause (11) of the agreement provides that both the partners would be the principal managers of the vehicle.

(d) Clause 17 of the agreement is all the more significant and translated into English it reads as follows,-- '17. That because the permit of the route is in the name of Sunder Singh, Party No. 1 the parties had decided that the owner's name for the new vehicle would be that of Sunder Singh; otherwise the title and possession in respect of the permit and the vehicle would, in accordance with the partnership agreement, be such that Sunder Singh, the first party, would have it to the extentof three-fourth, while Inderjit Singh would have it to the extent of one-

fourth.'

10. There is therefore no room for doubt that the partners transferred the permit in proportion to their respective shares, without the permission of the transport authority, and conferred on themselves the right to use and manage the vehicle in the manner authorised by the permit in terms of the partnership agreement.

11. It is also a significant fact that the agreement of partnership was actually put into operation, for the plaintiff has admitted in paragraph 2 of the plaint that the vehicle was purchased and was plied on the Shahpura-Bhilwara route in accordance with the terms of the agreement and that differences between the partners arose when, as has been stated in paragraph 3 of the plaint, the defendant did not Keep the plaintiff in Joint management after a period of one month and did not render the account.

12. It is therefore apparent that the partnership agreement contravened the provisions of Section 59 of the Motor Vehicles Act in doing what was forbidden by it. The consideration or object of the agreement was unlawful within the meaning of Section 23 of the Contract Act and it was therefore void. I am fortified in this view by the decisions in Maniam Hiria Gowder v. Naga Maistry AIR 1957 Mad 620, A. V. Varadarajulu Naidu v. K. V. Thavasi Nadar : AIR1963 Mad413 and Tekumalla Rama Rao v. Durga Suryanarayana : AIR 1964 AP256 . Reference may also be made to Gordhandas Kassawji v. Champsey Dossa AIR 1921 PC 137 which supports the view that the agreement became unlawful because it provided for the transfer of the permit. Similarly, M/s. Dayabhai and Co. Barwani v. Commissioner of Income-tax M. P., Nagpur and Bhandara : [1966]59ITR364(MP) on which reliance has been placed by Mr. Tiwari himself, supports the view that if the partnership deed contains a clause for the transfer of the vehicle or the permit, that would make the agreement unlawful.

13. Some cases have been cited for a contrary submission, but they are clearly distinguishable. In Umacharan Shaw and Bros, v. Commissioner of Income-tax, West Bengal : [1959]37ITR271(SC) their Lordships of the Supreme Court found that there was no evidence that the excise licences were transferred or sub-let and they therefore held that there was no offence or transgression of the provisions of

the Bengal Excise Act, 1911 and there was nothing affecting the validity of the partnership. Similarly in L. Shiv Dayal L. Mela Mal v. Firm Bishan Pass Shankar Dass the agreement did not involve the 'transfer' or 'sub-lease' of the licence and the licensee under the Opium Act merely entered into an agreement that a third person, who was a non-licensee, would sharethe profits and losses of his business in consideration of his contribution towards the capital of the business. It was therefore held that the agreement was not unlawful as it did not contravene any provision of the Opium Act or the Rules made thereunder. The cases cited by Mr. Tiwari are thus of no avail to the plaintiff, and the fact remains that it has been proved beyond doubt that the partnership agreement was illegal and void.

14. What then is the effect of the illegality on the partnership? Mr, R. L. Purohit learned counsel for the defendant, has argued that the agreement having been vitiated by illegality is wholly unenforceable because its consideration and object were forbidden by law and courts cannot give effect to such an agreement for that would amount to the recognition of an illegal act and place a premium on contumacy. To support his argument, the learned counsel has placed reliance on two decisions of this court in Himmat Ram v. Lalchand 1953 Raj LW 220 and Baijulal v. Matadin ILR (1953) 3 Raj 45 and the decisions in Madura Municipality through Commissioner v. K. Alagirisami Naidu AIR 1939 Mad 957, Puvvada Venkata Subbayya v. Attar Sheik Mastan AIR 1949 Mad 252, Shyam Sunder Lal v. Lakshmi Narain Mathur : AIR1961 All347 and Kuju Collieries Ltd. v. Jhoar Khan Mines Ltd. : AIR1967 Pat72 . I shall revert to these cases in a while.

15. I may here state that while it is true that the general law would refuse to give full effect to an illegal contract because of its illegality on the maxim ex turpi causa non oritur actio (an action does not arise from a base cause), the shade of illegality liffers from contract to contract, and there nay well be a contract in which a party is unaware of the illegality, in all innocence. The question whether in such a contract a person will be relieved of the consequences of an illegal contract, has therefore attracted a good deal of attention. Connected with it is the question, which so often arises, whether a party to such a contract is entitled to recover the money paid by it even though the contract is not enforceable, and this ancillary question has also assumed considerable importance because courts have often been called upon to

apply the yardstick of justice to such cases as well. These are precisely the points for consideration in the present case.

16. It appears that the rigorous and Indiscriminate application of the rule of turpi causa to all illegal contracts, without exception, will not be reasonable or fair. Thus in a case where a contract is made illegal by a statute passed for protection of a class of persons, there is no reason why a member of the protected class should not be able to recover the property transferred by him because, after all, the statute hasbeen made for his benefit. There may also be a case where to parties are not in pari delicto, as for example, where the person who parts with money is an ignorant man who has been taken in by an unscrupulous person. There may also be a case where, before the illegal purpose is substantially earned out, a party repudiates the contract out or remorse and penitence. Similarly there may be a case in which a person is able to establish his claim to recover the money or property transferred by him without reference to the illegality of the contract. In these and like cases there is no reason why the general rule of turpi causa should be held to be applicable. In England, such exceptional cases have been recognised and are to be found in all text books on contracts: 'Principles of the English Law of Contract' by Anson, 22nd Edition, pp. 342-350, 'Chitty on Contracts', 22nd edition pp. 383-386, 'Sutton and Shannon on Contracts', 6th edition, pp. 245-250, 'The Law of Contract' by Cheshire and Fifoot, 6th edition, pp. 311-316.

17. In our country while Section 23 of the Contract Act deals with unlawful or illegal agreements and provides that every agreement of which the object or consideration is unlawful is void, section 65 of that Act deals with the obligations of the person who has received an advantage under a void agreement or a contract which becomes void, as follows,--

'65. 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.'

The obligation for restitution dealt with in the section applies therefore to all agreements which are discovered to be void or contracts which became void,

18. A 'void' agreement as well as the contract which 'becomes void' are defined in the Contract Act as follows,--

'2(g). An agreement not enforceable by law is said to be void;'

.....

'2(i) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.'

The definitions cover all void agreements and contracts, and therefore Section 65 covers them also, and there is no justification for the argument that it excludes illegal agreements and contracts falling within the mischief of Section 23 from its benefit. I have no doubt therefore that section 65 is applicable to illegal agreements and contracts also.

19. At the same time, it could not be the purpose of the law that even in cases where the parties are in pari delicto the one who gives the money for an unlawful object should be entitled to recover it under Section 65 of the Contract Act This appearsto be the reason why the scope of the section has been limited to (i) agreements whichare discovered to be void, and (ii) contracts which became void. These two classifications or categories of cases may not be exhaustive, but, by and large, they serve the purpose of including an unconscionable claim like the one in a case where the parties are in pari delicto from the benefit of restitution and would serve the cause of justice, if they applied with discretion and caution. Thus where a person knowingly transfers money or other property for run unlawful consideration or object, it would be fair and equitable to hold that he would not be entitled to claim restitution in a court of law on the ground that the agreement had been discovered to be void or that the contract had become void. Such an agreement or contract would not therefore fall within the benefit of Section 65 of the Contract Act.

20. In England, there are certain well known exceptions to the rule of non-recovery and some or them may not, strictly speaking, fall within the ambit of Section 65 of the Indian Contract Act. For instance, in the illustration mentioned by me earlier where a contract is made illegal by a statute passed for the protection or a class of persons, it may not be possible to order restitution where the contract was made with full knowledge of its illegality because the two requirements of Section 65 of our Act may not be fulfilled. It may also be that a person may be forced by the other party to enter into an illegal contract with full knowledge of its illegality. In these cases it may not be possible to take the plea that the agreement was discovered to be void or that the contract became void, so as to place an obligation on the person who has received the advantage under the void agreement or contract to make restitution on the wordings of Section 65.

But, all the same, in such agreements or contracts the parties cannot be said to be in than delicto. There might also be a case in which a person who has made an illegal agreement or contract may voluntarily and genuinely repudiate the illegal purpose well in time and claim locus penitential. But such agreements or contracts may also not fall within the scope of Section 65 if a strict and literal interpretation is placed on the wordings of the section. Restitution has, all the same, been allowed in such cases on grounds of public policy (as in the case of the class protecting statute) or for equitable considerations. Courts are meant to do justice by the parties and such just and equitable rules or exceptions are always adopted as and when necessary, and this can well be done because section 65 cannot be said to deal exhaustively with all claims for restitution so that there is nothing to prevent the courts from allowing restitution in proper cases.

21 It is true that in Himmat Ram's case, 1953 Raj LW 220 this court has taken the view that 'Section 65 however only applies to contracts which are void, but not to those which are illegal' and it has further been observed that 'the section can have no application where the parties are presumed to-have known at the time of its inception that the contract was void or illegal'. The reason of the rule has been stated to be that when a contract is void or illegal to the knowledge of the parties, it cannot be said that such a contract was discovered to be void or illegal. If it was the intention of their Lordships to exclude all illegal contracts from the benefit of

Section 65, I may say with utmost respect that there is nothing in Section 65 of the Contract Act to exclude illegal contracts from its purview. On the other hand, as I have already shown, illegal contracts are, in my humble opinion, also covered by that section.

Similarly the decision in Baijulal's case, ILR (1953) 3 Raj 45 that a suit for refund of money is not maintainable in the case of a contract which is prohibited by law and is punishable as an offence, cannot be correct in all circumstances and cases, and does not appear to have been laid down as a general or inexorable rule of law. In fact it appears from a perusal of the two cases just referred that the attention of their Lordships was not invited to the other relevant cases bearing on the point. All the same, I would gladly have referred the matter to a larger Bench for reconsideration, but I find that it is not necessary to do so because of a recent decision of their Lordships of the Supreme Court in Sita Ram v. Radha Bai : [1968]1SCR805 .

In that case Radha Bai, the plaintiff, entrusted some jewellery to her brother Lachhmi Narain, father of the defendant. After Lachhmi Narain's death, the plaintiff asked for the return of the jewellery. The claim was resisted by the defendant and it was contended that because on the plaintiffs own showing the jewellery was left with Lachhmi Narain with the object of defrauding the plaintiffs daughter-in-law during the course of the arbitration proceedings, the parties were in pari delicto and the claim was untenable. Their Lordships considered the submission with reference to the provisions of Sections 23 and 24 of the Contract Act and thought it proper to refer to the exceptional cases known to English Law in which a man will be relieved of the consequences of an illegal contract e.g. a case where the illegal purpose has not yet been substantially carried into effect, or where the plaintiff is not in pari delicto or where he does not have to rely on the illegality to make out his claim. Their Lordships ordered restitution on the ground thatthe parties were not in pan delicto, and didnot take the view that such a benefit could not be given because of the illegality of the contract.

As their Lordships of the Supreme Court have declared this to be the correct law, it cannot he said that the view expressed in Himmat Ram's case or Baijulal's case

should he followed. For the same reason I need not deal individually with the other cases cited by Mr. Tiwari. In fact there are several other cases in which a claim for restitution has been allowed or approved in the case of an illegal contract and I shall content myself by referring to Jahed Shaikh v. Kamalesh Chandra Das 0043/1959 : AIR1959 Cal165 and Kanuri Sivaramakrislmaiah v. Vemuri Venkata Narahari Rao : AIR 1960 AP186 and Budhulal v. Deccan Banking Company Ltd. AIR 1955 Hyd. 69.

22. In the present case, it has not been claimed or contended that the contract became void after it was made, and the only question is whether the partnership agreement was 'discovered to be void.' To this Ex. J., which is the agreement of partnership furnishes an easy but sure answer. I have already made a reference to the four salient and relevant clauses of the agreement and a reference to them would show that the following facts have been fully established,--

'(1) The parties knew that the permit for plying the stage carriage was only in the name of defendant Sunder Singh.

(2) They decided not to get it transferred in the name of the partnership or the names of the two partners in accordance with the law.

(3) All the same, they decided to divide the permit in proportion to their respective shares in the partnership and to become owners of the permit and the vehicle covered by it in that proportion.

(4) They decided to use the vehicle in the manner authorised by the permit, in terms of the partnership agreement.

(5) They decided that they would be the joint managers of the vehicle during the period it operated on the Shahpura-Bhilwara route.'

It would thus appear that, in fact and substance, the partnership agreement transferred the permit to the two partners in proportion to their respective shares without the permission of the concerned Transport Authority under Section 59 of the Motor Vehicles Act and conferred on the plaintiff also the right to use the vehicle on the route authorised by the permit. The agreement therefore clearly

violated the provisions of Sub-section (1) of Section 59 of the Motor Vehicles Act and for that reason it was an illegal contract which was void ab initio to the knowledge of the parties. It cannot therefore be said that the agreement was 'discovered to be void' within the meaning of section 65 of the Contract Act.

23. In fact the plaintiff did not at all take the plea that the agreement was discovered to be void and that he was entitled to the benefit of Section 65 of the Contract Act, even though the defendant took a specific plea in the written statement that the agreement was illegal. As has been stated, the plaintiff filed a replication, but did not refer to the pica of illegality, what to say of taking the plea that he was entitled to restitution on any of the grounds mentioned in Section 65. No issue was framed on he question whether the agreement was discovered to be void, and no evidence was led on the point. There are also no circumstances which could go to show that the agreement was discovered to be void and there is nothing to show that the validity of the transaction was obscured by any fact or provision of law so as to lend support to the view that the agreement was 'discovered to be void' within the meaning of Section 05.

Moreover even the plaintiff has not stated in his fairly lengthy statement that the agreement was discovered to be void alter its execution and he has not produced any other evidence to justify that conclusion. There is therefore no reason why it should not be held that so far as the plaintiff is concerned the agreement was discovered to be void at the time of its execution. In this connection the following observations of their Lordships of the Privy Council in Annada Mohan Roy v. Gour Mohan Mullick AIR 1923 PC 189 are directly in point,--

'There has been no suggestion anywhere in the course of the present proceedings that any such facts occurred as could alter the view which must normally be taken of the meaning of the word 'discovery' and of the time at which that discovery must be held to have occurred.' (p. 191).

Their Lordships therefore held that the time of discovery of the illegality of the contracts was the time when the contracts were made. Equally relevant are the following observations of their Lordships in Hansraj Gupta v. Dehra Dun Mussoorie Electric Tramway Co. Ltd. :--

'In the absence of special circumstances (and none exists here) the time at which an agreement is discovered to be void within the meaning of Section 65 is the date of the agreement,. ....'

These observations were reiterated and approved by their Lordships in Babu Raja Mohan Manncha v. Babu Manzoor Ahmad Khan . It is therefore obvious that in the absence of any evidence or special circumstances it would be reasonable to hold that the present agreement was discovered to be void at the time when it was made, and not thereafter, and Section 65 of the Contract Act cannot benefit the plaintiff.

24. As has been shown, the transaction was not honest from the inception becausethe parties knew that even though the permit for plying the bus was in the name of the defendant and they were not going to get it transferred in their names, they effected its transfer to themselves in proportion to their respective shares, along with the transfer of the ownership of the vehicle covered by the permit in the same proportion, and also entered into an arrangement by which each of them acquired the right to use the vehicle in the manner authorised by the permit for their joint benefit even though such a right vested exclusively in Sunder Singh. I would therefore unhesitatingly hold that the agreement cannot be said to have been discovered to be void after its execution, and that it was void to the knowledge of the parties ab initio. The plaintiff is not therefore entitled to the benefit of Section 65 of the Contract Act.

Besides the parties were obviously in pari lelicto and they cannot claim restitution for that reason also. There is no question of locus poenitentiae because it has been admitted in the plaint that the parties implemented the agreement and actually plied the vehicle covered by the permit for some time and it was only when the defendant became recalcitrant that a dispute arose between them resulting in the present litigation. The plaintiff has also not pleaded any other circumstance like oppression or fraud land he has not established his right or title to the money paid by him without relying on the illegal agreement (Ex. 1). The general rule that money paid or property transferred under an illegal agreement cannot be recovered, would therefore apply. The claim For restitution was

therefore not enforceable and should have been dismissed. In taking a contrary view and in giving the benefit of Section 65 of the Contract Act to the plaintiff the learned Judge of the lower appellate court committed a serious error of law and that error has to be corrected.

25. Accordingly, the defendant's appealNo. 22 of 1962 succeeds, the judgment ofthe lower appellate court is set aside andentered for the defendant by dismissing thesuit. Plaintiffs appeal No. 225 of 1962 failsand is dismissed. In the circumstances ofthe case, however, the parties are left tobear their own costs.

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