APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.

1886.
March 22.
April 19.

KRISHNAN AND OTHERS (DEFENDANTS), APPELLANTS,

and

SANKARA VARMA (PLAINTIFF'S REPRESENTATIVE), RESPONDENT.*

Contract Act, ss. 21, 65—Mistake of law—Agreement to secure repayment of loan, collateral, to primary obligation.

By an agreement in writing, defendants, trustees of a temple, in consideration of an advance of money which they represented was required to pay off debts incurred for the benefit of the temple, granted to plaintiff a lease of the right to manage the temple lands, and plaintiff promised that he would repay himself out of the profits to be derived from the lands and that neither the defendants nor their family property should be made liable for the debt.

In a suit by plaintiff against a tenant of the temple lands, this lease was held to be void for illegality. Defendants subsequently resumed management and plaintiff sued them to recover the money advanced by him.

It was found that the agreement was entered into by both parties under a mistake as to the validity of the lease:

Held, that assuming s. 65 of the Contract Act was not intended to vary the rule that a mistake of law is no ground for relieving a party from his own contract, plaintiff was nevertheless entitled to recover on the ground that the agreement which provided for repayment was collateral and had failed.

An agreement that an obligation which is contracted shall be discharged in some particular mode is collateral to the primary contract which created the obligation, though the two agreements may be mixed up in one contract.

APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in suit 5 of 1884.

The plaintiff, Kadathanáh Ayanjeri Kovilagath Ráma Varma Rájá, sued Náráyana Mangalath Varieth Krishnan and nine others, members of a Malabar tarwad, to recover Rs. 4,000 lent to defendants under a registered agreement, dated 6th April 1879, with interest at 12 per cent.

The plaintiff prayed that this sum might be recovered by sale of temple properties mentioned in the plaint; 'out of the

* Appeal 69 of 1885.

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defendants' pocket,' and by granting 'other reliefs which he might ask for as the Court might think fit to grant.'

The Subordinate Judge decreed payment of Rs. 3,000 with interest at 12 per cent. from February 28, 1882, and declared that the properties of defendants' tarwad were liable for the amount decreed and costs.

Defendants appealed and plaintiff filed a memorandum of objections against this decree.

Sankaran Náyar for appellants.

Gopálan Náyar for respondent.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Muttusámi Ayyar, J.).

JUDGMENT:—The appellants are the hereditary urálars of the Polúr temple in the district of Malabar. They considered that their management was not efficient and they were unable to pay the debts which, as they alleged, they had contracted for the purposes of the devasam. On the 6th April 1879, they and their karnavan, Rámá Variar, induced the respondent to advance Rs. 8,000 to enable them to pay those debts. In return for this advance he accepted a lease of the right of management for a period of 96 years, and agreed to repay himself by demising properties belonging to the temple on kánam. The appellants undertook to afford him every facility for so doing, and the respondent agreed that neither they nor the property belonging to their family should be made liable for the debt. To this effect appellants executed document A in respondent's favor on the 6th April 1879. As stated by the respondent, he paid them Rs. 4,000 in cash and executed bond B for the balance of Rs. 4,000. Thereupon, he entered on the management of the temple as the assignee of the uráyama right (right of management), and instituted suit 373 of 1880 to eject one of the tenants of the institution who allowed the rent to fall into arrears. The tenant impeached the validity of the assignment or lease, but the representative of the appellant's family affirmed the document in that suit. In February 1882, the suit was, however, finally decided against the respondent on the ground that the trusteeship of a temple could not be assigned. After this, the appellants resumed the management, and the respondent brought the present suit to recover back Rs. 4,000 with interest at 12 per cent. per annum from the date of the

original transfer. The appellants resisted the claim on three grounds, viz., that the amount paid in cash was only Rs. 3,000, that the respondent accepted the transfer of the uráyama right with full knowledge of facts, and could not claim to recover back what he had paid with such knowledge, and that they did not repudiate the karár or otherwise act in contravention of its terms. The Subordinate Judge found that Rs. 3,000 only was paid in cash, and that the appellants applied Rs. 2,938 in liquidation of their tarwad debts, and that it was not shown that the money received was used for the benefit of the devasam. He placed reliance on Exhibit D which was an account particular filed by the appellants' karnavan in suit 509 of 1880 between the members of his family, in preference to the oral evidence adduced by the respondent, and considered that Rs. 1,000 was set apart for the expenses incurred in bringing about the assignment of the uráyama right for 96 years. The Subordinate Judge then referred to s. 65 of the Indian Contract Act, exonerated the properties of the temple from all liability for the claim, and decreed that the appellants do pay the respondent Rs. 3,000 together with interest at 12 per cent. from the date of the final decree in suit 373 of 1880 till the date of payment, and with costs and interest thereon at 6 per cent. per annum from the date of his decree. He declared also that the properties belonging to the appellants' tarwad were answerable for the debt.

Both parties object to this decree so far as it is unfavorable to them. It is urged for the appellants that no suit can be maintained to recover money paid with full knowledge of facts, on the ground that the interest transferred was not in law capable of being transferred, that they did not act contrary to the terms of document A, and that there was no prayer in the plaint that the properties belonging to their tarwad should be rendered liable for the claim. On the other hand, the respondent contends under s. 561 of the Code of Civil Procedure, that the finding as to the non-payment of Rs. 1,000 out of Rs. 4,000 is contrary to the weight of evidence, and that interest at 12 per cent. per annum should have been awarded from the date of document A, instead of from the date of the final decree in Original Suit 373 of 1880. It appears that document A was given and accepted under the erroneous belief that uráyama right was assignable in law on a lease of 96 years. We were referred to no evidence upon which

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we could hold that either the appellants or the respondent knew that the assignment was invalid. The mistake then is a mutual mistake of law in regard to the transfer of a right which is in substance in the nature of a trust. But it was not necessary for the respondent to rely on the transfer for the purpose of showing that the appellants were under an obligation to repay the amount advanced. It is shown by document A that they represented to the respondent that they needed a loan to pay the devasam debts, and that the amount was advanced to them to pay those debts. If the representation was *bonâ fide* and they paid the devasam debts with the money obtained from the respondent, their obligation to repay the loan as urálars out of devasam properties would be complete. If, as disclosed by the facts found, they paid their own tarwad debts with the money advanced to enable them to pay devasam debts, still their obligation to repay the respondent for breach of their contract would be complete. The agreement in regard to the transfer of uráyama right on a lease of 96 years prescribed only a special mode of satisfying that obligation, and if that agreement could not take effect because of its being tainted with illegality, their obligation to repay cannot on that ground be taken to be satisfied. According to the rule laid down by Lord Cairns in *Elkington's case* (1) and in *Bridger's case* (2) an agreement that an obligation which is contracted shall be discharged in some particular mode is collateral to the primary contract which created the obligation, though the two agreements may be mixed up in one contract. Assuming that s. 65 of the Contract Act is not intended to vary the rule that a mistake of law is no ground on which a party can be relieved from his own contract, we are still of opinion that the respondent is entitled to recover back the amount advanced, on the ground that the collateral agreement which provided for its re-payment failed. As to the contention that the Subordinate Judge is in error in declaring that the appellants' tarwad property is liable for the debt, we observe that the plaint contains a prayer for such other relief as the respondent may ask for and the Court may deem it fit to grant. The amount borrowed was not shown to have been applied to the payment of the devasam debts, and devasam properties cannot be made liable. On the other hand, Rs. 2,932 out of Rs. 3,000 was proved to have

(1) L.R., 2 Ch., 511. (2) L.R., 9 Eq., 75.

been used to pay the debts due by the appellants' tarwad, and such being the case, we consider the tarwad property was properly declared liable for the amount decreed. We accordingly dismiss the appeal with costs.

As to the objections filed by the respondent. There is a conflict of evidence in regard to the payment of Rs. 1,000 in addition to Rs. 3,000, and we cannot say that the Subordinate Judge has not come to a correct finding. As to the interest awarded to the respondent as damages, we see no reason to interfere on appeal. He stated in his plaint that he entered on the management of the temple upon the execution of document A, and the appellants, it appears, resumed the management after the date of the final decree in suit No. 373 of 1883. The Subordinate Judge then declined to allow interest for the period during which the respondent had presumably the benefit of managing the temple, and we do not consider that he was in error in doing so. We therefore disallow the objections also with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

KARUPPAN (PLAINTIFF), APPELLANT,

and

AYYATHORAI (DEFENDANT No. 1), RESPONDENT.*

1886. July 24.

Civil Procedure Code, ss. 100, 101, 108, 540—Appeal from ex parte decree.

A defendant against whom a decree has been passed *ex parte*, and who has not adopted the procedure provided by s. 108 of the Code of Civil Procedure can appeal from such decree under the general provisions of s. 540. *Lal Singh* v. *Kunjan* (I.L.R., 4 All., 387) dissented from.

APPEAL from the decree of R. Vasudeva Ráu, Subordinate Judge at Negapatam, modifying the decree of V. Mulhari Ráu, District Múnsif of Mannárgudi, in suit 20 of 1885.

The plaintiff, Karuppan Chetti, sued the defendants Ayyathorai and Subbu Mudali, father and son, to recover Rs. 1,369-2-6 due on a bond executed by Rámalinga Mudali, deceased son of

* Second Appeal 967 of 1885.