

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

VENKATACHELLA CHETTI (PLAINTIFF), APPELLANT,

v.

VENKATA SUBBA RAU (DEFENDANT), RESPONDENT.*

1894.
April 16.
Sept. 11.

Indian Contract Act—Act IX of 1872, s. 30—Contracts to buy and sell Government promissory notes—Whether wagering contracts or not—Contracts for payment of differences only.

A having on various occasions sold certain amounts of Government promissory notes to B, aggregating on the whole to 2½ lakhs, for delivery on 30th November 1891, B on the 28th of November sold the same amount to A for delivery on the 30th November. On that day B, through his attorneys, called upon A to retain the 'paper' contracted to be sold by A to B in respect of that contracted to be sold by B to A, and to pay the differences in the prices of the two contracts to B, and subsequently sued him for the amount:

Held, that on the evidence B having admitted that the original contract sued on was for payment of differences only, that it was a wagering contract, and therefore void;

Held, on appeal *per Muttusami Ayyar, J.*, that the above judgment should be confirmed;

Per Best, J., that on the evidence it was not proved that at the time of entering into the original contract the intention of both parties was merely for payment of differences, and that consequently the contract was not a wagering contract, but a valid one.

APPEAL from the decree of Davies, J., sitting on the original side of the High Court in original suit No. 75 of 1892.

The facts of the case appear sufficiently for the purpose of this report from the foregoing and from the judgment of Mr. Justice Davies, which was as follows:

"The judgment in this case follows the judgment in the connected case No. 74 of 1892, the facts and the pleadings being similar and the evidence in that case having been treated as evidence in this. The differences here are (1) that the amount involved is in connection with transactions for 2½ lakhs of rupees, the amount of difference claimed being Rs. 3,312-8-0; (2) that the plaintiff is not a man of wealth like the plaintiff in the other

* Original Side Appeal No. 37 of 1893.

“suit; and (3) that he has put himself out of court by practically admitting that the contract was for payment of differences only and therefore was a wagering contract in the eye of the law.

VENKAT:
CHELLA
CHETTI

“For the like reasons as are given in my judgment in the other suit, this suit is dismissed but without costs.”

VENKAT:
SUBBA R

The plaintiff thereupon preferred this appeal.

The *Advocate-General* (Hon. Mr. *Spring Branson*) and Mr. *R. F. Grant* for appellant.

Mr. *Wedderburn* for respondent.

MUTTUSAMI AYYAR, J.—The learned Judge rests his decision in this case against the plaintiff on his practically admitting that the contract sued on was for payment of differences only, and on the reasons assigned by him for his decision in original suit No. 74 of 1892. I concur in that opinion for the reasons mentioned in my judgment in regular appeal No. 36 of 1893. “I would dismiss this appeal also with costs, and disallow the memorandum of objections.

BEST, J.—This suit was tried with original suit No. 74 of 1892, which forms the subject of appeal in original suit appeal No. 36 of 1893.

The learned Judge has dismissed the suit for the reasons given in his judgment in the connected suit with the remark added that the plaintiff in this suit has “put himself out of court by practically admitting that the contract was for payment of differences only.” But on referring to the evidence in the case I am unable to find any such admission on the part of the plaintiff. Plaintiff’s statement (as his own first witness in the case) is that the “intention was to get actual delivery of paper, but if he sold again to the same party then differences only were to be paid”; and as a matter of fact a sale to defendant was made on the 28th November, *i.e.*, two days before the date on which defendant was to deliver under the original contract. I have no doubt whatever the plaintiff was, in a sense, gambling in Government paper, but such gambling, however demoralizing and reprehensible, is not illegal, as observed in *Thacker v. Hardy*(1). In the absence of proof that at the time of entering into the original agreement the understanding of both parties was that it was merely for payment of differences, I am of opinion—for reasons stated in my judgment in

(1) L.R., 4 Q.B.D., 685.

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original suit appeal No. 36 of 1893—that the contract between the parties cannot be held to be void within the meaning of section 30 of the Contract Act.

If the same objections have been filed in this case, I would disallow them for the reasons stated in my judgment in that case, and, also for reasons stated in that judgment, I would allow this appeal; but as my learned colleague's finding is in favour of the respondent, the decree of the learned Judge in the court below must be affirmed, and this appeal dismissed with costs under section 575 of the Code of Civil Procedure.

Branson & Branson, attorneys for appellant.

Wilson & King, attorneys for respondent.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1894,
March 29, 30.

BALA PATTABHIRAMA CHETTI (DEFENDANT No. 1), APPELLANT,

v.

SEETHARAMA CHETTI AND ANOTHER (PLAINTIFF AND
DEFENDANT No. 2), RESPONDENTS.*

*Code of Civil Procedure—Act XIV of 1882, ss. 510, 524—Reference to arbitration—
Refusal of person appointed arbitrator to act—Appointment of arbitrator by Judge
under s. 510—Effect of s. 524 on such appointment.*

The words 'so far as they are consistent with any agreement so filed' in s. 524 of the Code of Civil Procedure do not mean that the agreement must contain in every case an express provision as to what ought to be done if any arbitrator is unwilling to act, in order that a Judge may act in conformity to it, and that s. 510 has otherwise no application. The reasonable construction is that the action of the Judge under s. 510 should not be inconsistent with the agreement, if it contains any special provision on the subject.

APPEAL against the decree of D. Irvine, District Judge of Coimbatore, in original suit No. 19 of 1890.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

Ramachandra Rau Saheb for appellant.

Mr. Grant and Lakshmana Chetti for respondent No. 2.

Bhashyam Ayyangar for respondent No. 1.

* Appeal No. 107 of 1893.