

SINNU
PANDARAM
v.
SANTHOJI
ROW.

The decision in *Rera Mahton v. Ram Kishen Singh*(1) does not militate against this view, the ground of the decision being that a sale made by granting execution in contravention of section 246 will not affect the title of a *bonâ fide* purchaser.

The appeal fails and is dismissed.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Moore.

THITHI PAKURUDASU (PLAINTIFF), APPELLANT,

v.

BHEEMUDU AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Abkâri Act—(Madras) I of 1886, s. 24 (c)—License to sell arrack issued under the Act—Rule contained in license imposing duty on license-holder to obtain Collector's permission to sub-let—Agreement to sub-let and sell arrack to sub-lessee without sanction—Suit on agreement for rent and for price of arrack sold—Contract Act—IX of 1872, s. 23—Unlawful consideration—Void agreement—Maintainability of suit.

Plaintiff, being the holder of a license issued under section 24 (c) of the (Madras) Abkâri Act of 1886, entered into an agreement with the defendants that the latter should sell arrack in plaintiff's licensed shop and that plaintiff should supply the liquor to be sold. Rule 21 of plaintiff's license imposed a duty on plaintiff to obtain the sanction of the Collector in case he should sub-let. Neither plaintiff nor defendants obtained such sanction. On a suit being filed by plaintiff for a sum of money due under the agreement :

Held, that the agreement was illegal and that plaintiff could not sue on it.

Sum for Rs. 156, being the price of arrack supplied and the profit on arrack sold. Second defendant, who alone defended the suit, pleaded that the agreement in pursuance of which the arrack had been sold was illegal and void and an issue was framed on the point. Plaintiff, in his evidence, stated that first defendant's father and second defendant were his commission agents for the sale of arrack in a shop for which plaintiff was the license-holder. The material terms of the agreement were the following:—"In the

(1) L.R., 13 I.A., 106.

* Second Appeal No. 134 of 1901, presented against the decree of F. Murray, District Judge of Ganjam, in Appeal Suit No. 103 of 1900, presented against the decree of D. Raghavendro Row, District Munsif of Sompeta in Original Suit No. 103 of 1900.

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abkâri shop No. 1 in the village of Sompeta, for which you obtained a lease for the official year commencing April 1896 and ending by the close of March 1897, we shall sell every month G. 70 (seventy gallons) of No. 60 *Kacha*, at a price of not more than Rs. 2-4-0 per gallon of No. 60 *Kacha*, from this day till the end of March 1897, out of the liquors sent for by you from the Aska Distillery and supplied to us, in accordance with the terms of the license you obtained from the Government and caused to be given to us; and we shall pay you out of the said sale-proceeds at the rate of Rs. 2 (two rupees) per gallon; if less than the aforesaid 70 gallons are sold, we shall pay you profit at the rate of As. 8 (eight annas) per gallon on the number of gallons in deficit. We shall sell the No. 30 *Pongu* supplied by you at the price fixed by you, and we shall take a commission of As. 4 (four annas) per gallon on the *Pongu* liquor sold by us. We shall carry on the sale of liquors and the other business in the said No. 1 shop with care and in accordance with the Abkâri Act and with the rules made or to be made by the Government. If water, etc., be mixed with the liquors, if they are adulterated in any other manner, if, in the business done by us, the shop is not kept open always according to the stipulation in the license if liquors from other shops, etc., or other liquors are sold, or if there should be any theft or misappropriation of the liquors given and supplied by you, in each of the above cases we shall not only make good the entire loss incurred by you, but shall also be liable to the rules, stipulations and punishments fixed by the Government." Plaintiff admitted that he had not sent the agreement to any Revenue officials for their sanction, and the District Munsif found that he had not obtained their sanction or permission to have arrack sold on his behalf by the defendants, or to sub-let his shop to them. He held that the agreement to supply arrack for sale in that manner was opposed to the terms of the Abkâri Act and to rule 21 of plaintiff's license, and was, in consequence, invalid and illegal. He further held that as the agreement was illegal and invalid plaintiff was not entitled to seek enforcement of it, and he dismissed the suit.

Plaintiff appealed to the District Judge, who upheld the Munsif's decision. He referred to rule 28 in plaintiff's license which contained the clause "no licensee shall sell without obtaining a Collector's license" based on section 22 of the Abkâri Act I of 1886. He said:—"The defendant, selling as he did without such a

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license, contravened the law, and the agreement which he entered into with plaintiff is therefore invalid and cannot be acted on, since any such agreement is void under section 23 of the Contract Act. Such an agreement is obviously opposed to public policy, for it is necessary for the Collector to know who and what manner of men are the lessees who sell liquor in order that bad characters may not be found among them, for liquor shops are often the resort of bad characters. Thus the only question to be determined in this appeal, viz., whether the plaintiff's agreement with defendant is valid or not, is found in the negative for the above reason. Consequently, I dismiss the appeal with costs."

Plaintiff preferred this second appeal.

V. C. Seshachariar for appellant.

V. Ramesam for respondents.

JUDGMENT.—Section 22 of the Abkari Act I of 1886 imposes a duty on the lessee or assignee, that is on the defendant, not the plaintiff in this case; but clause 21 of the plaintiff's license, which is issued under section 24, clause (e) of the Act, imposes the duty on the plaintiff also, as grantee of Government, to obtain the Collector's license for his lessee, the defendant.

Thus there was a legal duty on the part of both the plaintiff and the defendant to obtain the Collector's permission to the sub-letting. They failed to do so, and the contract entered into between them that defendant should sell arrack was illegal, and the plaintiff therefore cannot sue on it.

We dismiss the second appeal with costs.
