# APPELLATE CIVIL.

*Before Mr. Justice Spencer and Mr. Justice Krishnan.*

KANDREGULA ANANTHA RAO PANTHULU (PLAINTIFF), APPELLANT, 1919, December.

*v.*

KUNDIKONDA SURAYYA AND KUNDIKONDA PRAKASAM (DEFENDANTS NOS. 1 AND 3), RESPONDENTS.*

*Indian Contract Act (IX of 1872) ss. 64 and 65—Written Contract—Material alteration by one party, effect of—Breach of contract—Damages—Repayment of advance.*

If a written contract is materially altered by one party without the knowledge and consent of the other, the former is not entitled to damages for breach of contract, but is entitled to a repayment of the advance made by him.

SECOND APPEAL against the decree of A. VENKATARAMAYYA PANTULU Garu, the Additional Temporary Subordinate Judge of Rajahmundry, in Appeal No. 27, of 1918, preferred against the decree of K. NARASIMHAM Garu, the Additional District Munsif of Rajahmundry, in Original Suit No. 477 of 1916.

Plaintiff and defendants Nos. 1 and 2 entered into an agreement for the delivery by the latter of 50,000 coconuts. The terms of the contract were embodied in a document (Exhibit A); and according to plaintiff, one of the terms was, that if delivery was not made within a certain date, the plaintiff was entitled to claim profit at the rate of Rs. 15 per thousand coconuts. Plaintiff alleged that there was a breach of contract by non-delivery on the stipulated date, and claimed damages at the above rate as well as the return of an advance of Rs. 1,200 paid to defendant on the same date and evidenced by a receipt (Exhibit A1) written on the same sheet of paper as Exhibit A. Defendant, inter alia, contended that the agreement was that on default the defendant was to pay Rs. 5 per thousand coconuts, that the figure 15 was an unauthorized alteration by plaintiff, and that as it was a material alteration the plaintiff was not entitled to base his claim on that document.

The District Munsif found that the document, had been altered as alleged by the defendant, and that as the alteration

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was of a material character it vitiated the agreement, and held that plaintiff could not claim damages for defendant's default. He, however, held that the payment of Rs. 1,200, as an advance, was evidenced by a separate document, though it was part of the same transaction, and decreed the repayment of that amount. On appeal, the Subordinate Judge concurred with the District Munsif that the alteration was material and that no damages could be allowed. With regard to the repayment of the advance of Rs. 1,200 he observed:

"The contract Exhibit A and the receipt Exhibit A1 were written on the same sheet of paper and the contract also refers in specific terms to the receipt to be executed on the other side of the document. The receipt seems to have been separately written up just for the purpose of securing formal attestation to the transaction, represented by the contract and the receipt. The suit itself has been brought on the basis of the contract, the execution of the receipt being only incidentally referred to as evidencing the payment of the advance. And the cause of action for the suit itself is mentioned in the plaint as the due date for the delivery of the coconuts mentioned in the contract. Under such circumstances I do not think the learned District Munsif was right in separating the plaintiff's claim for the advance of Rs. 1,200 as standing on a different footing from his claim for damages and awarding a decree to him for that amount as distinguished from the rest of the claim."

He, therefore, reversed the decree and dismissed the plaintiff's suit. Plaintiff thereupon preferred this Second Appeal.

*P. Narayanamurti* for the appellant.

*V. Ramdoss* for first respondent.

*C. Rama Rao* for second respondent.

SPENCER, J.

SPENCER, J.—I cannot agree with the learned Subordinate Judge in his view that the plaintiff is debarred from recovering the advance made by him for the mere reason that Exhibit A (the contract deed) and Exhibit A1 in which the receipt of the advance was acknowledged, were written on the same piece of paper and that a material alteration of one would affect the other with the taint of fraud.

In my opinion the defendant is bound to refund any advantage taken by him whether the contract is void, or

voidable and rescinded. In one case section 65 of the Contract Act applies, in the other section 64.

There is no question now of performing the contract. First defendant does not want to perform it and he may be treated as having rescinded it, as he set up in his written statement another arrangement by which the original contract had been superseded. In fact the first defendant in his written statement, paragraph 10, did not deny his liability to refund the advance of Rs. 1,200 but he alleged that satisfaction had been given as regards Rs. 500 and that only Rs. 700 remained to be paid.

As for the claim for damages for non-performance of the contract on the point of law, which is whether a plaintiff who has made a material alteration in an instrument containing a contract can recover any amount under it, I think we should follow *Chitturi Suriah* v. *Boddu Ramayya*(1), *Gour Chandra Das* v. *Prasanna Kumar Chandra*(2), and the case of *Powell* v. *Divett*(3).

In fact Mr. Narayanamurti conceded after some argument that as the terms of the contract were embodied in Exhibit A he was not entitled to recover damages independently of this document.

The only question then left was as to the appellant's (plaintiff's) right to recover the advance of Rs. 1,200, and this must be found for the appellant on the strength of first defendant's admission and the reasons given above.

The result will be that the appeal will be allowed with proportionate costs in this and the lower Appellate Court on this part of the plaintiff's claim and the decree of the District Munsif will be restored against first respondent and the Second Appeal dismissed with costs against second respondent, who, it is conceded, has been unnecessarily made a party to this appeal.



KRISHNAN, J.—I accept the finding of the lower Courts that the written contract, Exhibit A, has been materially altered by the plaintiff *without* the knowledge and *consent* of the first defendant, the other party to it. On that finding we must hold that plaintiff is not entitled to enforce that contract, see *Powell* v. *Divett*(3), and that his suit so far as it is for damages was

(1) (1915) M.W.N., 150. (2) (1906) I.L.R., 33 Calc., 812.
(3) (1812) 104, E.R., 755.

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rightly dismissed, as it would be enforcing the contract to give him such damages.

It is, however, argued that plaintiff is nevertheless entitled to the repayment of the Rs. 1,200 paid by him as an advance to the first defendant and the claim is made under section 64 or 65 of the Contract Act. The view of the lower Appellate Court that Exhibit A1, the receipt given for the money, is also rendered invalid by the alteration in Exhibit A does not seem to me to be supportable. It is only a receipt for the money paid. If the repayment of that money is claimed by way of enforcement of the contract, no doubt plaintiff will be met by the objection based on its material alteration. But it is not so claimed. The lower Courts have found that the first defendant did not perform the contract but on the other hand he committed breach of it. Though plaintiff cannot take advantage of the breach to claim damages, he is not precluded from relying upon it and treating the contract as having become void under section 65 and requiring the defendant to repay the money advanced to him. Illustration (*c*) of section 65 seems to indicate that the section is meant to apply also to cases where one party breaks a contract and the other party in consequence of it rescinds it. The material alteration, though it prevents plaintiff from enforcing the contract, does not seem to prevent him from rescinding it. No authority has been cited to show that it does. On the other hand the ruling in *Chitturi Suriah* v. *Boddu Ramayya*(1), would seem to support the view that the money advanced could be claimed back. Plaintiff would therefore be entitled to be paid back the Rs. 1,200 that he paid.

The Second Appeal so far as it is against the second respondent is not pressed. I would therefore allow the Second Appeal against the first respondent and, reversing the decree of the Subordinate Judge, restore that of the District Munsif. Plaintiff will pay and receive proportionate costs so far as the first respondent is concerned in this and the lower Appellate Court.

The Second Appeal is dismissed with costs against the second respondent.

K.R.

(1) (1915) M.W.N., 150.