APPELLATE CIVIL.

Before Mr. Justice Reilly and Mr. Justice Anantakrishna Ayyar.

VADDE VENKATASWAMI AND ANOTHER (DEFENDANTS ELEVEN AND TWELVE), APPELLANTS,

1931, September 14.

v.

BOMMARAJU VENKATA SUBBAYYA AND THIRTEEN OTHERS (PLAINTIFF AND DEFENDANTS FORTY-TWO TO FORTY-FIVE, TWO TO SIX, EIGHT TO TEN AND LEGAL REPRESENTATIVE OF THE FIRST DEFENDANT), RESPONDENTS.*

Vendor and purchaser—Sale-deed—Registration of—Fraud on registration law—Invalidity of sale-deed on ground of—Plea by vendor of—Maintainability of—Maxim "In pari delicto potior est conditio possidentis"—Statute—Rule of public policy embodied in—Contravention of—Maxim applicable to case of.

A vendor of immovable property cannot be allowed to plead or to take advantage of the invalidity of the registration of his sale-deed on the ground that by the inclusion of a particular item of property in the document and getting the document so registered in an office where otherwise it could not have been registered a fraud on the registration law was committed, in which he participated.

As a general rule a plaintiff cannot plead his own fraud or illegal act as a basis of his claim or as a necessary step towards the success of his claim. His position in that matter is not made better by showing that the defendant has joined him in the fraud or illegal act or by the fraud or illegal act not being pleaded but coming to light in the course of the trial of the suit or even in the hearing of an appeal. The rule applies even where the fraud or illegality disclosed was in contravention of some rule of public policy embodied in a statute.

APPEALS against the decrees of the Court of the Additional Subordinate Judge of Bapatla in Appeal Suits Nos. 28,

* Second Appeals Nos. 717, 1541 and 1893 of 1925.

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27 and 28, and 28 of 1924 preferred against the decree of the Court of the District Munsif of Ongole in Original Suit No. 601 of 1921.

The facts of the case necessary for the portion of the judgment reported appear fully from the same.

P. Venkataramana Rao for appellants.

B. Somayya for first respondent.

JUDGMENT.

REILLY J.

REILLY J.—[Part of the judgment has been omitted as not being necessary for this report.] It is not now disputed that all the property concerned in the suit, as has been found by the lower Courts, was the property of Karavadi Ramaswami at the time of his death in 1860 and that after his death Mahalakshmamma had only a widow's interest in it. The sale-deed, Exhibit I, which I have mentioned, was dated the 7th September 1908 and was executed by Rangamma and her three sons then living, the plaintiff, defendant 43 and an elder brother, Venkatapayya, now dead. It was in favour of defendant 1, who is now represented by defendants 2 to 4 as his legal representatives, and by other contesting defendants as transferees from him. Exhibit I is a registered document; but in it a small item of one cent is included, which never belonged to the vendors and which it has been found was never intended by any of the parties to Exhibit I to pass to the vendee. It was included only for the purpose of getting the document registered in a particular Sub-Registrar's office, in which no sale-deed relating to the other items, which were intended to be transferred, could have been registered. The plaintiff in his plaint pleads that the inclusion of the fourth item in the document and getting the document so registered in an office where otherwise it could not have been

registered was a fraud on the Registration law and that therefore the document has not been validly registered and he can ignore it. On the facts there is no doubt that that was a fraud against the Registration Act. The evidence is in effect that the plaintiff, his brother, defendant 43, and defendant 1, the vendee, all joined in that fraud. The District Munsif and the Subordinate Judge therefore found that Exhibit I was not validly registered and had no legal effect. Before us a contention has been raised for the contesting defendants that the plaintiff cannot plead his own fraud in that way and that, even if this fraud had come to the notice of the Court otherwise, no relief could be given to the plaintiff in the suit on that basis, but that the maxim *In pari delicto potior est conditio defendentis et possidentis* should be applied. It cannot be denied that as a general rule a plaintiff cannot plead his own fraud or illegal act as a basis of his claim or as a necessary step towards the success of his claim. His position in that matter is not made better by showing that the defendant has joined him in the fraud or illegal act or by the fraud or illegal act not being pleaded but coming to light in the course of the trial of the suit or even in the hearing of an appeal; *Gascoigne* v. *Gascoigne*(1) and *Scott* v. *Brown*(2). In the latter case the plaintiffs sued on an illegal contract involving an indictable offence. The illegality was not pleaded, and, although the trial Judge noticed it, he did not let it affect the disposal of the case before him. It was the Lords Justices in the Court of Appeal who themselves took the point. SMITH L.J. said:

"If a plaintiff cannot maintain his cause of action without shewing, as part of such cause of action, that he has been

(1) [1918] 1 K.B. 223. (2) [1892] 2 Q.B. 724.

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guilty of illegality, then the Courts will not assist him in his cause of action."

and he applied the maxim *In pari delicto potior est conditio possidentis*. LINDLEY L.J. said:

"It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the Court ought not to assist him."

I do not think there can be any doubt about the general rule. But it has been suggested that there is an exception when the fraud or illegality disclosed is in contravention of some rule of public policy embodied in a statute and that, if that is so, the plaintiff may be allowed to vindicate the law and public policy to his own profit in spite of his own fraudulent or illegal act. So far as I understand the matter, there is no such exception. In *Cottington* v. *Fletcher*(1) the plaintiff was a Papist who owned an advowson, i.e., the right to present to a living in the Church of England. By a statute, 1 Will. and Mary C. 26, no Papist can present to a living in the Church of England, nor can any one who holds an advowson in trust for a Papist. To protect his property Cottington assigned the advowson to Fletcher under an arrangement that Fletcher should hold it in trust for him, and Fletcher presented to the living the second defendant in the case. Subsequently Cottington became a conforming Protestant, and he then sued for a re-assignment of the advowson. Lord HARDWICKE indicated his opinion that, if Fletcher had raised a demurrer that Cottington could not plead his fraud against the law in that way, Fletcher would have succeeded. The report of that case is not very full; but in *Muckleston* v. *Brown*(2) Lord ELDON, commenting upon the case, expressed strongly the same

(1) (1740) 2 Atk. 156; 26 E.R. 498. (2) (1801) 6 Ves. Jun. 52; 31 E.R. 934.

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view, though he appears to have doubted whether the report was correct in another respect. There it will be seen that Cottington was disclosing a contravention of what was regarded as a matter of the highest public policy, and yet he would not have been allowed to do so if objection had been raised. In *Curtis* v. *Perry*(1) Chiswell, a Member of Parliament, had allowed ships bought by his partner, Nantes, with partnership money to be registered in the name of Nantes alone in order that they might be used for contracts with the Government in violation of the Contractors' Act, under which no Member of Parliament could have any interest in any contract with the Government. Lord ELDON said :—

"The moment the purpose to defeat the policy of the law by fraudulently concealing that this was his (Chiswell's) property is admitted, it is very clear he ought not to be heard in this Court to say that is his property."

And there the rule was applied, although there had been a fraud against another statute also, 34 Geo. III. C. 68, under which the name of the owner of every ship had to be registered. But no vindication of public policy even in those very important matters could avail against the general rule. In the same case Lord ELDON quoted an unnamed and unreported case, in which Lord KENYON dismissed a bill for the reconveyance of property given by the plaintiff to his son as a nominal qualification for a seat in Parliament in fraud of a statute regarding qualifications for Parliament. In none of those cases was the fact that the confession of fraud would have disclosed the contravention of an important rule of public policy embodied in a statute treated as having any effect in qualification of the general rule. It will be observed that Cottington was

(1) (1802) 6 Ves. Jun. 740 ; 31 E.R. 1285.

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trying by his plea to undo the evasion of a statute and thereby to recover his property, almost exactly what the plaintiff is trying to do in respect of Exhibit I in this case.

Can we suppose that there is any special sanctity about the Registration Act, which would bring in an exception to the general rule? No doubt the registration of a sale-deed in the proper office is a matter of public policy. But it can hardly be suggested that it is a matter of higher public policy than the questions dealt with in the cases I have quoted. Why should the plaintiff, who has joined in the fraud in this case, be allowed to profit by it or to plead it? Is it a matter of over-mastering public policy that the vendee under Exhibit I should not be allowed to remain in possession because Exhibit I was not validly registered? I think a recent amendment of the law by the Legislature shows that there can be no such over-mastering public policy in connection with the Registration Act. Under section 53-A recently added to the Transfer of Property Act a vendee, who has got only an unregistered sale-deed, may protect his possession by pleading part-performance and may actually use the unregistered sale-deed to prove the terms of the sale. When the Legislature has provided in that way for effect being given to a transfer, though the Registration Act has not been complied with, we cannot say that it is even a matter of public policy that the vendee under Exhibit I should not be allowed to remain in possession. In my opinion the plaintiff cannot be allowed to plead or take advantage of any invalidity in the registration of Exhibit I. Exhibit I on its face is a validly registered document, and for the purpose of this case we must treat it as such.

[The rest of the judgment dealt with other points in the case.]

ANANTAKRISHNA AYYAR J. [Part of the judgment has been omitted as not being necessary for this report.] Under Exhibit I, four items of properties are purported to be sold to the first defendant. The fourth item covered by Exhibit I is one cent of inam dry land situate in Chadala village attached to Ongole Sub-Registration District; whereas items 1, 2 and 3 of Exhibit I are lands attached to Kothapatnam Sub-Registration District. The document was presented to the Ongole Sub-Registrar for registration and was registered by him. The allegation in paragraph 3 of the plaint regarding this matter was as follows :—

> "Besides this, whereas the first defendant should have got the said document registered at Kothapatnam, he got it registered at Ongole by including unjustly and fraudulently some other properties unnecessarily. Hence the said document is not at all valid in law and the first defendant cannot acquire any right whatever under the said document."

The first defendant's plea was that item four also was sold to him but that the plaintiff and others re-purchased from the first defendant the one cent of land (item four) on payment of a small amount and are in possession thereof.

Both the lower Courts have held that the parties to Exhibit I could never have intended that item four should form part of the property conveyed by the document, and that it could never have been intended that any title should pass thereunder in item four—one cent—and that the executants of Exhibit I had no shadow of title to that one cent and that the first defendant also must be taken to have been aware of the same. It was for the convenience of the plaintiff, and his brother, the forty-third defendant—who was employed at Ongole—and at their suggestion that item four was included in

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Exhibit I, and the document registered at Ongole. On these facts it was argued for the plaintiff that the registration of Exhibit I is invalid in law. On behalf of the first defendant it was argued that the plaintiff was equally party to the fraud as the first defendant and that it is not open to the plaintiff to allege his own fraud and claim relief on that basis. The plaintiff's learned Advocate replied to this argument by saying that the Registration Act is a statute of public policy, and that there could be no estoppel against the provisions of such a statute. Our attention was also drawn to the decisions of the Privy Council in *Harendra Lal Roy Chowdhuri* v. *Haridasi Debi*(1) and *Biswanath Prasad* v. *Chandra Narayan Chowdhuri*(2). After having the question argued before us, I have come to the conclusion that it is not open to the plaintiff in such circumstances to allege his own fraud and claim relief on that basis. In Broom's Legal Maxims, the maxim is quoted—'*Nemo allegans turpitudinem suam est audiendus*'—No one alleging his own baseness ought to be heard. Another maxim is referred to, viz., *Nullus commodum capere potest de injuria sua propria*—No one can take advantage of his own wrong. It is also said '*In pari delicto potior est conditio possidentis*'—In equal fault, the condition of the possessor is more favourable. Various decisions have been cited in support of the principle underlying the above legal maxim, but I do not propose to go into the same.

It is stated in Story's Equity Jurisprudence, Vol. I, section 421:

"In general, where parties are concerned in illegal agreements or other transactions, whether they are *mala prohibita or mala in se*, Courts of equity, following the rule

(1) (1914) I.L.R. 41 Calc. 972 (P.C.). (2) (1921) I.L.R. 48 Calc. 509 (P.C.).

of law as to participators in a common crime, will not interpose to grant any relief; acting upon the known maxim, *In pari delicto potior est conditio defendentis et possidentis.* The old cases often gave relief, both at law and in equity, where the party would otherwise derive an advantage from his iniquity. But the modern doctrine has adopted a more severely just, and probably politic and moral rule, which is, to leave the parties where it finds them, giving no relief and no countenance to claims of this sort."

See also third edition of Story's Equity Jurisprudence by Randall, section 298.

In *Raghupati* v. *Nrishingha*(1) MOOKERJEE J. discusses this question. The learned Judge in addition to quoting some English authorities also quotes the following passages from certain American decisions:

"The law leaves the parties to such a contract as it found them. If either has sustained a loss by the bad faith of a *particeps criminis*, it is but a just infliction for premeditated and deeply practised fraud, which, when detected, deprives him of anticipated profits, or subjects him to unexpected losses. He must not expect that a judicial tribunal will degrade itself by an exertion of its powers, by shifting the loss from the one to the other, or to equalize the benefits or burthens which may have resulted by the violation of every principle of morals and of laws. Or, as Chancellor Walworth states it: 'Wherever two or more persons are engaged in a fraudulent transaction to injure another, neither law nor equity will interfere to relieve either of those persons as against the other from the consequences of their own misconduct.'"

In *Scott* v. *Brown*(2) the Court of Appeal made certain observations which are relevant to the present case. LINDLEY L.J. said:—

"*Ex turpi causa non oritur actio.* This old and well-known legal maxim is founded in good sense, and expresses a clear and well-recognised legal principle, which is not confined to indictable offences. No Court ought to enforce an illegal

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(1) (1922) 36 C.L.J. 491.

(2) [1892] 2 Q.B. 724.

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contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the Court, and if the person invoking the aid of the Court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the Court ought not to assist him. If authority is wanted for this proposition, it will be found in the well-known judgment of Lord MANSFIELD in *Holman* v. *Johnson*(1)."

LOPES L.J. quoted an extract from the judgment of COCKBURN C.J. in *Begbie* v. *Phosphate Sewage Co.*(2) to the following effect:—

"The plaintiff cannot present his case to the jury without necessarily disclosing the unlawful purpose in furtherance of which this money was paid."

It has to be observed that, though the illegality of the contract was not pleaded by the defendant, the point was taken by the Court and acted upon.

A. L. SMITH L.J. observed at page 734:—

"Now, how does the law stand upon the subject? If a plaintiff cannot maintain his cause of action without shewing, as part of such cause of action, that he has been guilty of illegality, then the Courts will not assist him in his cause of action. This was decided in *Taylor* v. *Chester*(3), where the illegality was pleaded, and also in *Begbie* v. *Phosphate Sewage Co.*(2), where it was not pleaded, but, the fraud being apparent, the Court would not interfere."

In *Petherperumal Chetty* v. *Muniandy Servai*(4) the Privy Council held that the contemplated fraud must, according to the authorities, have been effected and that then, and then alone, does the fraudulent grantor or giver lose the right to claim the aid of the law to recover the property he has parted with (see page 559).

In the present case the fraud has been effected, the plaintiff has got his money, and the defendant was put

(1) (1775) I Cowp. 343; 98 E.R. 1120.
(2) (1875) L.R. 10 Q.B. 491, 500. (3) (1869) L.R. 4 Q.B. 309.
(4) (1908) I.L.R. 35 Calc. 551 (P.C.).

in possession of the properties. Therefore the plaintiff could not be given relief. Reference may be made to a decision of this Court in *Janu Sait* v. *Ramasami Naidu*(1). There the plaintiff entered into a contract for the purchase of rice in violation of rice control regulations. The rice purchased was subsequently commandeered by the Government under the regulations. It was held that the purchaser was not entitled to recover the portion of the price paid by him to the defendant by reason of such commandeering when it was proved that both the plaintiff and the defendant knew of those restrictions and were parties to the illegal contract. PHILLIPS J. observed at page 568:

"When both parties are *in pari delicto,* the maxim '*In pari delicto potior est conditio possidentis*' applies and the Courts will not assist the plaintiff to recover in such a case."

DEVADOSS J. observed at page 576 as follows:—

"In this case, the contract has been fully completed and the plaintiff who seeks relief on the ground of fraud is not entitled to it, as I find on the evidence that he was not deceived as regards the terms of the licence, and his conduct in getting rice without a licence to buy in Negapatam was in violation of the rules framed in the interests of the public. This point is fatal to the plaintiff's case and he is entitled to no relief."

See also *Jones* v. *Merionethshire Permanent Benefit Building Society*(2), where LINDLEY L.J. observed:—

"A plaintiff is not entitled to relief in a Court of Equity on the ground of the illegality of his own conduct. In order to obtain relief in Equity he must prove not only that the transaction is illegal, but something more; he must prove either pressure or undue influence. If all that he proves is an illegal agreement he is not entitled to relief."

Some very early English decisions were also cited to us in which the Court made similar observations that the plaintiff in such circumstances would not be

(1) (1923) 18 L.W. 564.
(2) [1892] 1 Ch. 173, 182.

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given any relief when he has to plead his own fraud as part of his cause of action.

The fraud in this particular case having been effected, as already mentioned, it is enough to rely on the decision in *Petherperumal Chetty* v. *Muniandy Servai*(1) to decide this point against the plaintiff. The Privy Council decisions in *Harendra Lal Roy Chowdhuri* v. *Haridasi Debi*(2) and *Biswanath Prasad* v. *Chandra Narayan Chowdhuri*(3) are not really applicable to the exact point that we are now considering. The question there was not whether the plaintiff could be allowed to set up his own fraud, but whether registration was properly and validly effected when the question arose with reference to third parties.

[The rest of the judgment dealt with other points in the case.]

[Their Lordships eventually dismissed the plaintiff's second appeal and allowed the second appeals of defendants two to six and nine to twelve, with the result that the plaintiff's suit was dismissed except with reference to the fifth item.]

A.S.V.

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(1) (1908) I.L.R. 35 Calc. 551 (P.C.).
(2) (1914) I.L.R. 41 Calc. 972 (P.C.). (3) (1921) I.L.R. 48 Calc. 509 (P.C.)