APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Ramesam and Mr. Justice King.

CHAVA RAMANAYUDU (PLAINTIFF), PETITIONER,

1934, December 19.

v.

SURYADEVARA SEETHARAMAYYA AND THREE OTHERS (DEFENDANTS), RESPONDENTS.*

Abkari Act (I of 1886), sec. 27—Partnership for carrying on toddy shop business with a successful bidder at a toddy shop auction after the bid was knocked down in his favour —Effect of, when permission of the Collector had not been taken to work in such partnership.

A promissory note was executed by A, after he had become the successful bidder at a toddy shop auction, in favour of B for advances to be made by the latter for carrying on the toddy shop business which they agreed to work as partners. The licence was later on issued in A's name and the partnership carried on the business and the moneys covered by the promissory note were lent by B to the partnership. A had not obtained the permission of the Collector to work the toddy shop in partnership.

Held that, inasmuch as section 27 of the Abkari Act had been contravened, the partnership was formed for an illegal purpose and that no suit could be laid on the promissory note.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of the Court of the Subordinate Judge of Tenali in Small Cause Suit No. 63 of 1930, dated 22nd December 1930.

V. Govindarajachari for petitioner.

V. V. Chowdary and *G. S. Venkatarama Ayyar* for respondents.

Cur. adv. vult.

* Civil Revision Petition No. 1026 of 1931.

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JUDGMENT.

BEASLEY C.J.—This was a suit on a promissory note. The plaintiff was one Chava Ramanayudu and there were four defendants. The amount claimed was Rs. 907-13-0. The first defendant admitted the claim but pleaded non-liability on the ground that the plaintiff exonerated him. The third defendant was *ex parte*. The second and fourth defendants pleaded that the suit promissory note was for advances to be made by the plaintiff for carrying on a toddy shop which they (the defendants and the plaintiff) agreed to work as partners after the first defendant had already become the successful bidder for the year 1927-28 and that the partnership was an illegal partnership. The learned Subordinate Judge finds as a fact that the promissory note was executed for advances to be made by the plaintiff for the partnership, that the plaintiff was a partner and that the first defendant who obtained the licence was not shown to have obtained the Collector's permission to work the shop in partnership. In view of these findings he dismissed the suit.

The question before the learned Subordinate Judge was, and before us, is whether the partnership was formed for the purpose of doing something which was either illegal or opposed to public policy. The General Sales Notification issued annually by the Commissioner of Excise under the Abkari Act laying down the general conditions applicable to all abkari and opium licences by section 27 provides :

"No privilege of supply or vend shall be sold, transferred or sub-rented without the Collector's previous permission.

Nor, if the Collector so orders, shall any agent be appointed for the management of any such privilege without his previous approval."

This condition is one of those which is set out in the abkari licence. Section 37 provides for the penalties to be inflicted on the infraction of any of the conditions of the licence by a licensee or by any person in his employment. The effect of section 27 is that a partnership in an abkari business is prohibited unless the previous permission of the Collector has been obtained. In *Nalain Padmanabham* v. *Sait Badrinadh Sarda*(1) the facts were that A and B were farmers of opium revenue under Government. They obtained a licence from the Collector for the sale of opium subject to the condition, among others, that they should not sell, transfer or sub-rent their privileges without the permission of the Collector (similar to section 27 in this case). A and B, without the sanction of the Collector, entered into an agreement with C, by which they admitted him as a partner in the opium business. C having brought a suit for dissolution and winding up of the business, it was held that the agreement was void and the suit was not maintainable, the effect of the agreement between A and B on the one hand and C on the other being to enable C to sell opium without a licence, an act directly forbidden by the Opium Act and made penal by it, that the contract being intended to enable C to do what was forbidden by law was unlawful and void, that the provisions of the Abkari and Opium Acts are not intended merely to protect public revenue but the prohibitions contained in them

(1) (1911) I.L.R. 35 Mad. 582.

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are based on public policy, and that the agreement was also illegal as it amounted to a transfer by A and B of their privilege to C in violation of the condition against transfer subject to which the licence was granted. In the course of the judgment reference was made to *Marudamuthu Pillai* v. *Rangasami Mooppan*(1) where it was said :

> "The provisions of the Abkari Act, as a whole, show clearly that every person carrying on abkari business as a principal must be licensed. . . ",

and :

> "To hold that a person who has not got a licence could still be a partner with one who has a licence and as such partner carry on the business with or without the other would enable the unlicensed partner to evade the liabilities intended by the law to be cast on persons carrying on abkari business."

Other cases in point are *Behari Lall Shaha* v. *Jagodish Chunder Shaha*(2) and *Raghunath Lalman* v. *Nathu Hirji Bhate*(3). For the petitioner, however, reliance was placed upon the following cases, viz., *Appadurai Mudali* v. *Murugappa Mudali*(4), *Nanna Vazhmuni Mudali* v. *Nathamuni*(5) and *Narayanamurthy* v. *Subrahmanyam*(6). In the first case, which is a decision of ODGERS and MADHAVAN NAIR JJ., the plaintiff lent a sum of money on a promissory note to a partnership. The partnership consisted of defendants 1 to 3 and took a contract of sale of arrack in certain shops and borrowed money from the plaintiff for the purpose of that business. First of all, in the opinion of ODGERS J., the business was not an illegal one, on the ground that there was no sufficient material for the Court to so decide, and,

(1) (1901) I.L.R. 24 Mad. 401.
(2) (1904) I.L.R. 31 Calc. 798.
(3) (1894) I.L.R. 19 Bom. 626.
(4) (1925) 23 L.W. 709.
(5) (1929) 122 I.C. 342.
(6) (1928) 114 I.C. 655.

even on the supposition that the condition of the licence was that all the names of the licensees or persons concerned in that particular business by way of partnership must appear on the face of the licence, it was a question whether on the evidence of the plaintiff he could be said to be *particeps criminis* in the carrying on of the illegal trade because, assuming that there was a prohibition in the terms of the licence, there was no evidence that the plaintiff ever knew of it. The important distinguishing feature in that case is that the plaintiff was not a member of the partnership but was a stranger lending money to it. In the present case, the plaintiff was a partner and, if the partnership had for its object the carrying on of an illegal business, the plaintiff as a member of that partnership cannot be heard to deny that he had guilty knowledge. In the second case, which is a decision of ANANTAKRISHNA AYYAR J., the plaintiff was a partner and sued for the taking of the partnership accounts between him and the first and second defendants and for the recovery of the amount to be found due to him on the taking of the accounts. The suit was decreed but on appeal the Subordinate Judge reversed that decree and remanded the suit to the District Munsif for a fresh trial, and, whilst doing so, suggested that the District Munsif might at the retrial consider a new ground pressed before him, namely, that the partnership was illegal. At the retrial the first defendant put in an additional written statement contending that the partnership in question was illegal and opposed to public policy. The District Munsif found that the contract of partnership was illegal and opposed to public policy. The District

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Judge on appeal reversed the decision, and the case came up on second appeal before ANANTAKRISHNA AYYAR J. The facts were that the first defendant held a licence to sell toddy in a shop, and according to him took the plaintiff as a partner in respect of that business. The licence was not produced by the first defendant. The District Judge held that, since the licence relating to the year in question had not been produced, there were no grounds for saying that the contract of partnership was illegal. The licence, however, was produced in second appeal and was sought to be admitted in evidence, but ANANTAKRISHNA AYYAR J. refused to allow it to be admitted in evidence at that stage. ANANTAKRISHNA AYYAR J. held that it was essential that the licence granted to the first defendant should be produced and that the view of the District Judge was correct in stating that at the time the partnership was formed the first defendant had not begun to trade in toddy and had no stock which he made the joint property of all the three partners. In this view the partnership could not be held to be illegal as there was nothing *prima facie* illegal in such a partnership under the Abkari Act. The decision in this case appears to me to have turned on the absence of proof that the partnership was entered into for an illegal purpose. In the last case, which is a decision of REILLY J., it was held that, although a partnership entered into in contravention of a licence or of any rule under the Abkari Act is void and the licensee of a toddy or arrack shop cannot legally take a partner without sanction, yet, it is not illegal for several persons to enter into a partnership for the purposes of

bidding at a toddy shop auction and, if successful in the auction, of obtaining a licence and of carrying on a toddy shop business. REILLY J. holds that it is not illegal for persons to enter into a partnership for the purpose of carrying on a toddy shop business or one for which they hope at a future date to obtain a licence. That is quite true if it is intended at a future date to get a licence in the names of all the partners. That is not the fact here as a few dates will show. The first defendant was a successful bidder at the auction on 30th July 1927 and it was in his name that the licence was issued on 1st October 1927. The promissory note is dated 17th August 1927 and the money was therefore lent to the partnership after the first defendant had become the successful bidder at the auction and was the person in whose name the licence would be issued. The first defendant in his evidence said that the two months' deposit of Rs. 140 was paid by him about the 20th August. After the licence was issued it is plain from the evidence that the partnership carried on the business. The permission of the Collector required by section 27 of the General Sales Notification was neither obtained nor applied for and there is evidence that the plaintiff himself was collecting the money of the business and keeping accounts. One thing, therefore, is perfectly clear, namely, that an illegal partnership was actually being carried on; but it is contended that at the date of the commencement of the partnership it has not been shown that it was formed for an illegal purpose. The plaintiff in his evidence did not say that it was intended to apply for the Collector's permission

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for a transfer of the licence or to carry on the business in partnership, nor was there any cross-examination of the defence witness with regard to this point. The question is whether the learned trial Judge was right in drawing the inference from the facts that it was the intention of the partnership to carry on the business in the name of the first defendant alone. In my view, that is the only fair inference. The partnership was formed after the first defendant had become the successful bidder. The licence would, therefore, be issued in his name. No application had been made for the issue of the licence in the names of the partners. In fact no such licence was ever asked for, nor was the permission of the Collector obtained, and the fair inference is that the object of the partnership was to do that which it did in fact do, namely, carry on the business in contravention of section 27. On the facts of this case I am satisfied that the District Munsif properly decided the case; and in the result this civil revision petition must be dismissed with costs.

RAMESAM J.—I agree.

KING J.—I agree.

G.R.