APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Krishnaswami Ayyangar.

1938, April 29.

KONETI DESIKACHARI AND FOUR OTHERS (PLAINTIFFS AND NIL), APPELLANTS,

v.

SRI MAHANT PRAYAG DASJI VARU (DEFENDANT), RESPONDENT.*

Indian Trusts Act (II of 1882), sec. 84—Scope of—Money paid to trustee of a public trust to defraud trust with full knowledge of the intended fraud—Purpose for which money was paid not carried out—Suit for return of money —Incompetency of.

An agreement by which a certain sum of money is paid to the trustee of a public trust for the purpose of inducing him to defraud the trust is one which is contrary to public policy and section 84 of the Indian Trusts Act is not intended to compel a Court to enforce the return of money paid with full knowledge of the enormity of the agreement. The fact that the purpose has not been carried out does not make any difference in such a case.

Case-law reviewed.

APPEAL from the judgment and decree of WADSWORTH J., dated 7th May 1936 and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 262 of 1933.

K. Krishnaswami Ayyangar for *A. Seshachari* for appellants.

A. Suryanarayaniah for respondent.

The JUDGMENT of the Court was delivered by

LEACH C.J.

LEACH C.J.—This appeal raises a question with regard to the effect of section 84 of the Indian Trusts Act.

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* Original Side Appeal No. 65 of 1936.

The plaintiffs in the Court below were the second and third appellants and one Koneti Desikachari who is now dead and is represented by the fourth and fifth appellants. The appellants are members of a joint Hindu family of which Koneti Desikachari was the managing member. At all times material to the suit the family were the owners of two villages lying in the neighbourhood of the Tirumalai-Tirupathi Devasthanam, one of the most important Hindu temples in India. This temple is in the Tirupati Hills, Chittoor District. The suit was filed to recover certain sums alleged to have been paid by Koneti Desikachari to the respondent under a contract which he failed to fulfil and for damages resulting from his breach. The respondent was the sole manager of the temple at the time. The appellants had mortgaged these two villages, and Koneti Desikachari approached the respondent with a view to the respondent buying them on behalf of the temple, as the mortgagees were pressing for repayment. The appellants allege that an arrangement was arrived at by which they were to sell to the temple their two villages for a sum of Rs. 95,000 but that they were to receive only a sum of Rs. 85,000, the remaining Rs. 10,000 being retained by the respondent as his " commission ". This arrangement involved a fraud on the trust to the extent of Rs. 10,000. The sale could not be carried through without the sanction of the District Court and the appellants allege that it was agreed between Koneti Desikachari and the respondent that if the Court refused sanction to this arrangement the respondent would buy the lands himself for a sum of Rs. 85,000. No application was made to the District Court for sanction of the sale of the villages to the temple, and the properties were left with the appellants, who say that they lost the benefit of a favourable

arrangement with the mortgagees. They also allege that the respondent insisted on Rs. 10,000 being paid to him before he took steps in the matter. They say that, as the result of the respondent insisting on his "commission" being paid before he took any steps, they paid him Rs. 1,000 in the month of July 1930 and Rs. 3,000 in the month of May 1931, and executed two promissory notes, one for Rs. 2,100 and the other for Rs. 500 in his favour. The suit was filed to recover the Rs. 4,000 representing the two sums of Rs. 1,000 and Rs. 3,000 and Rs. 36,125 as damages and expenses alleged to have been suffered and incurred by the appellants as the result of the respondent having failed to carry out his part of the bargain. The defence was a complete denial of the truth of the appellants' allegations. The respondent admitted that he had received a sum of Rs. 2,500 from Koneti Desikachari but averred that this money was paid, not for the purpose alleged by the appellants, but on account of a debt owed to him by one Chevala Kamalamma. The suit was tried by WADSWORTH J. who held that there had been a fraudulent arrangement entered into between Koneti Desikachari and the respondent of the nature alleged in the plaint—that is how we read the judgment—and that the Rs. 1,000 had been paid by Koneti Desikachari to the respondent in pursuance of this illegal agreement. He also held that Rs. 3,000 had been paid by Koneti Desikachari to the respondent, but considered that this amount had been paid out of money provided by Chevala Kamalamma herself and had been paid on her behalf. With regard to the sum of Rs. 1,000 the learned Judge refused a decree on the ground that the arrangement was contrary to public policy. Although the learned Judge did not discuss the matter, his judgment amounted to a rejection of

the plea that there had been an alternative agreement under which the properties were to be sold to the respondent for Rs. 85,000 if the temple did not buy them.

The appellants contend that the judgment of the learned trial Judge is wrong on all points, but their learned Advocate was compelled to admit that, if the Court rejects the plea that there was an alternative agreement and that the appellants' case has to rest on the agreement to sell the properties in fraud of the temple, no claim for damages can be sustained. We are firmly of the opinion that there was no alternative agreement of the nature alleged. We consider that it is an afterthought and has been alleged for the purpose of sustaining the claim for damages. Therefore the Court is called upon merely to consider whether the appellants are entitled to a decree for the recovery of the two sums of Rs. 1,000 and Rs. 3,000 paid under the agreement which involved a fraud on the temple. As I have indicated, the learned Judge has found as a fact that both the sums were paid to the respondent by Koneti Desikachari, but that the Rs. 3,000 was paid by him on behalf of Chevala Kamalamma. It is not necessary for us to inquire whether the sum of Rs. 3,000 was paid on her behalf, because we consider that the appellants cannot maintain their claim in law, even if this sum had been paid by Koneti Desikachari for the purpose alleged by him.

The appellants' own case is that these two sums of money were paid by Koneti Desikachari for the purpose of inducing the trustee of a public trust, a trust of national importance, to defraud the trust. Such an agreement is in our opinion contrary to public policy and the Court will not order a refund of money paid under an arrangement which falls within this category. The law in this connection was clearly stated by

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LUSH J. in *Parkinson* v. *College of Ambulance, Ld., and Harrison*(1). That was a case in which the plaintiff sought to recover a sum of money which he had paid on the understanding that the payment would result in an honour being conferred on him. The honour was not conferred and he sued to recover what he had been induced to pay. LUSH J. held that the action did not lie and his reasons can be gathered from the following passage in his judgment:

"In the present case the plaintiff knew that he was entering into an illegal and improper contract. He was not deceived as to the legality of the contract he was making. How then can he say that he is excused? How can he say that he has suffered a loss through being defrauded into making a contract which he knew he ought never to have made? The answer is that he ought not to have made it. Where he was deceived was that he thought he would make a profit, derive a benefit from his unlawful act. He cannot be heard to say that. He has himself to blame for the loss that he has incurred."

That is the position in the present case. The learned Advocate for the appellants would have it that the principle here stated does not apply in this country by reason of the provisions of section 84 of the Indian Trusts Act. That section reads as follows:—

"Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor."

The learned Advocate for the appellants contends that the case comes under both the first and second parts of the section. He says that the appellants are the owners of the property transferred to the respondent for an illegal purpose which has not been carried

(1) [1925] 2 K.B. 1.

into execution. He also says that they are not as guilty as the respondent.

I will deal with the second contention first because the answer is a short one. I can see no difference in the degree of the guilt of a person who instigates another to commit a fraud from which it is intended they shall both benefit and of the person who is willing to carry out the fraud.

With regard to the first contention, the learned Advocate says that there can be no doubt that the property has been transferred and that the illegal purpose for which the transfer has been made has not been effected. He says that the first part of the section applies in all cases where the purpose for which the property is transferred is illegal. If this were so, it would mean that if A gave Rs. 500 to B to murder C and B repented, or was prevented from carrying out the crime, A could recover the Rs. 500 under this section. The learned trial Judge has dealt in his judgment with this very question, and we agree with him that the argument is going very much too far.

It is an accepted rule of law that where property is transferred for an illegal purpose the property can be recovered when the purpose has not been carried out and the person who transfers repudiates the contract. This principle was stated in *Taylor* v. *Bowers*(1) and was accepted by the Privy Council in *Petherpermal Chetty* v. *Muniandy Servai*(2). *Taylor* v. *Bowers*(1) was a case where there was an agreement to defraud creditors and so was *Petherpermal Chetty* v. *Muniandy Servai* (2). In inserting section 84 in the Indian Trusts Act the Legislature could not have intended to compel a Court to hear and decide a case

(1) (1876) 1 Q.B.D. 291. (2) (1908) I.L.R. 35 Cal. 551 (P.C.)

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which is entirely opposed to public policy. It seems to me that it had in view the principle stated in the cases to which I have just referred and this principle does not apply to the present case. The contract between Koneti Desikachari and the respondent was a contract which was opposed to public policy, and, in these circumstances, we consider that the appellants are not entitled to ask the Court to enforce the return of money paid with full knowledge of the enormity of the agreement. The Calcutta High Court gave expression to the same opinion in *Ledu Coachman* v. *Hiralal Bose*(1).

For these reasons the appeal fails and must be dismissed with costs. As the appeal has been filed in *forma pauperis* the appellant will be required to pay the requisite court-fee to Government.

G.R.

APPELLATE CIVIL.

Before Mr. Madhavan Nair, Officiating Chief Justice, and Mr. Justice Krishnaswami Ayyangar.

1938, August 10.

H. M. EBRAHIM SAIT (DEFENDANT), APPELLANT,

v.

THE SOUTH INDIA INDUSTRIALS, LIMITED (PLAINTIFF), RESPONDENT.*

Original Side Rules, Madras, O. VII, r. 7 (2)—Unconditional leave to defend under—When defendant is entitled to—Discretion of Court to put defendant on terms—When to be exercised.

Under Order VII, rule 7 (2), of the Original Side Rules the Court has discretion to decide whether leave to defend should

(1) (1915) I.L.R. 43 Cal. 115.

* Original Side Appeal No. 50 of 1938.