Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1914
December, 4.

MANGAL SEN AND OTHERS (PLAINTIFFS) *v.* MUHAMMAD HUSAIN AND ANOTHER (DEFENDANTS)*

Contract—Privity of contract—Right of third parties to sue on covenant in lease.

Where on a lease of certain muafi land the lessees undertook, as between themselves and their lessor, to be responsible for the payment to the zamindars of certain sums which the muafidar was primarily bound to pay, it was *held* that the zamindars could not enforce this covenant by suit against the lessees. *Khwaja Muhammad Khan* v. *Husaini Begam* (1), *Touche* v. *The Metropolitan Railway Warehousing Company* (2) and *Debnarayan Dutt* v. *Chunilal Ghose* (3) distinguished.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case appear from the judgement under appeal, which was as follows :—

"On the two issues remitted by my learned predecessor the court below has found, in regard to the first, that a sum of Rs. 790 cash, was recovered by the defendant No. 3 from the defendants Nos. 1 and 2 in respect to the years in suit; and on the second issue, it has also come to a finding, but it seems to me that that issue does not arise and requires no decision in this appeal. The facts of the case may be very briefly stated as follows. The village in question consists of 2 *pattis*: one 6 biswa *patti* and the other 14 biswa *patti*. It is held revenue-free. In the land which constitutes the village there are two classes of proprietary rights, the so-called zamindari and the so-called *muafidari*. The zamindar is a person to whom the *muafidar* has to pay 10 per cent. of his collections in the case of cash rents and 2 seers per maund in the case of rent payable in kind. The person in possession is the *muafidar*. The sole right therefore of the zamindar in this village is to recover the above mentioned dues from the person in possession. How this right arose, it is impossible to say on the present state of the record. There is no evidence on the point at all. The present plaintiffs have acquired the zamindari rights, i.e., the right to recover the 10 per cent. from the person in possession. They have also acquired the 6 biswa *patti* of the so-called *muafidari* rights. As owners of the zamindari rights they have sued to recover the 10 per cent. dues from the owner of the 14 biswa *patti* on the collections made in respect to that *patti* for the years 1316 and 1317 F. The owner of this *patti* gave a lease thereof to the defendants Nos. 1 and 2. The plaintiff impleaded them as defendants. By the terms of their lease, these first two defendants agreed with the defendant No. 3 to pay to the zamindar his *haq-i-zamindari*. The courts below have given a decree against the first two defendants, holding that they were bound by their contract with defendant No. 3 to pay the *haq-i-zamindari* to the plaintiffs.

* Appeal No. 19 of 1914, under section 10 of the Letters Patent.

(1) (1910) I. L. R., 32 All., 410. (2) (1871) L. R., 6 Ch. App., 671.

(3) (1913) I. L. R., 41 Calc., 137.

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The plea taken on second appeal is that there was no privity of contract between the plaintiffs and defendants Nos. 1 and 2; that the *haq-i-zamindari* in question is not a charge upon the land; that there cannot be said to be a covenant running with the land, and that, therefore, the plaintiffs were not entitled to a decree as against the lessees, though they may have been entitled to one as against defendant No. 3, the lessor. In the case of a contract the ordinary rule is that a person who is no party to it, though entitled to a benefit under it, cannot enforce it. There are certain exceptions to this rule, though they are rare. There being a total absence of evidence as to how the *haq-i-zamindari* arose, it is not shown that the zamindar's dues are a charge upon the land, and it is impossible to say that there is any covenant running with the land which would bind the transferees. In the present case, the plaintiffs being no party to the contract between defendants Nos. 1 and 2 and defendant No. 3, they are not entitled to enforce that contract as against the former. Morally, no doubt, the appellants are bound to pay to the plaintiffs, and it is this moral duty which the courts below have attempted to enforce by their decrees. It seems to me impossible in the circumstances of the case to give the plaintiffs a decree as against the defendants Nos. 1 and 2. The mere saving of multiplicity of suits is not a sufficient ground to give the plaintiffs a decree against a person who is not liable to them in law. It has been suggested that the court might make the defendant No. 3 a party to this appeal and give the plaintiffs a decree as against him. The unfortunate part, however, is that plaintiffs were content with the decree given by the court of first instance as against only defendants Nos. 1 and 2. These two defendants appealed. The defendant No. 3, who was exempted in the first instance, was no party to the appeal in the court below. It is impossible, therefore, to make him a party to the present appeal though there cannot be any doubt whatsoever that he is liable to the plaintiffs for the amount due to them and could not rid himself of that liability by granting a lease to the other two defendants. I, therefore, allow the appeal and set aside the decree of the courts below. In the circumstances, however, the parties to this appeal will pay their own costs throughout."

The plaintiffs appealed.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellant:—

The general rule is that a contract can be enforced only by a person who is a party to it. But where a contract is entered into between two persons for the benefit of a third person that person is entitled to sue; *Khwaja Muhammad Khan* v. *Husaini Begam* (1). That case was in point. Certain money was to be given to the plaintiff by her father-in-law who had entered into a contract with her father to pay the money. Their Lordships of the Privy Council decreed her suit holding that *Tweddle* v. *Atkinson* (2) did not apply to India. The same view was taken

(1) (1910) I. L. R., 32 All., 410. (2) (1861) 1 B. and S., 393.

at Calcutta in a case where a debtor had transferred his liability to a third person. *Debnarayan Dutt* v. *Chunilal Ghose* (1). In the present case the lessees had executed a kabuliat promising to be "responsible for zamindari dues."

Claims like these were based upon equitable grounds and equity was in favour of the plaintiff. He then referred to and discussed *Gregory and Parker* v. *Williams* (2), *Touche* v. *Metropolitan Railway Warehousing Company* (3) and *Jahandar Baksh Mallik* v. *Ram Lal Hazrah* (4).

Mr. *B. E. O'Conor*, for the respondents :—

A person who is not a party to a contract cannot sue. Unless he accepts all the rights and liabilities under the contract he cannot be said to be a *cestui que trust.* In the cases cited the benefit accrued to the plaintiff and he accepted the benefit. In the company case the contract was accepted by the company and so the company was held liable. In the Calcutta case the plaintiff had acknowledged the transferee from the debtors to be his debtor. Unless special circumstances are proved the case cannot be taken out of the general rule. No such circumstances are proved. The general rule is, therefore, applicable.

The Hon'ble Dr. *Tej Bahadur Sapru*, in reply :—

Acceptance on the plaintiff's part was quite immaterial, and even if it was necessary, the mere fact that the plaintiff brought this suit against the lessees showed that he accepted the defendants to be his debtors.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit in which the plaintiffs claimed zamindari dues. They made defendants to the suit a certain *muafidar* and also two lessees from the *muafidar*. It is admitted that the zamindars were entitled to dues (though not the amount claimed) from the *muafidar*. Under the terms of the lease the other defendants, that is to say, the lessees from the *muafidar*, undertook to pay the zamindari dues. The plaintiffs mainly claimed against the lessees but stated that for the sake of precaution the *muafidar* was also made a defendant and that if they were not entitled to a decree against the lessees they might have a decree against him. The lessees (the

(1) (1913) I. L. R., 41 Calc., 137.

(2) (1817) 3 Mer., 582.

(3) (1871) L. R. 6 Ch. App., 671.

(4) (1910) I.L.R., 37 Calc., 449.

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respondents to the present appeal), pleaded, first, that they were not liable to the plaintiffs, inasmuch as they had never entered into any contract with them, and, secondly, that if they were at all liable the dues were not as claimed by the plaintiffs. The court of first instance granted a decree against the present respondents exempting the *muafidar*. The respondents appealed, with the result that the decree of the court of first instance was confirmed. The plaintiffs preferred no appeal against the dismissal of their claim against the *muafidar*. In second appeal to this Court the decrees of the courts below were set aside and the plaintiffs' suit dismissed. Against this decree the plaintiffs have preferred the present Letters Patent Appeal. The only point to be decided is whether or not under the circumstances of the present case the plaintiffs were entitled to sue the defendants, the lessees. It is admitted that there was no privity of contract. It is also admitted that the respondent's liability (if any) is under the terms of their contract with their lessor, the *muafidar*. In our opinion the learned Judge of this Court was correct in the view he took.

The learned advocate on behalf of the appellants contends that wherever there is a contract under which a third party may obtain a benefit, he is entitled to sue upon that contract just as fully as he could do if he had been a party to it. We think that such a proposition is altogether too wide. In the present case it is pretty clear that if the plaintiffs thought it was to their advantage they might even have refused to recognize the respondents as the persons liable to pay their dues. We may also point out that in many cases it would be extremely inconvenient that parties should be sued by persons who were no parties to the contract. On the strict words of the present contract the lessees as between themselves and their lessor were liable to pay the "zamindari dues," and yet we find that there is a difference of opinion between the plaintiffs and the respondents as to what these dues were. The plaintiffs never agreed to accept the respondents as the persons to whom they would look for the payment of their dues. They never in any way altered their position in consequence of the contract which the respondents entered into with their lessor. We think there can be no doubt that the general rule is that a party cannot make another person liable upon a contract to which

the suing party was not privy. There are no doubt exceptions to this rule. We think that it may fairly be said that in all such cases as the defendant would be liable in a "Court of Equity" the courts in this country should hold him liable. But we do not think that the present is a case in which a "Court of Equity" could grant the plaintiff relief. The case of *Khwaja Muhammad Khan* v. *Husaini Begam* (1), has been cited In that case there was a marriage arrangement between the defendant and the father of the plaintiff whereby the defendant agreed to pay Rs. 500, a month to the plaintiff and charged certain property with the payment of the money. It was held that the plaintiff, although no party to the contract, was entitled to enforce it. At page 413 of the report their Lordships of the Privy Council say: "Here the agreement executed by the defendant specially charges immovable property for the allowance which he binds himself to pay to the plaintiff; she is the only person beneficially entitled under it. In their Lordships' judgement although no party to the document, she is clearly entitled to proceed in equity to enforce her claim."

The case of *Touche* v. *The Metropolitan Railway Warehousing Company* (2) was also quoted. There the plaintiff had done work at the instance of a promoter of a company. The articles of the association provided that in certain events the sum of £ 2,000 would be paid to one of the promoters for the plaintiff who had done the work. It was held that the plaintiff could get the money from the company. A copy of the articles of association had been sent to the plaintiff, he had done the work and the company had got the benefit of his labours.

In the case of *Debnarayan Dutt* v. *Chunilal Ghose* (3), it was also held that the plaintiff, though not a party to the arrangement between the defendant and the third party, was entitled to be paid a sum of Rs. 300 and interest. At page 142 the facts of the case are briefly stated by the learned Chief Justice:—"On the 22nd of July, 1899, defendants Nos. 1 to 4 borrowed from the plaintiff a sum of Rs. 300, and by way of security for this they gave a personal covenant by a registered

(1) (1910) I. L. R., 32 All., 410. (2) (1871) L. R., 6 Ch. App., 671.

(3) (1913) I. L. R., 41 Calc., 137.

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bond and also purported, though ineffectually, to create a charge by deposit of a *pattah* relating to immovable property. Interest was paid upon this bond up to the 13th of April, 1903, and on the 18th of August, 1903, defendants 1 to 4 executed a registered instrument of transfer of all their property, movable, and immovable, to defendant No. 5 for a sum of Rs. 2,000, becoming thereby, as the plaintiff describes it, 'rightless.' This Rs. 2,000 was not all paid in cash, but there was the provision and declaration in the *kabala* that out of this consideration money of Rs. 2,000, amongst other things, the sum of Rs. 330 due to the plaintiff should be paid by the defendant No. 5. On the very same day there was an arrangement between the plaintiff and defendant No. 5, under which the liability of defendant No. 5 under the transfer was acknowledged and accepted, and either then or in connection therewith this *pattah* was handed over to defendant No. 5."

It is clear that in all these cases the plaintiff had an "equity" which would always have been enforced by an English Court of Equity. The facts of the present case, as already pointed out, are quite different. We think the view taken by the learned Judge of this Court was correct and we dismiss the appeal with costs.

Appeal dismissed

1914
December, 3.

Before Mr. Justice Chamier and Mr. Justice Piggott.

RAM DULARI (PLAINTIFF) v. BALAK RAM AND ANOTHER (DEFENDANTS) *

Execution of decree—Attachment of undivided share in house—Conditional decree for partition pending attachment—Purchase of judgement-debtor's share by decree-holder—Decree-holder not entitled to benefit of decree for partition.

A decree-holder attached in execution of his decree his judgement-debtor's undivided share in a house. Pending the attachment the judgement-debtor sued for partition of the house and obtained a decree for separate possession of her share conditional on payment of Rs. 237 into court. The decree-holder then brought to sale the share allotted to his judgement-debtor, and, having paid into court the Rs. 237 which the judgement-debtor had omitted to pay, asked for delivery of possession of the specific share purchased.

Held that, whether or not the decree-holder might ultimately be entitled to the full benefit of the decree for partition in favour of his judgement-debtor on payment of the sum of Rs. 237, all he acquired by his purchase was a right

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* Second Appeal No. 134 of 1914, from a decree of F. S. Tabor, District Judge of Shahjahanpur, dated the 12th of November, 1913, confirming a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 13th of May, 1913.