

Before Mr. Justice Boys and Mr. Justice Kendall.

ABDULLAH AND ANOTHER (PLAINTIFFS) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (DEFENDANTS).\*

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March 7.

Act No. II of 1912 (*Co-operative Societies Act*), section 42, sub-section (4) (a), as amended by the *United Provinces Co-operative Societies Amendment Act (III of 1919)*, section 2—*Co-operative society—Liquidation—Act (Local) No. III of 1901 (United Provinces Land Revenue Act)*, section 233 (m).

Under the provisions of section 42 of the *Co-operative Societies Act, 1912*, as amended by the *United Provinces Co-operative Societies Amendment Act, 1919*, the Collector attached certain cattle as being the property of one Z, who was indebted to a co-operative bank then in liquidation. Whereupon A and S, who claimed the cattle as their own, lodged an objection to the attachment, and, when this was dismissed, had the cattle released on the security of one HL. HL was compelled to pay Rs. 720 on account of Z's debt to the bank. Subsequently HL and A and S filed the present suit against the Secretary of State for India in Council, the Liquidator and Z.

Held, that the suit was barred by the provisions of section 233 (m) of the *United Provinces Land Revenue Act, 1901*. *Secretary of State v. Mahadei* (1), followed. *Tulsa Kuar v. Jageshar Prasad* (2), referred to.

THE facts of this case are fully stated in the judgement of the Court.

Maulvi Muhammad Abdul Aziz, for the appellants.

Mr. G. W. Dillon and Munshi Narain Prasad Ashthana, for the respondents.

BOYS and KENDALL, JJ. :—This is a plaintiffs' appeal in a suit for refund of money realized from them by the sale of cattle. A Co-operative Bank in

\* Second Appeal No. 897 of 1926, from a decree of Nadir Husain, Additional Subordinate Judge of Bulandshahr, dated the 17th of February, 1926, modifying a decree of Brij Nandan Lal, Additional Munsif of Khurja, dated the 15th of August, 1925.

(1) (1896) I.L.R., 19 All., 127.

(2) (1906) I.L.R., 28 All., 563.

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Bulandshahr went into liquidation and a Liquidator was in due course appointed. He found that one Zahur was a debtor of the Bank. Proceedings in such a case are governed by the Co-operative Societies Act of 1912. Section 42 of this Act has been amended for the purposes of these provinces by the United Provinces Act No. III of 1919 which has added to section 42 a sub-section (4) (a) which reads as follows :—

“ Any sum ordered under this section to be recovered as a contribution to the assets of the Society or as costs of liquidation may be recovered, on a requisition being made in this behalf to the Collector by the Registrar of Co-operative Societies, in the same manner as arrears of land revenue.”

The Registrar of Co-operative Societies or the Liquidator on his behalf invited the Collector to attach certain animals—cattle and horses—as being the property of Zahur. An attachment was accordingly effected. Abdullah and Sultan, the present appellants, lodged an objection before the Collector of Bulandshahr, claiming the animals to be their own. This was dismissed on the 29th of August, 1924. Subsequently, apparently in order to save the animals from injury in the custody in which they were, Abdullah and Sultan got them released on the security of one Hira Lal for Rs. 750. Hira Lal had subsequently to pay Rs. 720 in satisfaction of Zahur's debt. After an infructuous suit had been filed, which was allowed to be withdrawn with permission to file a fresh suit owing to the Secretary of State not having been made a party, the present suit was filed by Abdullah and Sultan and Hira, the surety, against the Secretary of State, the Liquidator and Zahur. The first court dismissed the suit *in toto*. On appeal the learned Additional Subordinate Judge dismissed the appeal as regards the claim against the Secretary of State and the Liquidator, but decreed the appeal to the extent that he gave the plaintiffs a declaration

to the effect that they were entitled to recover Rs. 720 from Zahur, defendant No. 3, on payment of the requisite court fees therefor. Against this decree Abdullah and Sultan have appealed, making the Secretary of State and the Liquidator respondents to the appeal. Zahur, defendant No. 3, has not filed any appeal. Both the lower courts have held that no civil suit would lie in a matter of this nature against the Secretary of State or the Liquidator.

We have cited the terms of sub-section (4) (a) of section 42 of the Co-operative Societies Act as amended in these provinces. According to that amendment any sum ordered to be recovered as a contribution, etc., may be recovered "in the same manner as arrears of land revenue." The section of the Land Revenue Act applicable is section 149. That enacts that the Collector may attach and sell the movable property of the defaulter and that such attachment and sale shall be made according to the law in force at the time being for the attachment and sale of movable property under the decree of the civil court.

The contention in this appeal has centred round the question whether the provisions of order XXI, rules 58 and 63, of the Code of Civil Procedure are applicable, in which case the remedy of the plaintiffs would be by bringing such a suit as that from which this appeal arises, or whether such a remedy is barred to them by the provisions of section 233 (m) of the Land Revenue Act, and their remedy, if any, was by appeal to the Commissioner under sections 210 and 211 of the Land Revenue Act from the order dismissing their objection.

We are unable to hold that the provisions of section 233 (m) do not forbid such a suit as the present. It is there clearly laid down that no persons shall

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institute any suit in a civil court with respect to "claims connected with or arising out of the collection of revenue (other than claims under section 183) or any process enforced on account of an arrear of revenue, or on account of any sum which is by this or any other Act realizable as revenue." This is clearly a case in which a sum was being realized as revenue, and the claim is clearly connected with and arising out of that transaction. There is, therefore, nothing in the words of the section which would justify us in holding that it did not forbid a suit in a civil court in the circumstances of this case. We were referred for the appellants to section 183 which expressly provides for a civil suit in certain circumstances, and it was urged that if a civil suit could be brought by a person who had defaulted in payment of revenue, *a fortiori* it would be natural to expect that a suit in the present circumstances could be brought by a stranger who asserted that he had nothing whatever to do with the revenue or the payment thereof.

But this argument overlooks the fact that section 233 (*m*) expressly excepts suits under section 183 and the existence of that particular section emphasizes the intention of the Legislature to bar all other suits excepting suits under section 183.

A similar question came before this Court and is reported in *Secretary of State v. Mahadei* (1). In that case their Lordships commented on the hardship which a person suffered who was, in circumstances such as the present, debarred from filing a civil suit but they held that the law was clear and that no other conclusion was possible. We ourselves are unable to find any adequate reasons for differing from this conclusion.

We have noted above that the lower appellate court has given a declaratory decree to the plaintiffs

(1) (1896) I.L.R., 19 All., 127.

as against Zahur, no doubt relying upon the decision in *Tulsa Kuar v. Jageshar Prasad* (1). Zahur has not appealed and we have not, therefore, had to consider this question.

The appeal is, therefore, dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Boys and Mr. Justice Kendall.*

BHAGWAN DAT SHASTRI AND ANOTHER (PLAINTIFFS)  
v. RAJA RAM (DEFENDANT).\*

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Act No. IX of 1872 (*Indian Contract Act*), section 23—Agreement opposed to public policy—Performance of “*puja*” for success of pending suit.

Plaintiff and defendant entered into a contract by which the plaintiff undertook to perform some kind of “*puja*” (referred to as “*anushtan*”) in order to cause defendant to be successful in a suit which he had before the courts: in the event of his success, the plaintiff was to get one-tenth of the decree money. The plaintiff (partially at any rate) carried out his part of the contract, and the defendant was successful in his suit.

*Held*, on suit to enforce payment of one-tenth of the decree money, that the agreement was contrary to public policy, as it was found that the intention of the parties was that the plaintiff should exercise some extraneous influence, unauthorized by law, on the mind of the court.

THE facts of this case are fully stated in the judgement of the Court.

Dr. *M. L. Agarwala*, for the appellants.

Munshi *Haribans Sahai*, for the respondent.

BOYS and KENDALL, JJ.:—This second appeal arises from a somewhat peculiar suit. The plaintiff and the defendant had entered into a contract by which the plaintiff undertook to perform some kind of “*puja*” which is referred to as “*anushtan*”

\* Second Appeal No. 1910 of 1924, from a decree of W. Y. Madeley, Additional Judge of Moradabad, dated the 23rd of September, 1924, reversing a decree of Banwari Lal, Subordinate Judge of Bijnor at Moradabad, dated the 20th of March, 1923.

(1) (1906) I.L.R., 28 All., 563.