

1926

RUGGHAN
PRASAD
v.
DHANNO.

evidence is not sufficient to prove that even an oral appointment was made. It may be the fault of the counsel in the lower court, but neither Rugghan Prasad nor Kanhaiya Lal stated that Narain Das made any appointment to take effect after his own death and the third witness Balchand admitted that he did not know which of the two trusts in the management of Narain Das was being made over to Rugghan Prasad. It is also evident from all the evidence that the man who is really managing the trust is one Gaya Prasad alias Kammo. Another point which makes the evidence difficult to believe is the assertion of all the three witnesses that Basant Lal himself was present while Narain Das was making the appointment of his successor. If Basant Lal was present at the time and made no objection, no reason has been given why he should have raised this objection subsequently and filed a suit. In our opinion the plaintiff is entitled to the declaratory decree which he has obtained in the lower court, and we dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Dalal and Mr. Justice Pullan.

1926
Decem-
ber, 23.

HARDEO DAS, NANAK CHAND (PLAINTIFF) v. RAM PRASAD, SHYAM SUNDAR AND OTHERS (DEFENDANTS).*

Act No. IX of 1872 (Indian Contract Act), section 30—Wagering contract—Principal and agent—Suit by principal to recover money deposited with agent as security.

An agent employed to carry out wagering contracts cannot plead the illegality of such contracts as a defence to an action brought by the principal to recover from the agent money received by him from the principal by way of security for

*Second Appeal No. 1217 of 1924, from a decree of Abdul Halim, Additional Judge of Meerut, dated the 3rd of May, 1924, reversing a decree of J. N. Mushran, Subordinate Judge of Meerut, dated the 30th of November, 1923.

the fulfilment of such contracts. *Bhola Nath v. Mul Chand* (1), followed. *Chhanga Mal v. Sheo Prasad* (2), overruled, and *Daya Bhai Tribhovan Das v. Lakhmichand, Panachand* (3), referred to.

1926

HARDEO
DAS,
NANAK
CHAND
v.
JAM
PRASAD,
SHYAM
SUNDAR.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Babu *Satish Chandra Das*, for the appellant.

Dr. *Kailas Nath Katju*, for the respondents.

DALAL and PULLAN, JJ. :—The finding of the lower appellate court is that the defendant was an agent of the plaintiff to carry out wagering contracts. There was no evidence of the defendant having derived any profit under those contracts and so the plaintiff's suit as to profits was rightly dismissed. The question, however, remains regarding the recovery of Rs. 400 deposited by the plaintiff with the defendant by way of security. The lower appellate court dismissed this portion of the suit also, referring to a single Judge case of this Court, *Chhanga Mal v. Sheo Prasad* (2). We are not in agreement with that decision. It rested on a ruling of the Bombay High Court, *Daya Bhai Tribhovan Das v. Lakhmichand, Panachand* (3). The Bombay case was decided on the basis of a special Act, Bombay Act III of 1865, which has no operation in these provinces. As far back as 1903 a Bench of this Court held that an agent, who has received money to the use of his principal on an illegal contract between him as such agent and a third party, cannot be allowed to set up the illegality of the contract as a defence in an action brought by the principal to recover from the agent the money so received, *Bhola Nath v. Mul Chand* (1). Recently another Bench of

(1) (1903) I L.R., 25 All., 639.

(2) (1920) I.L.R., 42 All., 449.

(3) (1885) I.L.R., 9 Bom., 358.

1926
 HARDEO
 DAS,
 NANAK
 CHAND
 v.
 RAM
 PRASAD,
 SHYAM
 SUNDAR.

this Court has construed section 30 of the Indian Contract Act. According to that decision the provisions of that section did not prevent a person who is employed as an agent in connexion with a wager from recovering the sums due to him by his principal. The present is a converse case. Rupees 400 is due to the principal from the agent and the agent cannot plead the illegality of the contract. The lower appellate court admitted that the agent would have to pay any profit made by him under such a contract. There is the greater reason for asking the agent to refund any sum received by him from the principal to carry out such a contract.

We decree the appeal for Rs. 400. The rest of the appeal is dismissed. Parties shall receive and pay costs of all courts according to their success and failure.

Appeal allowed.

Before Sir Cecil Walsh, Acting Chief Justice, and Mr. Justice Banerji.

1926
 December 23.

RAGHUBAR DAYAL AND OTHERS (PLAINTIFFS) v.
 MULWA AND OTHERS (DEFENDANTS).*

Act No. IX of 1887 (Small Cause Courts Act), Schedule II, article 35 (ii)—*Test of applicability of—Suit for compensation for cutting trees and removing fruit—Bonâ fide claim of right.*

Article 35 (ii) of the second schedule of the Small Cause Courts Act applies only to those acts which, by the circumstances of the case, are clearly alleged or shown to be punishable by the Penal Code. Merely removing fruit or cutting trees under a *bonâ fide* claim of right, or as a result of the dispute, is not necessarily a criminal offence.

THE plaintiffs were zamindars and by virtue of a partition became sole owners of plot No. 1637. They brought a suit for the recovery of Rs. 50 as

* Appeal No. 69 of 1926, under section 10 of the Letters Patent.