

## REVISIONAL CIVIL.

Before Mr. Justice Sen.

PUTTU LAL (PLAINTIFF) v. RAJ NARAIN (DEFENDANT).\*

1931  
January, 23.

*Contract Act (IX of 1872), section 23—Public policy—  
Bargain about public office—Agreement between rival  
candidates for lambardarship.*

An agreement by one co-sharer in a mahal to pay a certain sum of money annually to another co-sharer in the mahal, in consideration of the latter withdrawing his candidature for lambardarship in favour of the former, amounts to an agreement of bargain or traffic relating to a public office, and as such is opposed to public policy.

Mr. *Krishna Murari Lal*, for the applicant.

Mr. *Baleshwari Prasad*, for the opposite party.

SEN, J. :—This is an application for revision under section 25 of the Provincial Small Cause Courts Act and has been filed by the plaintiff, who had sued for recovery of Rs. 28 principal and interest from the defendant.

Parties to the suit are brothers, who owned shares in mahal Banal in equal moieties. The office of lambardar having fallen vacant, both of them applied for appointment as lambardar. On the 15th of June, 1925, an agreement was entered into between the parties, whereby Puttu Lal the plaintiff withdrew his candidature for lambardarship in favour of his brother Raj Narain, and the latter agreed in consideration of this to pay the plaintiff Rs. 8 annually out of the collection dues in respect of the irrigation charges of the village Banal. There was a clause in the instrument that the aforesaid sum was payable by Raj Narain to Puttu Lal from year to year during the continuance of Raj Narain as lambardar. On the 11th of February, 1930, Puttu Lal instituted a suit in the court of small causes for recovery of the annuity

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for three years together with interest. The suit was resisted upon the ground that the agreement was opposed to public policy and as such was void in law. This contention was upheld by the court below and his suit was dismissed.

It has been contended before me that the agreement in question is not opposed to public policy and is not void under section 23 of the Indian Contract Act.

The office of a lambardar is a public office. Provision has been made in section 45 of the Land Revenue Act (III of 1901) for the appointment of the lambardar in any mahal or part of the mahal. Certain rules have been made by the Board of Revenue and sanctioned by the Local Government with reference to the appointment of the lambardar. These rules are to be found in Circular No. VIII-iii (sanctioned by the Local Government), dated the 24th of February, 1902, and have the force of law. Rule 9 provides that no person shall be appointed to be a lambardar (a) who is not a co-sharer of the mahal and in possession of his share, (b) whose share is heavily burdened with mortgages or other encumbrances, or (c) who in the opinion of the Collector is not competent to perform the duties of the office or whose appointment is inadmissible on account of his bad character. The eligibility for lambardarship therefore depends upon certain grounds of fitness recognized by the Government. Remuneration receivable by the lambardar has also been provided for in these rules. It does not appear whether the collection dues in respect of the irrigation charges of any village are dues which are associated with or dissociated from the office of the lambardar as such.

Any traffic or bargain relating to public offices is opposed to public policy upon the obvious principle that any agreement relating to such traffic or bargain is calculated to prejudice the interests of the public

by obstructing or interfering with the selection in office of the most competent person. The agreement which is sought to be enforced in this case obviously infringes this principle. An agreement by one co-sharer in a mahal to pay a certain sum of money annually to another co-sharer in the same mahal in consideration of the latter withdrawing his candidature for lambardarship in favour of the former amounts to an agreement to bargain or traffic relating to a public office, and as such is opposed to public policy. I have been referred to a certain number of authorities. It will not be profitable to discuss them in detail, because the facts are not parallel to the facts of the present case. The nearest approach to the present case is a decision of the Chief Court of the Punjab in *Amir Khan v. Saif Ali* (1). In this case the plaintiff sued to recover from the defendant damages for the breach of a contract the terms of which were as follows: "That the plaintiff should bear all the expenses to be incurred in a lambardari suit brought by himself and the defendant, that both should eventually bear the costs of such suit equally and that the successful party should pay to the other half the *pachotra* of the office." It was held by BENTON, J., that the agreement was *void ab initio*, as it offended against the provisions of sections 23 and 24 of the Indian Contract Act. This case supports the contention of the defendant. I dismiss this revision with costs.

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(1) (1893) Punj. Rec., No. 86.