

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice H. G. Smith

1935
August 9

RAM DHAN AND ANOTHER (DEFENDANTS-APPELLANTS) v. LALA
CHAUTH MAL AND OTHERS (PLAINTIFFS-RESPONDENTS)*

*Contract—Stranger to consideration, if can enforce contract—
Person realising dues for payment to an institution—Insti-
tution no party to contract—Institution, whether can sue for
recovery of amount.*

Where a person incurs an obligation to pay a certain sum of money to another and holds it for his benefit, such other person can claim it under the contract as if it had been made with himself.

Where, therefore, a shopkeeper realises certain dues from certain cartmen in the name and for the benefit of a Sabha, he constitutes himself trustee for the Sabha, and as such the Sabha as the *cestui que trust* is entitled to maintain a suit to enforce payment of the amount realised although the Sabha was no party to the contract between the shopkeeper and the cartmen. *Husaini Bandi Khanam v. Gauhar Begam* (1), relied on. *Jiban Krishna Mullick v. Nirupama Gupta* (2), distinguished.

Messrs. *Hyder Husain, S. N. Roy and P. N. Chaudhri*, for the appellants.

Messrs. *Ram Bharosey Lal, S. C. Dass and Suraj Sahai* for the respondents.

SRIVASTAVA and SMITH, JJ.:—This is a defendants' appeal against the decree, dated the 19th of December, 1932,, of the learned Additional Subordinate Judge of Gonda affirming the decree, dated the 3rd of August, 1931, of the Munsif of Utraula. It arises out of a suit for recovery of a sum of money alleged to have been realised by the defendants on behalf of the plaintiffs.

The plaintiffs are members of the working committee of a society known as the Dharam Sabha of

*Second Civil Appeal No. 96 of 1933, against the decree of Pandit Dwarka Prasad Shukla, Additional Subordinate Judge of Gonda, dated the 19th of December, 1932, confirming the decree of Pandit Shyam Manohar Tewari, Munsif of Utraula, Gonda, dated the 3rd of August, 1931.

(1) (1931) I.L.R., 7 Luck., 292.

(2) (1926) I.L.R., 53 Cal., 922.

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Colonelganj in the Gonda District, which has been registered under Act XXI of 1860, and the defendants are a firm of grain dealers in the said Colonelganj bazar. It is common ground between the parties that the practice existing in the bazar is that each cartman gives 2 annas in cash and 1 seer of grain per cart of grain to the shopkeepers of the bazar for charitable purposes. The plaintiffs' case is that the defendants had realised a sum of Rs.510 in cash and kind from various cartmen for the aforesaid Dharam Sabha, but had not paid the amount to the Sabha. The defendants denied having realised any money for the Sabha. They further pleaded that they were under no obligation to pay the money or grain realised by them from the cartmen to the said Sabha. Both the lower courts have rejected the defence, and held that the defendants had been realising the levy of 2 annas cash and 1 seer of grain per cart of grain sold at their firm for and in the name of the Colonelganj Dharam Sabha, and that the cash and the value of the grain so realised amounted to Rs.510. They have accordingly decreed the plaintiffs' claim for that amount.

The only contention urged in appeal is that the plaintiffs were no parties to the contract between the defendants and the cartmen, and therefore had no right to enforce payment of the amount in suit against the defendants. The contention is fully answered by the decision of a Bench of this Court, to which one of us was a party, in *Musammatt Husaini Bandi Khanum v. Gauhar Begam* (1). It was held in that case that the common law doctrine that no stranger to the consideration can take advantage of a contract, although made for his benefit, does not exhaust the whole law applicable to this class of cases. Another rule of law which is acted upon by the Courts of Equity is that where a person incurs an obligation to pay a certain sum of money to

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another and holds it for his benefit, such other person can claim it under the contract as if it had been made with himself. In the present case it is quite clear on the concurrent findings of both the lower Courts that the defendants realised these dues from cartmen in the name of and for the Sabha. This finding is based on the evidence of a number of cartmen, brokers, weighmen and grain dealers of the bazar, who deposed that the defendants had been realising these dues for the benefit of the Sabha. Thus it seems quite clear on this finding that the defendants when realising these levies constituted themselves trustees for the Sabha, and as such the Sabha as the *cestui que trust* is entitled to maintain the suit. Reference has been made by the learned counsel for the appellants to a decision of the Calcutta High Court in *Jiban Krishna Mullik v. Nirupama Gupta* (1). This case is distinguishable inasmuch as on the facts of that case their Lordships of the Calcutta High Court came to the conclusion that the instrument on which the claim was based was not executed for the purpose of conferring a benefit on the plaintiff, and for this reason the plaintiff was not entitled to sue upon the agreement contained in the said instrument.

For the above reasons we think that the contention raised by the appellants' counsel must fail. We accordingly dismiss the appeal with costs.

Appeal dismissed

(1) (1926) I.L.R., 53 Cal., 922.