1929

MAUNG THA NYO & CO. v. MA UN MA PRU AND OTHERS

OTTER, J.

and upon purely technical grounds her suit was correctly dismissed. So far as I am able to judge, however, Ma Hla Ma Khine acted honestly throughout and with a genuine endeavour to comply with the Registration Act. I observe that she did apply to the District Judge for a remand of the case in order that she might apply to the Court for relief. I observe also that this application was refused. I do not understand what was the reason for this refusal, and the learned Judge merely states that he sees no reason to remand the case as a fresh suit will not be barred. That being the view of the learned Judge I think the best course for the plaintiff is to register in accordance with the Act (and this I am told she has done) and bring a fresh suit. Her appeal therefore for the reasons I have given must be dismissed but in the special circumstances of this case the appeal is dismissed without costs.

APPELLATE CIVIL.

Before Mr. Justice Brown.

1929

Feb. 21.

MAUNG PO HTAIK
v.
BRAMADIN AND OTHERS.*

Wagering contract, cause of action directly based on—Agent receiving wager money—Liability to account to principal—Contract Act (IX of 1872), s. 30.

If, as a result of a wagering contract, an agent has received money on his principal's behalf, he is then liable to account to the principal for that money, but a suit cannot be brought in which the cause of action is based directly on the wagering contract.

Bholanath v. Mulchand, 25 All. 639—*referred to.*

Halker for the applicant.

Ba Soe for the respondents.

* Civil Revision No. 244 of 1928 from the judgment of the District Court of Thayetmyo in Civil Appeal No. 217 of 1928.

1929

MAUNG PO HTAIK v. BRAMADIN AND OTHERS.

BROWN, J.—The respondents brought a suit against the petitioner, Maung Po Htaik, for the recovery of Rs. 141. Their case was that money was collected for a confederacy to buy tickets for the Rangoon St. Leger Sweep from Mandalay. The confederacy to purchase the tickets consisted of certain officials in the Thayetmyo district. The petitioner was collecting one rupee contributions and obtained Re. 1 for this purpose from the respondents. The confederacy finally won a prize as a result of the race and each subscriber of Re. 1 obtained as his share of the prize Rs. 141. The respondents claimed a similar sum from the appellant.

The trial Court dismissed the suit, but the suit was decreed by the District Court on appeal and the petitioner has now come to this Court in revision.

Section 30 of the Contract Act provides that "agreements by way of wager are void and that no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made." It is clear, therefore, that the respondents could not possibly succeed merely on the strength of their agreement with the petitioner. The second clause of section 30 which the trial Judge discusses obviously has no application to the present case.

The District Court referred to an unofficial report of a case decided by the late Chief Court of Lower Burma. The question decided there was also decided in *Bholanath* v. *Mulchand and another* (1). If, as a result of a wagering contract, an agent has received money on his principal's behalf, he is then liable to account to the principal for that money, but a suit cannot be brought in which the cause of action is

(1) (1903) 25 All. 639.

1929

MAUNG PO HTAIK v. BRAMADIN AND OTHERS.

BROWN, J.

based directly on the wagering contract. The plaintiffs in the present case clearly could not succeed merely on the strength of their contract with the petitioner. They must prove that the petitioner has received the prize money and is holding it on their behalf. The plaint on this point is vaguely worded, but assuming that it does allege that the petitioner did receive the money, it seems to me quite impossible to hold that that allegation has been proved. There is no evidence whatsoever on that point. The prize money was received by the confederacy, but the evidence on the record is to the effect that the respondent's names were never entered in the books of the confederacy as having contributed towards the stake money. The learned District Judge remarks: "Defendant on the other hand admits having received Re. 1 from the plaintiffs for the Office Society Confederacy and for the Mandalay Sweep and he also admits that a prize has been won and that each share amounted to Rs. 141, but he avers that as Maung Maung who kept the list of subscribers had told him that the list had been closed, he had added to the Re. 1 given by the plaintiffs another Re. 1 and purchased a share in another sweep, the list of subscribers in that confederacy being held by one Maung Po Nyo and he submits that he informed the plaintiffs of this fact. The point for decision, therefore, is: Did the defendant inform the plaintiffs that the Office Society list had been closed and that their Re. 1 had been deposited with Maung Po Nyo for another sweep, and if so, did the plaintiffs agree? The onus of proof lies on the defendant, who has not been able to produce a tittle of evidence to prove this point."

It seems to me that the District Judge has entirely misconceived the question he had to decide. The plaintiffs could not sue on their wagering contract

and could not claim from the petitioner because he had failed to carry out its terms. They have to prove affirmatively that he had actually received the prize money on their behalf. There was no evidence whatsoever on this point nor can I see how any presumption can be drawn that the petitioner did receive the money. In my opinion, the respondents entirely failed to prove a cause of action on which they could sue.

The case is before me in revision, but I think there is sufficient ground for interference. It seems to me that the District Court's method of arriving at its conclusion was irregular, and that the Court entirely misconceived the point at issue. I set aside the decree of the District Court and restore that of the trial Court dismissing the suit of the plaintiff-respondents. The plaintiff-respondents will pay the costs of the petitioner throughout.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Otter.

MAUNG THEIN PE AND OTHERS
v.
J. P. DESOUZA AND ANOTHER.*

1929
Feb. 25.

Teacher's contract—One month's notice sufficient to terminate contract—Salary in lieu of notice.

A teacher engaged by the month is, in the absence of a special agreement, only entitled to one month's notice for the termination of his contract. In lieu of notice, he is only entitled to one month's wages and not to six months' salary.

A. David v. *St. Anthony's High School* (Civil Revision 219 of 1919 Ch. Ct. L.B.); *In the matter of the African Association Ltd. and Allen*, (1910) 1 K.B. 396; *M. E. Moolla* v. *K. C. Bose*, 8 L.B.R. 420—*referred to.*

---

* Letters Patent Appeal No. 111 of 1928 from the judgment of the High Court in Special Civil Second Appeal No. 95 of 1928.