

APPELLATE CIVIL.

Before Bhide J.

MAGHI MAL (PLAINTIFF) Appellant

versus

DARBARA SINGH AND ANOTHER (DEFENDANTS)

Respondents.

1933

April 24.

Civil Appeal No. 1498 of 1929.

Contract—privity of—stranger—whether can sue on contract—where no trust arises in his favour.

B mortgaged his land to *D* for Rs. 1,200, most of which amount was, however, not paid to the mortgagor, but was retained in the hands of *D* for payment to *M*, who was *B*'s creditor. *M* sued *D* for the amount so retained.

Held, that as *M* was not a party to the contract and no trust having been created in his favour, he had no *locus standi* to sue *D*, and his suit has been rightly dismissed.

Jamna Das v. Ram Outar Pande (1), *Nanku Prasad Singh v. Kartar Prasad Singh* (2), and *Thirumulu Subbu Chetti v. Arunachalam Chettiar* (3), relied on.

Torabaz Khan v. Nanak Chand (4) and *Gauri Shankar v. Mangal* (5), and other cases discussed.

Second appeal from the decree of Lala Munshi Ram, Additional District Judge, Ferozepore, dated the 16th March 1929, reversing that of Sheikh Laiq Ali, Subordinate Judge, 2nd Class, Ferozepore, dated the 30th November, 1928, and dismissing the plaintiff's suit.

FAKIR CHAND and ASA RAM AGGARWAL, for Appellant.

GOBIND RAM KHANNA, for Respondents.

(1) (1912) I. L. R. 34 All. 63 (P. C.) (3) (1929) 58 Mad. L. J. 420.
 (2) (1922) 3 Pat. L. T. 637 (P. C.) (4) (1932) 33 P. L. R. 685.
 (5) (1933) 34 P. L. R. 192.

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BHIDE J.—The material facts of the case giving rise to this second appeal were briefly as follows :—

On the 3rd February 1923 one Bagga Singh mortgaged his land in favour of Darbara Singh for Rs. 1,200. A sum of Rs. 1,150 out of the consideration was left with Darbara Singh for payment to the plaintiff Maghi Mal who was a creditor of Bagga Singh. This sum not having been paid according to the contract, Maghi Mal instituted the present suit for recovery of the amount with interest at one per cent. per mensem. The suit was resisted by the defendant Darbara Singh mainly on the ground that the plaintiff was not a party to the contract on which he based his claim and had therefore no *locus standi* to sue. The trial Court held that there was an assignment in favour of the plaintiff and decreed the suit. On appeal, however, the learned District Judge came to a contrary conclusion, relying chiefly on *Mohammad Sadiq v. Mst. Sahib Bibi* (1), *Mussammat Chet Kaur v. Gurmukh Singh* (2) and *Kherode Behari Goswami v. Raja Narendra Lal Khan* (3). The appeal was accordingly accepted and the plaintiff's suit dismissed.

The learned counsel for the plaintiff-appellant has urged in this second appeal that the learned District Judge's view is erroneous and in support of this contention has relied chiefly on a recent Division Bench judgment of this Court reported as *Torabaz Khan v. Nanak Chand* (4). This judgment was followed in a Single Bench judgment reported as *Gauri Shankar v. Mangal* (5), the facts of which were practically on all fours with the present case.

(1) 54 P. R. 1902.

(3) (1920) 55 I. C. 310.

(2) (1923) 75. I. C. 940.

(4) (1932) 33 P. L. R. 685

(5) (1933) 34 P. L. R. 192.

It may be conceded at once that there are observations in the judgment of Agha Haidar J. in *Torabaz Khan v. Nanak Chand* (1), which support the contention of the learned counsel for the appellant; but it may be pointed out that the learned Judge had held in the first part of the judgment, in view of the signature of Gopi Chand on the lease in question and other evidence on the record, that there was a tripartite agreement and Gopi Chand was a party to the transaction for all practical purposes. In view of this finding the further remarks on which reliance is placed by the appellant before me, appear to be rather in the nature of *obiter dicta*. I further note that the other learned Judge who sat on the Bench (Tek Chand J.) merely agreed in his conclusions—indicating (apparently) that he was not prepared to adopt the entire line of reasoning of his learned colleague. The Single Bench decision in *Gauri Shankar v. Mangal* (2), merely follows *Torabaz Khan v. Nanak Chand* (1).

The decision of the question of law raised before me would appear to depend largely on a correct interpretation of the decision of their Lordships of the Privy Council in *Khwaja Muhammad Khan v. Husaini Begam* (3). In that case there was a contract between A and B at the time of the marriage of the former's son with the latter's daughter (both of whom were then minors), that A would pay Rs. 500 *per mensem* to the bride as '*kharch pandan*' and certain property was also charged for the purpose. Some years after the marriage, differences arose between the husband and the wife and the latter sued A, her father-in-law, for recovery of '*kharch*'

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(1) (1932) 33 P. L. R. 685.

(2) ((1933) 34 P. L. R. 192,

(3) (1910) 32 All. 410 (P. C.).

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pandan.' One of the points taken up on behalf of A was that the plaintiff not being a party to the contract in question was not entitled to maintain the suit. Their Lordships, however, held that she was entitled to do so. The reasons given by their Lordships in support of their view were as follows:—

“First, it is contended, on the authority of *Tweedle v. Atkinson* (1), that as the plaintiff was no party to the agreement, she cannot take advantage of its provisions. With reference to this it is enough to say that the case relied upon was an action of assumpsit, and the rule of common law on the basis of which it was dismissed is not, in their Lordships' opinion applicable to the facts and circumstances of the present case. Here the agreement executed by the defendant specifically charges immovable property for the allowance which he binds himself to pay to the plaintiff; she is the only person beneficially entitled under it. In their Lordships' judgment, although no party to the document, she is clearly entitled to proceed in equity to enforce her claim.”

“Their Lordships desire to observe that in India and among communities circumstanced as the Muhamadans, among whom marriages are contracted for minors by parents and guardians, it might occasion serious injustice if the common-law doctrine was applied to agreements or arrangements entered into in connection with such contracts.”

It would appear from the above quotation that their Lordships' decision was limited to the facts and circumstances of the case before them. A somewhat wide interpretation appears to have been placed on the above ruling by the Calcutta High Court in

(1) (1851) 1 B. & S. 393.

Debnarayan Dutt v. Chunilal Ghosh (1) and *Dwarka Nath Ash v. Priya Nath Malki* (2), but this view does not appear to have been followed in later rulings of the same Court [*cf. Kherode Behari Goswami v. Raja Narendra Lal Khan* (3), *Jiban Krishna Mullik v. Nirupama Gupta* (4), *Krishna Lal Sadhu v. Pramila Bala Dasi* (5)]. It was also not adopted in *Mussammatt Chet Kaur v. Gurmukh Singh* (6), a Single Bench decision of this Court.

The English cases bearing on the point were considered by Page J. in *Jiban Krishna Mullik v. Nirupama Gupta* (4). It was pointed out therein that the remarks of Lord Hatherley in *Touche v. Metropolitan Railway Warehousing Company* on which reliance was placed in *Debnarayan Dutt v. Chunilal Ghose* (1), must be read with the facts of that case, which show that the plaintiff there, was treated as a person in whose favour a trust was created. It was further held that the true equitable principle as regards the right of a third person to sue on a contract to which he is no party is to be found in *Gandy v. Gandy* (7), where Cotton L. J. observed as follows :

“ Now, of course, as a general rule, a contract cannot be enforced except by a party to the contract, and either of two persons contracting together can sue the other, if the other is guilty of a breach or does not perform the obligations of that contract. But a third person, a person who is not a party to the contract, cannot do so. That rule, however, is subject to this exception; if the contract, although in form it is with *A*, is intended to secure a benefit to *B*, so that *B* is

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(1) (1914) I. L. R. 41 Cal. 137. (4) (1926) I. L. R. 53 Cal. 922.

(2) (1916) 36 I. C. 792. (5) (1928) I. L. R. 55 Cal. 1315.

(3) (1920) 55 I. C. 310. (6) (1923) 75 I. C. 940.

(7) (1885) 30 Ch. D. 57.

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entitled to say he has a beneficial right as *cestui que trust* under that contract; then *B* would, in a Court of Equity, be allowed to insist upon and enforce the contract. That, in my opinion, is the way in which the law may be stated.'''

In *Achuta Ram v. Jainandan Tewary* (1), reliance is placed by Bucknill J. on two rulings of the Privy Council, *Jamna Das v. Ram Autar Pande* (2) and *Nanku Prasad Singh v. Kanta Prasad Singh* (3), which show that a person who is not a party to a contract has no *locus standi* in a case of the present type to sue for the amount left by his debtor with an alienee for payment to him. These rulings seem to be practically conclusive on this point.

The weight of authority seems to be clearly in favour of the view that the principle laid down in *Khwaja Muhammad Khan v. Hussaini Begum* (4), should be confined to special cases, where, *e.g.* by virtue of the contract in question, a trust is created in favour of a third party [*cf. A. R. Iswaram Pillai v. Sonnivaneru Taragan* (5)]. It was pointed out in *A. R. Iswaram Pillai v. Sonnivaneru Taragan* (5), that in a case of the present type, a 'trust' cannot be said to be created in respect of the money left with the alienee. A similar view was taken by the Punjab Chief Court in *Muhammad Sadiq v. Mst. Sahib Bibi* (6). The whole case law on the subject was recently considered by a Full Bench of the Madras High Court in *Thirumulu Subbu Chetti v. Aruna chalam Chettiar* (7), and it was held therein that a person who is no party to an agreement between a

(1) (1926) I. L. R. 5 Pat. 468. (4) (1910) I. L. R. 32 All. 410
(P. C.).

(2) (1912) I. L. R. 34 All. 63 (P. C.). (5) (1915) I. L. R. 38 Mad. 753.

(3) (1922) 3 Pat. L. R. 637 (P. C.). (6) 54 P. R. 1902.

(7) (1929) 58 Mad. L. J. 420 (F. B.).

transferor and a transferee has no right to enforce against the transferee a stipulation for payment of money to him, contained in the deed of transfer and that the mere fact that the transferor is also made a party to the suit makes no difference in this respect.

In view of the above authorities (most of which were apparently not brought to the notice of the Division Bench which decided *Torabaz Khan v. Nanak Chand* (1)—the respondent in that case being unrepresented by counsel). I uphold the decree of the learned District Judge and dismiss the appeal. In view of all the circumstances, however, I leave the parties to bear their costs.

N. F. E.

Appeal dismissed.

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(1) (1932) 33 P. L. R. 685.