

her deceased husband a son of her own brother, Nanda Pandita in the Dattaka Mimansa extended to adoption by females the rule of Hindu law that no one can be adopted as a son whose mother the adopter could not legally have married, an extension which was not based upon the authority of any of the Smritis or institutes of sages, and their Lordships said (p. 161) :—

“As Bauerji J. further pointed out in the same case, the extension of the rule by Nanda Pandita is not supported by any text of the Dattaka Chandrika, or by any of the texts of the sages Sannaka and Sakala from which most of the rules of the Dattaka Mimansa were deduced. It has not been shown to their Lordships that the extension by Nanda Pandita to which they are referring has been accepted as the law in India, at least, so far as the adoptions by widows to their deceased husbands are concerned.”

We allow the appeal and pass a decree for the plaintiff for Rs. 350, and costs throughout, and interest on Rs. 200 at six per cent. In default of paying the decretal amount within six months of the proceedings reaching the lower Court, the plaintiff to be at liberty to apply for a final decree for sale.

*Appeal allowed.*

R. R.

## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.*

KATHU JAIRAM GUJAR (ORIGINAL DEFENDANT NO. 1), APPELLANT *v.*  
VISHWANATH GANESHI JAVADEKAR AND ANOTHER (ORIGINAL  
PLAINTIFF AND DEFENDANT NO. 2), RESPONDENTS<sup>2</sup>.

*Pleader—Contract for services—Sum in cash and part of property in suit agreed to be given to pleader for religious purposes—Public policy—Agreement void—Part of single consideration unlawful—Indian Contract Act (IX of 1872), sections 23 and 24.*

1925.

SHRIPAD  
DATTATRAYA  
*v.*  
VITTHAL  
VASUDEO  
SURT.

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March 3.

<sup>2</sup> First Appeal No. 336 of 1923.

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A special contract was entered into between a pleader and his client in terms as follows :—" I have this day given you a Vakilpatra in the above suit and agree to give you both Rs. 500 as Inam or reward in case you obtain full success for me in this or in the High Court, and would further give over to you possession of survey No. 58 of Shahada [part of the property in suit] for religious or charitable purposes". The pleader having filed a suit to enforce his claim under the contract,

*Held*, that the agreement taken by the pleader, that he should be given part of the property in dispute in the suit was against public policy and was, therefore, unlawful under section 23 of the Indian Contract Act ; and that the agreement to pay Rs. 500 and the gift of the property being one single consideration for the services of the pleader, the whole agreement was void under section 24 of the Indian Contract Act, 1872.

*In the matter of an Advocate*<sup>(1)</sup> and *Laxmanlal v. Mulshankar*<sup>(2)</sup>, relied on.

FIRST appeal against the decision of G. M. Pandit, First Class Subordinate Judge at Dhulia, in Special Suit No. 278 of 1922.

Claim to enforce an Inam agreement.

The facts material for the purposes of this report are fully set out in the judgment of his Lordship, the Chief Justice.

*K. H. Kelkar*, for the appellant.

*P. V. Kane*, for the respondents.

MACLEOD, C. J. :—The plaintiff stated in his plaint that he and one Shankar Shrikrishna Deo were engaged as pleaders by defendant No. 1 in Suit No. 273 of 1917 filed against him in the Court of the First Class Subordinate Judge of Dhulia by one Bhagwan Devidas ; that on September 23, 1917, when the Vakilpatra was given to them, defendant No. 1 made a special contract in the following terms :—

" I have this day given you a Vakilpatra in the above suit and agree to give you both Rs. 500 as Inam or reward in case you obtain ' full success ' for me in this or in the High Court, and would further give over to you possession of survey No. 58 of Shahada, comprising 3 acres and 36 gunthas and assessed at Rs. 30, for religious or charitable purposes. "

(1) (1900) 4 Cal. L. J. 259.

(2) (1908) 32 Bom. 449.

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It is admitted that the Survey No. 58 was part of the property in dispute in the suit. The suit was dismissed in the first Court on March 22, 1919, but in the first appeal the High Court granted relief to the plaintiff with regard to a portion of his claim.

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The trial Judge held that the agreement to give Rs 500 as Inam or reward in case the pleaders obtained "a full success" could be enforced. But with regard to the obligation on the 1st defendant to give away to the pleaders the lands for charity, he thought the claim was not sustainable.

The question then arose whether under section 24 of the Indian Contract Act the agreement was void because one of several considerations for a single object was unlawful. The Judge said:—

"As it was not a reward given to them for their professional services, the clause of the Inam Chitti relating to it becomes a distinct agreement by itself, and is to that extent void for want of consideration. In fact, it operates as an agreement to make a gift of the land rather than an agreement to make a transfer of it for value. Further as the religious and charitable purposes have not been defined, the beneficiaries who are to take under it cannot be ascertained, and the agreement being thus too vague and uncertain cannot be specifically enforced, under section 21 of the Specific Relief Act."

It is difficult to see how it can be said that the agreement to give land to the pleaders for religious or charitable purposes can be separated from the agreement to give them Rs. 500 for their services in the case as pleaders. It has been suggested that because the property was to be given over to religious or charitable purposes, it could not be considered as consideration given to the pleaders for their services in the suit. I do not think the Court need be misled by such argument. It was intended to be a gift of the property to the pleaders, leaving it open to them to deal with it as they thought fit. The words "for religious and charitable purposes" were evidently added in the hope that

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the real object of the agreement might be concealed. But we think it clear that the consideration for the services of the pleaders in the case was Rs. 500, and the gift of part of the property in suit. An agreement taken by a pleader that he shall be given part of the property in dispute in the suit in which he is engaged must necessarily be contrary to public policy, and, therefore, unlawful under section 23 of the Indian Contract Act. "It is professional misconduct for an advocate to stipulate for or agree with his client to accept as his fee or professional remuneration a share of the property, fund, or other matter in litigation for his services as advocate in such litigation upon the successful issue thereof." (See *In the matter of an Advocate*<sup>(1)</sup>.) In *Laxmanlal v. Mulshankar*<sup>(2)</sup> a pleader stood bail for his client pending a criminal charge against him, and as an indemnity for the bail took from him a sale-deed and a rent-note regarding his house, in the name of the plaintiff. The consideration for the sale-deed was a sum of Rs. 8,000, of which Rs. 5,000 were the indemnity for the bail-bond, and the remaining Rs. 3,000 represented the advances to be made thereafter by the plaintiff. The plaintiff sued on the rent-note to recover the sum of Rs. 2,000 as rent, and it was held (1) that the contract for indemnifying the pleader for his bail-bond was illegal; and this illegality rendered the sale-deed void in law; (2) that the rent note was tainted with the same illegality which affected the sale-deed and could not stand on any separate footing; and (3) that the agreement was an indivisible agreement. A part of a single consideration for one object was unlawful and, therefore, the whole agreement was void under section 24 of the Indian Contract Act, 1872.

In the same way in this case the agreement to pay Rs. 500 cannot be separated from the agreement to

<sup>(1)</sup> (1900) 4 Cal. L. J. 259.

<sup>(2)</sup> (1908) 32 Bom. 449.

give survey No. 58, part of the property in suit. We think, therefore, that the whole agreement was void. We allow the appeal and dismiss the plaintiff's suit with costs throughout.

COYAJEE, J. :—I am entirely of the same opinion.

*Decree reversed.*

J. G. R.

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## CRIMINAL REVISION.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.*

EMPEROR v. P. B. PONDE AND OTHERS<sup>a</sup>.

1925.

*City of Bombay Police Act (Bom. Act IV of 1902), sections 70, 72 and 74—  
Order by Magistrate to bring suspects from foreign territory—Remand of  
suspects to police custody—Police investigation—Course of investigation.*

March 4.

During investigation into an offence committed in Bombay, the Bombay City police placed sworn testimony before the Chief Presidency Magistrate of Bombay and applied for an extradition warrant against some suspects who had already been arrested at their instance in the Indore State by the Indore police. The Magistrate made a requisition to the Agent to the Governor General in Central India for their surrender. The suspects were brought down to Bombay in the custody of the Bombay police and placed before the Magistrate who remanded them to police custody in order that the police might complete their investigation. The suspects having applied against the order :—

*Held*, that the placing of information by the police before the Magistrate to enable him to make a requisition for the surrender of the suspects did not necessarily imply that the police investigation was then complete.

*Held*, also, that although the Agent to the Governor General had acted a the request of the Magistrate, the suspects so brought down from Indore were under the arrest of the Bombay police and arrived in Bombay in police custody and, therefore, the Magistrate was competent to make an order for their remand under section 70 of the City of Bombay Police Act.

THIS was an application under Criminal revisional jurisdiction against orders passed by S. S. Rangnekar, Chief Presidency Magistrate of Bombay.

<sup>a</sup> Criminal Application for Revision No. 60 of 1925.