

APPEAL FROM ORIGINAL CIVIL.

Before Sir Francis William Maclean, K.C.I.E., Chief Justice, Mr. Justice Harington and Mr. Justice Geidt.

JAFFER MEHER ALI

v.

BUDGE-BUDGE JUTE MILLS CO.*

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Dec. 13.

Contract—Official Assignee—Whether benefit of contract vests in Official Assignee—Indian Insolvent Act (11 and 12 Vict., C. XXI) ss. 7 and 24—Assignment of contract—Transfer of Property Act (IV of 1882) ss. 3, 6 (h)—“Actionable claim”—Contract Act (IX of 1872) s. 23—Fraudulent object.

Property under a contract, which an assignor can pass to an assignee, is an “actionable claim” within the meaning of s. 3 of the Transfer of Property Act, and would under s. 7 of the Indian Insolvent Act, vest in the Official Assignee on the insolvency of the assignor.

Under the joint action of s. 6 (h) of the Transfer of Property Act and s. 23 of the Contract Act, where the object of an assignment is fraudulent, the assignment is void and inoperative.

Decision of Sale J. (1) affirmed.

APPEAL by the plaintiff, Jaffer Meher Ali(1).

On the 20th July 1905 one Cassim Karim entered into a contract with the Budge-Budge Jute Mills Co. for the purchase of certain gunny-bags to be delivered by monthly instalments during the months of January to May 1906. The contract contained no special clause making it assignable. By an indenture dated the 16th August 1905 Cassim Karim purported, in consideration of the sum of Rs. 100, to transfer and assign to Jaffer Meher Ali nine several contracts, of which the contract in suit was one, and the benefits and advantages thereunder as also the right, title, interest, estate, claim and demand whatsoever of the assignor in or upon the said contracts.

On the 19th August 1905 the appellant gave notice of the assignment to the respondent Company, who forthwith declined to recognise the appellant as taking the place of Cassim Karim. On the 26th August, 1905, Cassim Karim filed his petition in

* Appeal from Original Civil Suit No. 36 of 1906, in Suit No. 156 of 1906.

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insolvency, which was subsequently dismissed. The appellant subsequently called upon the Mills to carry out the contract, and on their refusal to do so, instituted this suit for the sum of Rs. 3,000 as damages for non-delivery of the January instalment. The Company resisted the claim on two main grounds: first, that the contract was not assignable; secondly, that the assignment was not made *bonâ fide*, but fraudulently with the object of defeating and delaying the creditors of the assignor, and was in consequence void. It was held by Sale J. that the contract was assignable, but that in the circumstances of the case the object of the assignment was to defeat the provisions of the Insolvency Law by preventing the property of the insolvent from vesting in the Official Assignee, that such object was unlawful, and that the assignment was void and inoperative.

The suit was accordingly dismissed(1).

From this judgment of Sale J.(1) the plaintiff, Jaffer Meher Ali, appealed.

Mr. Hill (with him *Mr. H. D. Bose*) for the appellant. It was held in the Court of First Instance, that the assignment was fraudulent and void, inasmuch as its object was to defeat the provisions of s. 24 of the Insolvent Act. I submit the object of the assignment was not fraudulent nor was it intended to defeat creditors. At the date of the assignment the assignor was in such a position as to be unable to fulfil his obligations under the contract. The object of the assignment was to transfer the contract to another party, who could carry out the contract and so to save liability for breach. The contract need not have necessarily resulted in a benefit to the assignor; there may have been a loss.

Again this contract was not of such a nature as to vest property in the Official Assignee under s. 7 of the Insolvent Act. At the date of the assignment there existed no present interest in the goods, but only a future interest conditional on payment of price being made.

Mr. Dunne (with him *Mr. Zorab* and *Mr. Camell*) for the respondent Company. The argument of the appellant [results

(1) (1906) I. L. R. 33 Calc. 702.

in a dilemma. If the contract would not vest in the Official Assignee on the insolvency of the contracting party, it clearly follows it cannot be an "actionable claim" within the meaning of s. 3 of the Transfer of Property Act, and is therefore not assignable under s. 130 of the same Act. If the contract is to be regarded as assignable as an "actionable claim," it would pass to the Official Assignee on the insolvency of the contracting party, and in the circumstances of this case the object of the assignment would be fraudulent.

It is unnecessary for the purpose of this appeal for me to argue the point as to the assignability of the contract in question. But it is a matter of great importance to the Mills, and my submission is that the contract is not assignable.

Mr. Hill, in reply.

MACLEAN C. J. This case does not to my mind present any real difficulty. The facts, as found by Mr. Justice Sale, are not disputed on this appeal, and it is unnecessary for me to recapitulate them. It would hardly have been necessary for me to have said anything on this appeal, had it not been for a point taken by Mr. Hill, which was not taken in the Court of First Instance. His suggestion was that the case did not fall either within section 7 or section 24 of the Insolvency Act. As regards section 7, I do not understand that anybody had ever suggested that it did not fall within that section; and the argument that the benefit under the contract in question did not vest in the Official Assignee under section 7 is an argument, which cannot properly prevail. The plaintiff himself has shewn that it was an actionable claim within the meaning of section 3 of the Transfer of Property Act by the very fact of the assignment in question and on the footing that there was property under the contract, which the assignor could pass to the assignee; and, if it passed from the assignor to the assignee, it would pass from the latter to the Official Assignee on the assignee's insolvency. That this was a beneficial contract is further shown by the fact that by reason of the rise in the market a profit of Rs. 3,000 was receivable under it, the benefit of which would have passed to the creditors of the assignor upon

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his insolvency. That disposes of Mr. Hill's argument. If we get rid of that point, what remains? Section 6, sub section (h) of the Transfer of Property Act provides that "no transfer can be made for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872." That takes us to section 23 of the Indian Contract Act, which enacts that "The consideration or object of an agreement is lawful"—I pass over some intermediate matters—"unless it is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent." I think the transfer in question would come within either of those provisos. The object, on the facts found, was clearly fraudulent—nay the whole transaction appears to be so. When one has said this, one has said all that is necessary to hold that the judgment of the Court of First Instance is right ~~and~~ this appeal must be dismissed with costs.

HARRINGTON J. I agree.

GEIDT J. I also agree.

Appeal dismissed.

Attorneys for the appellant: *Manuel & Agarwalla.*

Attorneys for the respondent: *Orr, Dignam & Co.*

J. C.