APPELLATE CIVIL.

Before Mookerjee and Holmwood JJ.

GODHANRAM

v.

JAHARMULL PUGLIA.*

1912

Aug. 8

Principal and Agent—Suit for declaration of title to the benefits of a decree—Maintainability of the suit.

Where an agent entered into a contract in his own name with a third party and brought a suit to recover damages for breach of the same and obtained a decree thereon, a suit, subsequently brought by the principal against the agent for declaration of title to the decree, was not maintainable.

The principal, before the suit was brought by his agent, might have adopted the contract made by the latter and sued on it; but if he did so, he was bound to adopt the contract *cum onere*.

Udell v. *Atherton* (1) and *Bristowe* v. *Whitmore* (2) approved.

He might also have intervened at any stage in the action which had been commenced by his agent.

Sadler v. *Leigh* (3) approved.

SECOND APPEAL by Godhanram Bhakat and Benimadhab Shaha, the defendants.

This was a suit brought by Jaharmull Puglia against Godhanram Bhakat, Benimadhab Shaha and Jagadiswar Mukherjee for the declaration of title to a decree. The facts were as follows: The plaintiff carried on business at Sainthia in the purchase and sale of sundry articles under the name and style of Kali

* Appeal from Appellate Decree, No. 1746 of 1912, against the decree of Ashutosh Sarkar, Subordinate Judge of Birbhoom, dated June 24, 1912, affirming the decree of Hementa Kumar Haldar, Munsif of Suri, dated Feb. 25, 1911.

(1) (1861) 7 H. & N. 172. (2) (1861) 9 H. L. C. 391.

(3) (1815) 4 Camp. 195.

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Das Raghunath Das. In 1898, he employed the defendant No. 1 to look after the said business at Sainthia and left him in sole charge thereof from 1903 to 1907, while the plaintiff himself attended to the business in Calcutta. During this period the defendant No. 1 entered into a contract with the defendant No. 3 for the purchase of paddy from the latter and paid him the money for delivery of the same. Upon the latter having failed to deliver the paddy in terms of this contract, the defendant No. 1 brought a suit in 1906 for compensation and on the 28th March 1908, obtained a decree against him. The plaintiff did not intervene in this suit. During the pendency of this suit, that is to say, in about October 1907, the plaintiff terminated the agency of the defendant No. 1. On the 16th May 1908, the defendant No. 1 assigned his right under the decree to the defendant No. 2. On the 4th February 1909, the suit by the defendant No. 1 against the defendant No. 3 was affirmed on appeal. On the 11th February 1909, the plaintiff brought the present suit for declaration of his title to the decree obtained by the defendant No. 1 against the defendant No. 3, alleging, that the money paid by the defendant No. 1 to the defendant No. 3 for the paddy as aforesaid was paid out of the funds of the firm during the term of his employment as agent of the plaintiff, that before the appellate decree was made, the defendant No. 1 sold the decree to the defendant No. 2, who was not a *bonâ fide* purchaser of the same for value, and that the sale was not valid, and praying for an injunction restraining the defendant No. 3 from paying any money into the hands of the defendant No. 1 or the defendant No. 2 in satisfaction of that decree and for withdrawal of the amount realised by the decree and deposited in Court. The defendants contested this claim contending that the suit as framed was not maintainable, that

the defendant No. 1 entered into the contract with the defendant No. 3 for the sale of paddy, not as the plaintiff's agent, but on his own behalf, and paid the money for it out of his own funds, in which the plaintiff never possessed any interest, that the defendant No. 1 had to sell the decree to the defendant No. 2, as he could not pay back the money borrowed from one Kali Ghosh for the prosecution of the suit, that the sale took place before there was any appeal, and that the purchase of the defendant No. 2 was *bonâ fide* and for consideration. Both Courts having decreed the suit, the defendants Nos. 1 and 2 appealed to the High Court.

Babu Baranashibashi Mukherjee, for the appellants. The question involved in this appeal is, whether a suit of this nature is maintainable. This was a suit for the declaration of title to a decree obtained by the defendant No. 1 against the defendant No. 3 during the period of employment of the former as agent of the plaintiff. My submission is, that the plaintiff's proper course was to have instituted a suit for general accounts against his agent the, defendant No. 1, instead of bringing a suit in this novel form. In the present suit the plaintiff sought to derive the benefit of a successful litigation by the defendant No. 1 against the defendant No. 3. This, I submit, he could not be permitted to do. His remedy lay in a suit for adjustment of accounts against the defendant No. 1, in which all the rights and liabilities of the parties could have been settled. But in this particular case the plaintiff had by his conduct waived or repudiated the contract between the defendant No. 1 and the defendant No. 3.

Babu Manmatha Nath Mookerjee, for the respondent. It was not possible to have brought a suit for account. This was a suit of a civil nature and, unless there was some provision of law express or implied to

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prevent such a suit being brought, this suit was maintainable. The plaintiff's cause of action was, that the defendant No. 1 had no right to transfer this decree. His only remedy for claiming the benefit of the decree lay in a suit of the present nature. He could not have joined, either as plaintiff or as defendant, in the suit of the defendant No. 1 against the defendant No. 3, as the contract was not in his name at all and, therefore, it is idle to urge that the plaintiff ought to have been made a party in that suit: *see* the Contract Act (IX of 1872) ss. 230 and 231; *Gopal Das* v. *Badri Nath*(1) and *Mohendro Narain Chaturaj* v. *Gopal Mondul* (2).

MOOKERJEE AND HOLMWOOD JJ. This is an appeal on behalf of the first two defendants in a suit of a novel description. The events antecedent to the litigation are not in controversy and may be briefly narrated. According to the plaintiff, the first defendant acted as his agent from 1903 to 1907. The plaintiff had, in the name of Kali Das Raghunath Das, started and carried on a business which consisted in the purchase and sale of sundry articles. The first defendant, who was employed to look after this business, as agent of the plaintiff, advanced Rs. 300 to the third defendant for purchase of paddy. The latter failed to perform the contract; the result was that in 1906 the first defendant sued him for damages for breach of contract. During the pendency of this suit in the Court of first instance, the plaintiff terminated the agency of the defendant. He did not, however, himself intervene in the suit then pending which was tried in due course and decreed on the 28th March 1908. On appeal, this decree was affirmed on the 4th February 1909. In the interval, on the 16th

(1) (1904) I. L. R. 27 All. 361. (2) (1890) I. L. R. 17 Calc. 769.

May 1908, the first defendant assigned his rights under the decree to the second defendant. Seven days after the termination of the appeal in that suit, the plaintiff commenced the present action for declaration that he was beneficially interested in the decree obtained by the first defendant against the third defendant and for an injunction to restrain the third defendant from paying any money into the hands of the first or the second defendant in satisfaction of that decree. The defendants resisted the claim on the ground that the suit as framed was not maintainable. They also contended that the first defendant was not the agent of the plaintiff, and, that, in any event, the second defendant was entitled to protection as a *bonâ fide* purchaser for value without notice of the rights, if any, of the plaintiff. The Courts below have found that the first defendant was the agent of the plaintiff, that the sum advanced by him to the third defendant belonged to his principal, and that the contract was made by him as agent and on behalf of the principal. It has also been found that the second defendant was in league with the first defendant and was not a *bonâ fide* purchaser for value without notice. In this view, the Courts below have made a decree in favour of the plaintiff. The decree obtained by the first defendant against the third defendant, has meanwhile, been realised, the money is now in deposit in Court, and the plaintiff asks for leave to withdraw this sum. On behalf of the first defendant, it is argued that the plaintiff is not entitled to maintain the suit as framed. In our opinion, this contention is well founded and must prevail.

It is not disputed that the first defendant as agent was liable to render accounts to the plaintiff of all his dealings in the various transactions carried on by him as agent on behalf of the plaintiff. But what is

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argued is, that, in the absence of a special contract in that behalf, the plaintiff cannot be permitted to select capriciously a single transaction and claim the fruits thereof, without an adjustment of the rights and liabilities of the parties in relation to other transactions. This contention is manifestly sound. It is well-settled that when accounts are taken, the agent is bound to make over to the principal whatever sums he has realised on his behalf; but the agent is equally entitled to deduct expenses authorised by the principal and all proper expenses even though incurred for purposes not strictly legal. In the matter of this very transaction, if the plaintiff is entitled to the fruits of the decree, the defendant may equally claim to be remunerated for his services as agent, and to be reimbursed the litigation expenses. But the plaintiff does not offer in the present litigation to reimburse or remunerate the defendant; he merely claims the entire sum realizable under the decree obtained by his agent against the third defendant; this demand is clearly untenable. The plaintiff might possibly have adopted the contract made by his agent and sued on it; but if he did so, he was bound to adopt it *cum onere* or not at all. As was observed by Baron Wilde in *Udell* v. *Atherton* (1), whatever his previous authority to the agent, whatever his innocence, the principal must adopt the whole contract including the statements and representations which induced it or repudiate the contract altogether. To the same effect is the observation of Lord Cranworth in *Bristow* v. *Whitmore* (2), "where a contract has been entered into by one man as agent for another, the person on whose behalf it has been made cannot take the benefit of it without bearing its burthens." It was, consequently, open to the plaintiff, before the

(1) (1861) 7 H. & N. 172. (2) (1861) 9 H. L. C. 391.

suit was brought by the first defendant, to have commenced an action himself for breach of contract against the third defendant. He might also have, as pointed out in *Sadler* v. *Leigh* (1), intervened at any stage in the action which had been commenced by his agent. But though, as found by the Courts below, he had full knowledge of the commencement and progress of the litigation by the first defendant against the third defendant, he did not adopt either of the courses open to him. The reason is obvious; if the first defendant had been unsuccessful, the plaintiff would have been free to urge, whether unsuccessfully or not, it is immaterial to discuss, that he was not liable for the costs of the litigation. When that suit has successfully terminated, he turns round and contends that he is entitled to the benefit of the litigation but does not offer to bear the burden of costs. The claim is so obviously unjust that no Court will seriously entertain it, and has only to be stated to be repudiated as wholly untenable.

The result is that this appeal is allowed, the decree of the Court below discharged and the suit dismissed; but we direct each party to bear his own costs throughout the litigation.

O. M. *Appeal allowed.*

(1) (1815) 4 Camp. 195.