

1881
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APPEL-
LATE
CIVIL.

5 B. 253=5 Ind. Jur. 536.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Birdwood.

VISHNUCHARYA (*Applicant*) v. RAMCHANDRA (*Opponent*).*
[8th February, 1881.]

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Contract—Consideration—Agency—Revocation—Specific perf. ~~per~~ *Indian Con-
tract Act IX of 1872, ss. 202, 203 and 205.*

The defendant, by an agreement in the nature of a letter of attorney, constituted the plaintiff and his descendants the hereditary agents of the defendant, gave him authority to collect the rents of his share in an inam village, and promised to pay him an annual salary out of the rents.

Held that, as between the parties and during their lifetime, the appointment was valid and binding, whether or not any valuable consideration passed,—the mere acceptance of the office by the plaintiff being a sufficient consideration for the appointment.

But, independently of the terms of the agreement, and whether or not the agency had been created for valuable consideration, the defendant had, under the general provisions of s. 203 of the Indian Contract Act (IX of 1872), a right to revoke the authority, as the mere arrangement that the plaintiff's salary should be paid out of the rents could not be regarded as giving to the plaintiff an interest in the property, the subject-matter of the agency, within the meaning of s. 202.

If the defendant had revoked the agency improperly, the remedy lay, under ordinary circumstances, in a suit by the plaintiff for damages for breach of contract. Where, however, the plaintiff chose to sue for specific performance, and demanded arrears of salary.

Held that, without a valuable consideration for the defendant's promise, the agreement passed by him to the plaintiff would be *nudum pactum*, and the plaintiff would not be entitled to recover, except for work and services actually rendered.

THIS was an application for the exercise of the Court's extraordinary jurisdiction.

[254] On the 9th of October, 1876, the defendant Vishnucharya executed to the plaintiff Ramchandra an agreement to the following effect :—

"In the inam village of Mangle I hold a fourth share. * * * You, your sons and grandsons are to manage my share of the village, and collect the rents, generation after generation. You should take Rs. 42 annually out of the rents collected, and do the business of the village as my deputy hereditarily. I will not have the work done by any other person. If I get my work done by others, I will, without making any reduction in your pay, permanently continue to give you, generation after generation, the sum of money, now fixed in writing, from out of the whole amount of my share."

On the 25th of February, 1879, the plaintiff brought a suit against the defendant, in the Court of the Subordinate Judge of Ashta, for specific performance of his contract, and demanded two years' arrears of salary. The defendant admitted the execution of the document, but pleaded that the agreement was unilateral, and without consideration, and that, in fact, the plaintiff had done no work for him. Both the Courts below found in favour of the plaintiff, and gave him a decree for the full amount claimed with costs.

The defendant applied to the High Court.

* Extraordinary Application No. 70 of 1880.

Ghanasham Nilkanth Nadkarni, for the applicant.—The agreement is against public policy. It binds the defendant to pay Rs. 42 to the plaintiff for all time. There was no consideration moving from the plaintiff. The plaintiff has not rendered any service to the defendant, who has in consequence revoked the authority given by him, and has had to employ another man to do the work.

Ganesh Ramchandra Kirloskar, for the opponent.—We allege consideration of Rs. 500 for the agreement passed to us; but our undertaking to collect rents for the plaintiff, is a sufficient consideration. The plaintiff's salary was to be taken by himself from the collections, and he thus acquired an interest in the agency which cannot be defeated by the defendant. The plaintiff certainly worked for the defendant for six months, if not more, and [255] was prevented from working further by the defendant. The defendant has agreed, for a valid and sufficient consideration, to employ the plaintiff, and no one else, and if he breaks this stipulation and employs another, he is to pay the salary all the same. The plaintiff itself alleges a pecuniary consideration for the defendant's promise.

JUDGMENT.

The judgment was delivered by

MELVILL, J.—The instrument on which this suit was brought, is of the nature of a letter of attorney, whereby the plaintiff and his descendants were constituted the hereditary agents of the defendant for the management of his share in an inam village. As the present dispute has arisen between the original parties to the instrument, it is unnecessary for us to consider what would be the effect of such an appointment after the death of either party. As between the parties, the appointment was valid and binding, whether or not any valuable consideration passed; for the mere acceptance of the office by the plaintiff was a sufficient consideration for the appointment.

The parties seem to be agreed that the authority has been revoked. This is not indeed so stated in the plaint, but it is alleged in the defendant's written statement, and is admitted in the plaintiff's examination. The parties appear to differ as to the date of the revocation. Their statements are not very clear and precise, but the plaintiff apparently alleges that the revocation took place after he had been performing the duties of the office for six months, while the defendant declares that he revoked the authority before the plaintiff entered on the duties of the office, and that, consequently, the plaintiff never performed any service at all.

We do not understand that the plaintiff disputes the defendant's power to revoke the authority; nor, if he did so, could his contention be maintained. The instrument itself contains a provision that the defendant shall continue to pay the plaintiff's salary, even if he gets the work done by any other person; and this implies that the defendant has a right, conditional on the payment of a penalty, to employ another agent. And, independently of the terms of the instrument, the defendant would have a right, under the general provisions of the law (Indian Contract Act, IX of [256] 1872, s. 203) to revoke the authority given to the plaintiff, whether or not the agency had been created for a valuable consideration. The mere arrangement that the plaintiff's salary should be paid out of the rents, cannot be regarded as giving to the plaintiff an interest in the property which formed the subject-matter of the agency; and the Legislature has not adopted to its full extent the *dictum* of Lord Eldon in *Bromley*

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v. *Holland* (1) that, where a power of attorney was granted upon a valuable consideration, the Court (of Chancery) would not permit it to be revoked.

The remedy for the improper revocation of an agency lies, under ordinary circumstances, in an action for damages for breach of contract. By s. 205 of the Contract Act, the principal is bound to make compensation to the agent, whenever there is an express or implied contract that the agency shall be continued for any period of time. This would probably always be the case when a valuable consideration had been given by the agent. An action for damages might probably have been maintained in the present case, whether a valuable consideration was given by the plaintiff or not. In such an action the plaintiff would have been bound to claim a lump sum as compensation, and it would not be competent to him to break up his damages into annual instalments, and to bring periodical actions for their recovery. As, however, the present action does not purport to be one for damages on account of the revocation of the agency, it is not necessary for us further to consider this question.

We must deal with this claim as it is put forward by the plaintiff himself in his plaint, and in his answers on examinations. In his plaint he claims his salary for two years on account of service rendered. In his examination, however, he states that he worked for six months only, and that then the defendant refused to allow him to perform any more service. He is undoubtedly entitled to recover his salary as for work and services done for the period during which such services were rendered, but on his own showing such period did not exceed six months. Whether it amounted to six months, is a matter which will have to be considered; but, at any rate, for at least eighteen [257] months out of the two years to which the claim relates, the plaintiff must show some other foundation for his claim than that of work and services rendered.

As it is not contended, and could not be contended, that the agency still subsists, and as the suit is not for damages, but for specific performance of the terms of the contract which relate to the payment of the plaintiff's remuneration, the only foundation for the plaintiff's claim for payment after his services ceased must be the clause of the agreement to which reference has already been made, and which is as follows: "If I get my work done by others, I will, without making any reduction in your pay, permanently continue to give you, generation after generation, the sum of money now fixed in writing from out of the whole amount of my share. This is the clause on which the Courts below have proceeded in awarding the full amount claimed, without thinking it necessary to inquire whether the plaintiff had rendered service or not. But it cannot be doubted that such an agreement to pay a perpetual annuity, whether any services were rendered by the annuitant or not, would be *nudum pactum*, unless there were a valuable consideration for the promise. The plaintiff himself seems to have felt this, for he alleges in his plaint that he paid Rs. 500 to the defendant in consideration of the execution of the Ex. No. 20. This allegation has not been inquired into by either of the Courts below; but we find it impossible to determine the rights of the parties unless the truth of the allegation be ascertained.

If the allegation were established, the plaintiff would be entitled to recover his remuneration, whether he performed service or not; and it would not then be necessary to determine the length of time for which service was rendered. But, if he fails to prove the payment of the Rs. 500,

it will then have to be ascertained whether the plaintiff worked for the defendant for six months as he alleges, or for any shorter period, or not at all. The evidence offered by the defendant to prove that the plaintiff performed no service at all, was refused by the Courts below; but, in the eventuality which we have supposed, it will become necessary to take it.

[258] We must, therefore, require the District Court, after taking, or causing to be taken, the evidence produced by the parties, to find on the following issue:—

Has the plaintiff proved that he paid Rs. 500 to the defendant in consideration of the execution by the defendant of the instrument (Ex. No. 20)?

If the above issue be found in the negative, but not otherwise, the District Court should find, after taking, or causing to be taken, the evidence on the point which was rejected, on the following issue:—

For what period did the plaintiff actually perform work and services as the defendant's agent under the Ex. No. 20?

It is, perhaps, scarcely necessary to say that the District Judge should require very strong and convincing evidence of the payment of the Rs. 500 as consideration for the creation of the agency. The Ex. No. 20 contains no indication of the payment of any consideration; and, as the instrument has been drawn up with rather more than ordinary care and formality, it is certainly remarkable that no mention should have been made of such an important circumstance, and that there should be no provision for the payment of the sum advanced in the event of the agency being revoked.

5 B. 258.

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice Birdwood

SHIVRAM HARI (Original Plaintiff), Applicant v. ARJUN AND TWO OTHERS, SONS OF MANA (Original Defendants), Respondents.*

[3rd February, 1881.]

Vakil and client—*Inam chithi*—*Vakalatnama*—Act I of 1846, s. 17—*Nudum pactum*.

Where the acceptance of a *vakalatnama* by a pleader and the execution of an *inam chithi* (agreement) by his client, intended as remuneration for the professional services of the pleader, were contemporaneous, and the *vakalatnama* was not filed by the pleader until after the execution of the *inam chithi*.

Held that the acceptance of the *vakalatnama* and the execution of the *inam chithi* constituted one transaction, and that the agreement was not illegal under Act I of 1846, s. 7.

Ramchandra Chintaman v. Kalu Raju (1) distinguished.

[R., 8 B. 413; 61 P.R. 1907=33 P.L.R. 1907=45 P.W.R. 1907 (F.B.).]

[259] THIS was an application under the extraordinary jurisdiction of the High Court against the decision of E. Cordeaux, Judge of the District Court of Khandesh, affirming the decree of D. A. Dalvi, Second Class Subordinate Judge of Erandol.

The plaintiff Shivram Hari brought this suit against Arjun and his two brothers for Rs. 50, due on an agreement (*inam chithi*) executed to

* Extraordinary Application, No. 88 of 1880.

(1) 2 B. 362.