

## APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

1894.

August 7.

RAGHUNA'TH LALMAN (ORIGINAL DEFENDANT), APPELLANT, v. NATHU  
HIRJI BHA'TE (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Opium Act (I of 1878), Sec. 4,† Rules 43, 44, 45 and 52‡ of the Rules framed under the Opium Act—Contract Act (IX of 1872), Sec. 23—Lease of a farm to retail opium at certain shops in a district—Sub-lease of such shops without the Collector's permission—Sub-lease void—Illegal contract—Advances made for an illegal purpose subsequently carried out cannot be recovered.*

\* Second Appeal, No. 759 of 1892.

† Section 4 of the Opium Act (I of 1878) :—

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(a) cultivate the poppy ; (b) manufacture opium ; (c) possess opium ; (d) transport opium ; (e) import or export opium ; or (f) sell opium.

‡ Rules 43, 44, 45 and 52 of the Rules framed under the Opium Act (I of 1878) :—

43. With the general or special sanction of the Commissioner, the Collector may let in farm the right to retail opium, or to manufacture and retail all or any intoxicating drugs prepared from the poppy, in any local area under his control, for a term not exceeding five years. The Commissioner may prescribe rules :

(a) for the invitation and acceptance of tenders for such farms ;

(b) for the requisition of security for the due fulfilment of the engagements entered into by the farmers ; and

(c) as to the form and conditions of such leases.

Any breach of such engagement shall render the lease liable to annulment by the authority by whom the farm was sanctioned.

44. When any such farm is given, the farmer may make his own arrangements for the appointment of subordinate vendors, and for the manufacture of intoxicating drugs, within the limits of his farm and subject to the conditions of his lease : provided that no opium except that supplied from a Government depôt and opium lawfully imported under clause (c), Rule 12, and opium otherwise lawfully obtained, shall be retailed or used in the manufacture of such drugs.

45. Licenses for the retail of opium or of intoxicating drugs prepared from the poppy, by persons appointed by the farmer to retail on his behalf, shall be granted by the Collector in such form and on such conditions, consistent with the conditions of the farm, as the Commissioner from time to time prescribes.

52. Subject to the prohibitions, conditions and regulations imposed and prescribed by the foregoing rules, the manufacture, possession, import, export, transport and sale of opium are permitted.

The plaintiff who held the farm of the right to retail opium at certain shops in a district, and whose lease contained a clause prohibiting sub-letting without the Collector's permission, entered into an agreement with the defendant to sub-let to him, on certain conditions, the management of certain shops in the district for one year without the Collector's permission. After the expiration of the year the plaintiff brought a suit against the defendant to recover the balance due to him under the agreement, and obtained a decree.

*Held*, reversing the decree, that the agreement not being permitted by the rules framed under the Opium Act (I of 1878) was forbidden by section 4 of the Act, and was void as having in view an object forbidden by law.

*Held*, further, that the plaintiff could not recover the price of the opium supplied to the defendant, inasmuch as advances made for an illegal purpose subsequently carried out cannot be recovered.

SECOND appeal from the decision of G. C. Whitworth, District Judge of Násik, confirming the decree of Ráo Sáheb V. G. Kaduskar, Joint Subordinate Judge of Násik.

The plaintiff farmed from the Collector of Násik the right to retail opium at certain shops in the Násik district from the 1st August, 1887, to the 31st July, 1890. On the 5th June, 1889, he agreed to sub-let to the defendant the management of five shops in the Satána Táluka in the said district for one year from the 1st August, 1889.

After the expiration of the year, the plaintiff brought the present suit against the defendant to recover the sum of Rs. 567-5-3, being the balance alleged to be due to him on account of the price of the opium supplied to the defendant under this agreement.

The defendant contended (*inter alia*) that under the terms of the plaintiff's contract with the Collector he was forbidden to sub-let the opium farm without the permission of the Collector; that the sub-letting was, therefore, illegal, and that he was not liable to the claim.

The Subordinate Judge allowed the claim, holding the contract between the parties to be legal.

On appeal by the defendant the Judge confirmed the decree, remarking that the contract between the parties was not illegal even if it were granted that the lease to the plaintiff forbade any sub-letting of the farm without the Collector's sanction.

The defendant preferred a second appeal.

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*Dáji Abáji Khare* for the appellant (defendant):—The sub-lease was illegal, being granted without the Collector's permission, and, therefore, it cannot be enforced. The object of the Opium Act (I of 1878) and the rules framed under it is to regulate the sale of opium according to certain prescribed conditions and rules. The license to retail opium is framed in accordance with the rules, and a breach of the license is the breach of the rules. The sub-lease is void, being opposed to public policy—section 23 of the Contract Act (IX of 1872). The defendant had only a license for one shop: therefore giving and selling opium at other shops was clearly illegal—*Hormasji v. Pestonji*<sup>(1)</sup>.

*Náráyan Ganesh Chandáwarkar* for the respondent (plaintiff):—Our agreement with the defendant is not opposed to the terms of the license granted to us, and it is not illegal. The rules do not prohibit sub-letting. We had appointed the defendant as our agent, and he could not act as our agent without a sub-lease. The defendant already held a license for one of the shops under the order of the Collector, and with respect to the other shops he acted under the agreement. Rule 44 of the rules framed under the Opium Act contemplates an arrangement for the appointment of sub-vendors.

Even supposing that the object of the agreement was unlawful, still we are entitled to recover from the defendant the price of opium which we supplied to him and which he sold.

*Dáji Abáji Khare*, in reply.

FULTON, J.:—The plaintiff in this case held a farm of the right to retail opium at certain shops in the Násik district from the 1st August, 1887, to the 31st July, 1890, and on the 5th June, 1889, entered into an agreement with the defendant to sub-let to the latter on certain conditions the management of five shops in the Satána Táluka for one year from the 1st August, 1889. He now seeks to recover the balance due to him under this agreement, and has obtained a decree in his favour in both the lower Courts. For the defendant it has been argued that the agreement is void under section 23 of the Contract Act (IX of 1872). We have,

therefore, to consider the provisions of the Opium Act and the rules framed thereunder.

Section 4 of the Opium Act forbids the sale of opium except as permitted by the Act or rules. The rules in force when this agreement was made were published on pp. 704—715 of Part I of the *Government Gazette* for 1885. The permission to sell is contained in the 52nd rule, which only permits sales subject to the prohibitions, conditions and regulations imposed and prescribed by the preceding rules. The 43rd rule authorizes the Collector to let in farm the right to retail opium subject to conditions prescribed by the Commissioner. The 44th rule enables the farmer to appoint subordinate vendors within the limits of his farm and subject to the conditions of his lease. The 45th rule provides for the issue of selling licenses to the persons appointed by the farmer to sell on his behalf.

The lease granted to the plaintiff was in form E annexed to the rules, the 10th clause<sup>(1)</sup> of which prohibits sub-letting without the permission of the Collector, while the 14th clause<sup>(1)</sup> forbids his selling more than ten tolas weight of opium to any person at one time except to a medical practitioner or other person holding a special license from the Collector.

The defendant, it is admitted, was a licensed sub-vendor at one of the five shops; there being other licensed sub-vendors for the other four. The agreement between him and the plaintiff bound him to sell at least 24 lbs. of opium every month or pay compensation to the farmer at the rate of Rs. 5 per lb. on ac-

(1) Clauses 10 and 14 of form E of the rules framed under the Opium Act:—

10. That he will not sub-let any of his opium shops without permission of the Collector or employ for the retail sale of opium any person for whose employment in that behalf he may not have previously received written sanction and a separate license signed by the Collector authorizing such person to sell opium on behalf of the licensee.

14. That except to a medical practitioner or other person holding a special license from the Collector, he will not sell more than ten tolas weight of opium to any person at one time,

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count of any deficiency in the quantity sold, and also required him to purchase from the plaintiff the opium required for sale in the shops.

Now it seems to us that in thus sub-letting part of his farm without the sanction of the Collector, which the District Judge has found was not obtained, the plaintiff was entering into an agreement for the sale of opium contrary to law. The law prohibited his selling it at all except as permitted by the rules. The rules only permitted sales subject to the conditions of the lease. The lease prescribed numerous conditions for the regulation of the shops, and forbade the interposition of a sub-lessee (without the Collector's sanction). The agreement, it is true, bound the sub-lessee to observe all the requirements of the law and rules; but in entering into it, and thereby alienating his immediate control over the shops and sub-vendors, the plaintiff was arranging for the sale of opium in a manner not authorized by his lease and, therefore, not within the permission accorded by rule 52. The mere fact that a breach of the conditions of the lease prescribed by the Commissioner, and not embodied in rules framed by Government with the sanction of the Governor General in Council, may not be punishable under section 9 of the Act (as determined in Criminal Ruling 23 of 1887), does not seem to affect the question. The method of selling opium arranged for in the agreement was not permitted by the rules, and was, therefore, forbidden by section 4 of the Act. Consequently the agreement must, we think, be considered void as having in view an object forbidden by law. This view may press hard on the plaintiff; but when he made the agreement he must have been aware that it was contrary to the provisions of his lease, and, therefore, he cannot enforce it, as held in the cases of *Debi Prasad v. Rup Ram*<sup>(1)</sup> and *Hormasji v. Pestanji*<sup>(2)</sup>. As pointed out in the Allahabad case, it would be defeating the policy of the law (which evidently intends to give the executive authorities the most complete control over the sale of opium as well as liquor) if such contracts were to be allowed.

(1) I. L. R., 10 All., 577.

(2) I. L. R., 12 Bom., 422.

Mr. Chandawarkar urged that, even if the agreement were void, the plaintiff could at least recover the price of the opium supplied to the defendant, but since the case of *Collins v. Blantern*<sup>(1)</sup> it seems to have been settled law that advances made for an illegal purpose subsequently carried out cannot be recovered (*vide Begbie v. The Phosphate Sewage Co., Limited*<sup>(2)</sup>; *Herman v. Jeuchner*<sup>(3)</sup>; *Scott v. Brown, Doering, McNab and Co.*<sup>(4)</sup>). In the present case the plaintiff admits that the object of the agreement was carried out, and his claim is based on that assumption.

Under these circumstances, much as it is to be regretted that a dishonest defence of this sort should succeed, we must reverse the decrees of the Courts below and reject the claim, but at the same time direct that the parties do bear their own costs throughout.

*Decree reversed.*

(1) Smith's Leading Cases I, p. 399.

(3) 15 Q. B. D., 561.

(2) L. R., 10 Q. B., 491.

(4) L. R. (1892), 2 Q. B., 724.

## APPELLATE CIVIL.

*Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.*

PAROT BA'PA'LA'L SEVAKRA'M (ORIGINAL DEFENDANT), APPELLANT, v.  
MEHTA HARILA'L SURAJRAM (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Hindu law—Inheritance—Succession—Father's sister's daughter's son—Bandhu—  
Bhinna gotra sápinde.*

Harisukhrái, a Hindu, died leaving a widow and a son of a first cousin, *viz.*, the son of his father's sister's daughter.

*Held*, that on the death of the widow the latter, *viz.* the son of his father sister's daughter being a *bandhu* or *bhinna gotra sápinde* of Harisukhrái, was entitled to succeed to his property.

In regard to the succession of cognates, there seems to be no difference in the rules laid down in the *Mayukha* and the *Mitákshara*, and under the *Mitákshara* law succession depends upon propinquity and not upon religious efficacy.

SECOND appeal from the decision of Gilmour McCorkell, District Judge of Ahmedabad, confirming the decree of Ráo Sáheb Mánéklál Narottamdás, Joint Subordinate Judge.

This action was instituted by plaintiff Mehta Harilál Surjarám to recover possession of certain houses as the reversioner of one

\* Second Appeal, No. 523 of 1892.

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