Ahmedabad Jubilee S. and M. Co. Vs Chhotalal Chhaganlal

Court: Bombay High Court

Date of Decision: Dec. 18, 1907

Acts Referred: Contract Act, 1872 â€" Section 25(2)

Citation: (1908) 10 BOMLR 141

Hon'ble Judges: K.C.I.E., C.J; Lawrence Jenkins, J; Batchelor, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Batchelor, J.
The plaintiff sued for an account of the commission due to him from the defendant Company, and for the recovery of the sum

which might be so found due.

2. The suit was dismissed in the first Court but on appeal the decree was reversed, and a decree passed in the plaintiffs favour.

3. The defendant Company now appeals.

4. The suit is based upon contract and the first question which arises is whether there was ever any contractual relation between the plaintiff and the

Company. To make out the affirmative the plaintiff relies upon the Memorandum and Articles of Association of the Company. But these

documents embody only the social contract, as it has been called, i. e., a contract between the share-holders inter se, and possibly between the

share-holders and the directors, and do not constitute any contract between the Company and its promoters under one of whom the plaintiff now

claims: Eley v. Positive Government Security Life Assurance Company. (1876) 1 Ex. D. 88

5. The suit must therefore fail inasmuch as there never was a contract between the Company and the plaintiff or the promoter in whose shoes he

now claims to stand. Upon another ground also we think that the appeal must be allowed. The clause of the Memorandum of Association under

which the claim is based is No. 10 which must be read with No. 7. But these clauses constitute no valid contract. What they purport to do is to

give a perpetual annuity to the promoters and their assignees in consideration for certain services said to have been already rendered. But such past

services can form no legal consideration under the Contract Act, nor can Sub-section (2) of Section 25 of that Act assist the plaintiff here inasmuch

as the services said to have been rendered could not have been rendered to the Company, for the Company was admittedly not then in existence.

6. One other objection to the suit may also be noticed, and that is this:-The plaintiff claims under the promoter Maneklal Dalsookh and relies upon

certain resolutions of the Company as authorising the transfer of the claim to his name. The first of these resolutions is that of the 20th August 1900,

Exhibit 25, which, under Clause (10) of the Memorandum of Association, had to be confirmed by a subsequent special resolution.

7. Now the meeting called to confirm the resolution of the 20th August was held on the 9th of September, but instead of confirming the previous

resolution simpliciter, the Company confirmed it subject to an added proviso, and that we think was no valid confirmation, for there is nothing

before us to show how far the added proviso may have influenced the members in accepting this modification of the original resolution: compare

Wall v. London and Northern Assets Corporation (1898) 2 Ch.469.

8. The appeal failing upon the above grounds, the Honourable Mr. Setalvad had asked us to send down an issue of fact as to ""whether a contract

between Maneklal or the plaintiff and the Company should not be inferred from the conduct of the parties.

9. As we have already indicated, the case is now before us in second appeal, and we do not think that in this litigation this Court would be justified

in going out of its way to cure any defects which the plaintiff has committed.

10. The issue suggested is one which should have been raised before the Courts of fact and we are not disposed to allow it to be raised now with

the result of inaugurating a different case from that which the Company made before the lower Courts.

11. The result is that the appeal must be allowed and the plaintiffs suit must be dismissed with costs throughout.