

PUNCHIHEWA AND TWO OTHERS

v.

DAYASENA

COURT OF APPEAL.

G. P. S. DE SILVA (President, C/A) AND ABEYWIRA, J.

D.C. MATARA 280/SP.

C.A. 272/81 (F).

JANUARY 30, 1987.

National Lotteries Board—Title to winning sweep ticket—Maintainability—S. 16(4) of Finance Act No. 11 of 1963—Forfeiture of prize money to fund of National Lotteries Board.

The plaintiff (at the time a minor) bought a sweep ticket out of the money given to him by his employer the 2nd defendant for tea. At the draw of 6.3.1977 this ticket was found to have won the first prize. When the results appeared in the newspapers on 8.3.1977 the 1st defendant, another employee of the 2nd defendant, fraudulently took the sweep ticket from the plaintiff telling him he would deposit the money in the Bank as plaintiff was a minor and to wait for a week. After the lapse of a week the 1st defendant suggested to plaintiff to accept Rs.50,000 but plaintiff refused and complained to the Police. The 1st, 2nd and 3rd defendants (the 2nd and 3rd defendants being brothers) pleaded that the ticket was purchased by them from the money of the vegetable business carried on by them. The three defendants had gone to the Lotteries Board and claimed the money on 10.3.1977 but the officer said the money could not be given to all three of them. The rules permitted the money being given to only one person. The 2nd defendant then sued the 1st and 3rd defendants in D.C. Matara 1/1146 Z and that suit was settled on 17.10.77. By this settlement each of them would receive a 1/3 share. Plaintiff filed his suit on 21.10.1977. The defendants pleaded the decision in Case No. 1/1146 Z in their favour and s. 16(4) of the Finance Act whereby on the lapse

of 6 months from the date of the draw (6.3.1977) any prize money of a lottery "which has not been granted to the person entitled thereto by reason of the fact that such person is not to be found shall be forfeited and paid to the Fund of the Board". The Lotteries Board said they would abide by the decision of the Court and took no further part in the suit. The District Judge gave judgment for plaintiff.

Held—

(1) The plaintiff not having been a party to the earlier case between the defendants was not bound by the decree in that suit.

(2) Section 16(4) of the Finance Act postulates a situation where the prize "has not been granted to the person entitled thereto by reason of the fact that such person is not to be found". Here the prize had in fact been claimed on 10.3.1977. Further this was an objection which only the National Lotteries Board could take.

APPEAL from judgment of the District Court of Matara.

M. S. A. Hassan with Miss Jayatilleke for defendants-appellants.

Ranjith Abeysuriya with Ruwan Fernando for plaintiff-respondent.

Cur. adv. vult.

March 16, 1987

G. P. S. DE SILVA, J. (President, C/A)

The plaintiff instituted this action on 21st October 1977 against the 1st, 2nd and 3rd defendants and the National Lotteries Board (4th defendant) for a declaration that he was the winner of the 1st prize (Rs. 100,000) on sweep ticket No. 57 H 00161 (P2) issued by the National Lotteries Board. Admittedly, P2 was the sweep ticket that won the first prize and the draw was held on 6th March 1977.

According to the plaintiff, who was a minor at that time, he bought P2 as well as another ticket with the money that was given to him for his tea by his employer, the 2nd defendant. It was the case for the plaintiff that on the day when the results of the lottery appeared in the newspapers (8th March 1977) the 1st defendant, who was also an employee under the 2nd defendant, fraudulently took the sweep ticket P2 from his possession saying that he would deposit the money in the Bank, as the plaintiff, being a minor, would not be able to obtain the money. The 1st defendant had further told him to wait for a week and that he would get him the money. After the lapse of one week, the 1st defendant had suggested to him to accept a sum of Rs. 50,000 and the balance to be taken by the 1st defendant. He was not agreeable to this suggestion and since the money was not forthcoming, he made a complaint to the Police.

On the other hand, the case for the 1st, 2nd and 3rd defendants (2nd and 3rd defendants are brothers) was that P2 was not purchased by the plaintiff with his money but that P2 was purchased by them with the money belonging to the vegetable business carried on by the three defendants. The 1st defendant in his evidence stated that he along with the other two defendants went to the office of the National Lotteries Board, presented P2 and claimed the prize money. The officer of the National Lotteries Board to whom the defendants had presented P2 gave evidence and stated that P2 was presented to the National Lotteries Board on 10th March 1977. This date is important in view of the legal objection taken by the defendants-appellants to this action being maintained.

It is in evidence that the rules of the National Lotteries Board permitted the prize money to be given only to one person. On the presentation of P2, the defendants-appellants were informed that the money cannot be given to all three of them. Thereafter on 14th March 1977 the 2nd defendant to the present action filed an action in the District Court of Colombo (Case No. 1/1164 Z) against the 1st and 3rd defendants to the present action and the National Lotteries Board in respect of the prize won on P2. That action was settled on 17th October 1977 and, according to the terms of the settlement entered therein the present defendants-appellants were declared entitled to a 1/3 share of the prize.

In the instant case, the District Judge held that the winning ticket P2 was purchased by the plaintiff and not by the defendants-appellants. In his judgment he has carefully considered the evidence placed before him and has given cogent and valid reasons for accepting the testimony of the plaintiff and for rejecting the story spoken to by the 1st defendant. It is unnecessary to repeat here the reasons given by him. It is right to add that Mr. Hassan, counsel for the defendants-appellants, very properly in my view, did not seriously challenge the finding of fact arrived at by the District Judge.

Mr. Hassan, however, contended that in view of the provisions of s. 16(4) of the Finance Act No. 11 of 1963 the plaintiff cannot have and maintain this action. *Section 16(4)* reads thus:

"After the expiration of a period of six months reckoned from the date of the drawing of lots for the prizes in any national lottery, any prize in such lottery which has not been granted to the person entitled thereto by reason of the fact that such person is not to be found shall be forfeited and paid to the Fund of the Board:

Provided, however, that where any action or proceedings arising out of any claim made in respect of such prize is pending before any court at the expiration of the period aforesaid, such forfeiture shall not be made, and if in the final determination of that action or proceeding any person is declared to be entitled to such prize, the Board shall grant such prize to that person, and if no person is so declared, such prize shall be forfeited and paid to the Fund of the Board."

Mr. Hasṣan submitted that the plaintiff cannot maintain this action because he has filed the action "after the expiration of a period of 6 months reckoned from the date of the drawing of the lots for the prizes". Counsel further contended that in the action filed in the District Court of Colombo by the 2nd defendant to this action, the defendants-appellants were declared entitled to a 1/3 share each of the prize and that in terms of the proviso to section 16(4) set out above "the Board shall grant such prize" to the persons declared entitled to it in that action.

It seems to me that these submissions are not well-founded. As urged by Mr. Abey Suriya for the plaintiff-respondent, section 16(4) postulates a situation where the prize "has not been granted to the person entitled thereto by reason of the fact that such person is not to be found". It is manifest on the evidence called on behalf of the defendants-appellants, that well before the expiry of the period of 6 months from the date of the draw, namely on 10th March 1977, the defendants-appellants had gone before the National Lotteries Board, presented P2 and claimed the prize. Therefore section 16(4) in my view has no application to the instant case. Further, it would appear that it is not open to the defendants-appellants to take an objection based on section 16(4). If at all, it is an objection that may be available, in an appropriate case, to the National Lotteries Board. But in the present case the attorney-at-law appearing for the National Lotteries Board informed the court at the commencement of the trial that the Board is prepared to abide by the decision of the Court and is therefore not participating in the trial.

As regards the other contention that the Board is bound to grant the prize to the defendants-appellants who were declared entitled to it in the action filed in the District Court of Colombo, I am afraid I see no merit in it. That was an action to which the plaintiff was not a party and therefore he is not bound by that decree. Moreover, the words "the

Board shall grant such prize" appear in the proviso to the enacting part of the section and the proviso must be considered in relation to the enacting part of the section. As stated earlier, the enacting part of section 16(4) has no application to the facts of the instant case. It would therefore be fallacious to rely on the literal meaning of the words in the proviso and argue that the Board is bound to grant the prize in terms of the decree entered in an action to which the plaintiff was never a party.

I can see no basis for interfering with the findings of the District Judge which are reasonable and are in accord with the evidence and the probabilities of the case.

In the result, I affirm the judgment and decree and dismiss the appeal with costs fixed at Rs. 525.

ABEYWIRA, J. – I agree.

Appeal dismissed.
