

M.S. Devoraj Vs. S.V. Krishnamurthy

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Court : Karnataka

Decided On : Feb-04-1969

Reported in : AIR1969Kant350; AIR1969Mys350; (1969)2MysLJ580

Judge : K.R. Gopivallabha Iyengar, J.

Acts : Indian Contract Act - Sections 69 and 70

Appeal No. : Regular Second Appeal No. 650 of 1964

Appellant : M.S. Devoraj

Respondent : S.V. Krishnamurthy

Advocate for Pet/Ap. : Shri. Mohandas Hegde

Judgement :

1. The salient facts in this case are not disputed. The plaintiff was the holder of a power of attorney from defendant, and it is marked Ex. P-2 and dated 12-2-1951. This power of attorney was cancelled on 24-3-1955. The plaintiff in exercise of the powers vested in him by virtue of the power of attorney arranged for the addition, alteration and repairs of a building bearing No. 861, Narayana Sastry Road, Mysore. This work was entrusted to one Veerabhadra Pillay. The licence for this work was obtained on 31-8-1953. While accepting the estimate for the work, the plaintiff paid a sum of Rs. 1,000/-. The estimate Ex. P-6 mention that the work is entrusted to Veerabhadra Pillai by the plaintiff in his capacity as power-of-attorney

holder of the defendant. The total estimate was Rs. 5027.3-0. The amount due in respect of the work to be carried out was Rs. 4027-3.0 on 5-7-1954. Pillay, the contractor, wrote a letter marked Ex. P. 9 stating that the work entrusted to him has been completed, that arrangement may be made early for payment. The amount mentioned therein is Rs. 4027/-.

As per Ex. P. 9(a) dated 5-6-1955, the contractor sent a reminder in regard to the settlement of the bill stating that if the amount is not paid within a month from the date of the letter, legal steps will be taken. Another reminder was sent by the contractor to the plaintiff asking him to pay the amount due. On 26-8-1955, the plaintiff sent a reply as per Ex. P-10 stating that the defendant who happens to be the brother-in-law of the plaintiff has cancelled the power-of-attorney executed in his favour. In view necessary action against the defendant. He also refers to a suit filed by the defendant against the plaintiff.

On 1-9-1955, the contractor sent a lawyer's notice to the defendant stating that the defendant's house bearing Municipal No. 861, Narayana Sastry Road, Mysore, was repaired under instructions from his power-of-attorney holder M. S. Devaraj, that is, the plaintiff in this proceedings. He called upon the defendant to pay a sum of Rs. 4027/- and informs him that if the amount is not paid within a week, legal action will be taken against him for the recovery of the amount. The defendant sent a reply to this letter on 5th September 1955. In this letter, he denies many of the allegations made in Ex. P-15, and also states that the plaintiff and he are on inimical terms and that the entire expense incurred in connection with the repairs, has been paid to the plaintiff who had incurred expenses and that the defendant is not due to pay any amount to the contractor.

The plaintiff appears to have paid a sum of Rs. 4027/- on 20-9-1956 to the contractor, as seen from the receipt marked Ex. P-1(a). After this payment, the plaintiff issued a notice Ex. P-14 on 22nd December 1956 calling upon the defendant to pay a sum of Rs. 4027/- which he had paid on 20-9-1956 to the contractor. The plaintiff calls upon the defendant to pay the sum of Rs. 4027/- with interest by way of damages at 12 per cent per annum and also stating that failing compliance with this demand a suit would be instituted. The suit was filed by the

plaintiff on 14-6-1957.

2. The allegation in the plaint is that during the period of agency, the defendant wanted certain repairs, improvements and alterations to be effected to his house, and accordingly, the plaintiff, as the agent of the defendant, arranged for the work being done. On demand by the contractor, for the payment of a sum of Rs. 4027-3-0 due to him, the plaintiff paid the same on 20-9-1956. He pleaded that the Contractor was about to sue the plaintiff for the sum due, and, therefore, the plaintiff was obliged to pay for the contractor Rs. 4027/-. The plaintiff now claims that the defendant is now liable to pay the same to the plaintiff. Further, it is alleged that the defendant having benefited by the improvements to his property and having enjoyed the benefits accruing from the improvements thus effected, he is liable in law and equity to repay the amount to the plaintiff. In view of the fact that the defendant repudiated his liability and failed to pay the amount demanded, the plaintiff filed the suit for the recovery of the sum of Rs. 4027-3-0 together with interest and notice charges together aggregating to Rs. 4092-7-0.

The defendant repudiated the liability and stated that he is unaware of the work executed by the Contractor, referred to in the plaint. He denies that he ever consented or approved of the said work. He alleges that the claim of the plaintiff is exaggerated and that the work does not cost Rs. 5027-3-0, as alleged. Further, he pleaded that he has paid off the plaintiff whatever was demanded in this behalf. He confirms that the power of attorney executed on 12-2-1951 has been cancelled on 24-3-1955. He says that this cancellation was on account of the fact that he suspected the defendant (plaintiff?) to be dishonest. He further pleads that the plaintiff was not interested in the defendant and he was not liable to pay any amount to the contractor. Further, the defendant denied any such payment. He said that the doctrine of benefit is not applicable to this case. He also denied that the payment by the plaintiff to the contractor on 20-9-1956 would give rise to any cause of action and the suit founded on such cause of action is untenable.

3. The lower courts have found that the plaintiff was a power of attorney holder, and that the plaintiff was acting under the power of attorney executed by the plaintiff (defendant?) on 12-2-1951 as per Exhibit P-2 and it is as agent of the

defendant that the plaintiff entrusted the work in question to the contractor and paid him Rs. 1,000/-, it is also found by the lower courts that the work was got done by the plaintiff as agent of the defendant and its cost was Rs. 5027/-. The lower courts also held that the plaintiff paid a sum of Rs. 4027-3-0 to the contractor. The lower courts also held that the payment of Rs. 4027/- by the plaintiff to the contractor was on 20-9-1956, long after the cancellation of the power of attorney executed by the defendant in favour of the plaintiff. The trial court held that the payment made by the plaintiff to the contractor is not a voluntary payment and that it was a lawful payment non-gratuitous and that the plaintiff (defendant?) had enjoyed the benefit of such payment, and therefore, decreed the suit.

On appeal by the defendant, the appellate court confirmed the findings of fact, but held that the payment of Rs. 4027/- by the defendant (plaintiff ?) was not lawful but voluntary and the plaintiff cannot have the benefit of the provisions of Section 70 of the Contract Act. The learned District Judge found that the payment made by the plaintiff though it enures to the benefit of the defendant, is no more than an officious payment made only for the purpose of causing further trouble to the defendant rather than helping him in any manner. He, therefore, held that the plaintiff is was not obliged to pay off the contractor, and that the plaintiff is not entitled to seek the reimbursement of the amount paid by him on any ground as the payment is a voluntary payment for which the plaintiff was not liable to pay. In the result, the District Judge dismissed the plaintiff's suit with costs throughout. As against this judgment and decree, the plaintiff has come up in appeal to this Court.

4. Shri Mohandas Hegde, the learned counsel for the appellant, mainly relies on the provisions of Section 70 of the Contract Act. He submits that in view of the findings of fact as set out above, it cannot be disputed that the plaintiff's act in payment of the amount was not intended to be gratuitous. Further, the defendant has enjoyed the benefit of the repairs, improvements and alterations effected by the Contractor and, therefore, he is bound to make compensation in that regard. The plaintiff having paid the amount the liability of the defendant to the contractor has been discharged and to that extent, the defendant has had the benefit of such payment, and, therefore, the defendant is bound to compensate the plaintiff for the

amount paid by him to the Contractor.

In this connection, Shri Mohandas Hegde laid emphasis on the fact that the defendant had the benefit of the work done by the Contractor, and he had enjoyed such benefit. According to him, the cause of action would be the work done by the Contractor and the benefit which the defendant enjoyed thereby. A reference to plaintiff indicates that this is not the case put forward by the plaintiff. The plaintiff's case is that he paid the sum of Rs. 4027/- to avoid legal action, and the cause of action for the suit is said to have arisen on 20-9-1956, i.e., the date on which the plaintiff paid a sum of Rs. 4027/- to the Contractor. If the Contractor had filed a suit directly against the defendant it would have come strictly within the contract between the parties, inasmuch as, the work was done by the contractor in accordance with the contract entered into with him by the power of attorney holder of the defendant.

Now, the only question that arises is whether the payment by the plaintiff to the contractor on 20-9-1956 in discharge of an alleged liability of the defendant, would entitle the plaintiff to claim compensation from the defendant. The question, therefore, is, whether the admitted facts of this case would bring the case within the scope of section 70 of the Indian Contract Act. I may here mention that it is not the case of the appellant that the claim of the plaintiff comes within the scope of Section 69 of the Contract Act or that the provisions of Sections 230 and 233 of the said Act would apply to the facts of this case. So, the only question that arises is, what I have mentioned above, that is, the scope of Section 70 of the Act with reference to the facts of this case.

5. Section 70 of the Contract Act reads as follows:--

'Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. Illustrations (a), (b) & (c) * * * * *

This section has come up for interpretation in the decision of the Supreme Court reported in : AIR 1962 SC779 . Both the parties tried to rely upon this decision.

After quoting the provisions of Section 70, the Supreme Court observes as hereunder:

'It is plain that three conditions must be satisfied before this section can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The 2nd condition is that in doing the said thing delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When those conditions are satisfied S. 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered. In appreciating the scope and effect of the provisions of this section it would be useful to illustrate how this section would operate. If a person delivered something to another it would be open to the latter person to refuse to accept the thing or to return it; in that case Section 70 would not come into operation. Similarly, if a person does something for another it would be open to the latter person not to accept what has been done by the former; in that case again Section 70 would not apply. In other words the person said to be made liable under Section 70 always has the option not to accept the thing or to return it. It is only when he voluntarily accepts the thing or enjoys the work done that the liability under S. 70 arises.'

These observations clearly lay down that the person who gets the benefit must have the option to refuse to accept the benefit. It also implies that the benefit accepted must be voluntary. These tests have to be applied to the facts of this case and I shall examine this aspect a little later. In the latter part of the judgment, the Supreme Court observes as follows:--

'.....It is of course true that between the person claiming compensation and person against whom it is claimed some lawful relationship must subsist, for that is the implication of the use of the word 'lawfully' in S. 70; but the said lawful relationship arises to because the party claiming compensation has done something for the party against whom the compensation is claimed but because what has been done by the former has been accepted and enjoyed by the latter. It is only when the latter accepts and enjoys what is done by the former that a lawful

relationship arises between the two and it is the existence of the said lawful relationship which gives rise to the claim for compensation.....'

From this observation it follows that the lawful relationship is not what is precedent to the act done by the plaintiff, but the lawful relationship that arises after the act is done. The Supreme Court further observes:

'.....Therefore, in our opinion, all that the word 'lawfully' in the context indicates is that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of Section 70 gives rise to a claim for compensation.'

The object of Section 70 is also referred to in the judgment and it is stated that:

'.....Section 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them. Section 70 deals with cases where a person does a thing for another not intending to act gratuitously and the other enjoys it. It is thus clear that when a thing is delivered for done by one person it must be open to the other person to reject it. Therefore, the acceptance and enjoyment of the thing delivered or done which is the basis for the claim for compensation under S. 70 must be voluntary. It would thus be noticed that its requirement affords sufficient and effective safeguard against spurious claims based on unauthorised acts. If the act done by the respondent was unauthorised and spurious the appellant could have easily refused to accept the said act and then the respondent would not have been able to make a claim for compensation.'

They also refer to the observations of Chief Justice Jenkins which are as follows :

'The terms of S. 70', said Jenkins, C. J., 'are unquestionably wide, but applied with discretion they enable the courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations actually created by contract. It is, however, especially incumbent of final Courts of fact to be guarded and circumspect in their conclusions and not to countenance acts or payments

that are really officious.'

The facts of this case indicate that the contract for construction was entered into by plaintiff not in his personal capacity, but as agent of the defendant. The liability, if any, under the contract was against the defendant. If the Contractor had any claim, it could be only against the defendant. It is undisputed that the power of attorney was cancelled on 24-3-1955. The payment is made on 20-9-1956. This payment was made without any knowledge of the defendant. He had no option either to accept or reject it. Shri Mohandas Hegde the learned counsel for the appellant invited my attention to Ex. P-11, a reply issued by the defendant to the Contractor. The defendant in it states that the entire expenses incurred in connection with the repairs has been paid to Devoraj and this reply was of 5th September 1955. This document instead of being of any assistance to the plaintiff, supports the case of the defendant that there could have been no acceptance of any benefit by the defendant by the plaintiff's payment. The stand of the defendant is that the plaintiff has paid the contractor whatever was due to him from out of the defendant's monies and not that he had any benefit from the plaintiff's payment. Therefore, the payment alleged to have been made by the plaintiff to the Contractor would not be a lawful payment within the meaning of Section 70 of the Indian Contract Act. The payment under Section 70 should be by a person who has a lawful interest in making the payment at the time when the payment was made. In this connection, the respondent's counsel invites my attention to the decision of the Madras High Court in : AIR1950 Mad817 where it is stated that:

'Where a person divests himself (of) all his interests in the property and has ceased to have any interest in the same by reason of a valid transfer, he cannot be said to be within the relationship contemplated either by S. 69 or S. 70 Contract Act.'

In this case the relationship of principal and agent had come to an end. The plaintiff was not interested in any of the transactions of the defendant. Therefore, if the plaintiff in those circumstances made a payment, it would be voluntary and officious and cannot secure him the benefit of S. 70 of the Contract Act. This decision also lays down the proposition that in order to claim the benefit of S. 70, it

must be shown that the defendants had the opportunity of accepting or rejecting the benefit of the payment made by the plaintiff. The words in the section 'he enjoys such benefit' must be taken to mean that he does it as a result of his volition. As I have already stated, Exhibit P-11 indicated a denial of any benefit having been conferred on him by the payment. It is further contended by the respondent's counsel that the benefit contemplated in S. 70 must be a direct benefit. In support of this contention reliance is placed on the observations at page 432 of Pollock and Mulla on The Indian Contract Act, where it is stated that the benefit must be direct and not indirect. Reliance is also placed on a decision of the Privy Council reported in . In the instant case it cannot be said that the benefit is direct. As Sri Mohandas Hegde submitted the benefit accrues to the defendant by the improvements and addition or alterations effected by the contractor. The benefit accruing by the payment is only indirect, in view of the fact that the payment discharges the liability of the plaintiff (defendant?) which would arise on the basis of the benefit derived by him owing to the improvements, alteration or repairs effected by the contractor. For this reason also the claim of the plaintiff is not covered by the provisions of S. 70 of the Contract Act. It is not in every case in which a man is benefited by the money paid by another that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit, there must be an obligation express or implied to repay. It is well settled that there arises no obligation to the case of a voluntary payment by one person of another's debt. Applying this principle which has been enunciated in , it appears to me that the present case is one where the plaintiff has discharged the obligation of the defendant. This by itself would not create a legal obligation against the defendant to repay the plaintiff. In this connection I may refer to page 572 of Anson's Law of Contract wherein an apt illustration is given--viz.,

'So, for example, if A pays the premiums of B on insurance policy in order to prevent the policy from lapsing, he cannot recover the money from B.'

In this case, if the plaintiff has paid the money to the contractor to discharge the obligation of the defendant, that by itself would not create a liability on the defendant to pay the plaintiff. Further, even if the plaintiff had paid the contractor in

order to avoid the possibility of a claim being made by the contractor against him, even then, it would not give rise to a claim against the defendant; in this particular case such a contingency does not arise. It is clear from the documents that I have referred to that the plaintiff had entered into a contract with the contractor for an on behalf of the principal, i.e. the defendant. Knowing this well, if the contractor had chosen to initiate any legal action against the plaintiff, he could not have sustained such action in view of the plaintiff's stand. Therefore, there is no basis for the apprehension referred to in the plaint. As mentioned already, the payment is made long after the cancellation of the power of attorney by which whatever interest the plaintiff, had in the defendant's transactions, had come to an end. Therefore, Sri Mohandas Hegde, the learned counsel for the appellant, tries to sustain the case of the plaintiff on the basis of a decision in AIR 1943 Mad 85. This was a case where the tank in question was owned jointly by the Government and also the shrotriamdars. The tank being in need of repairs, the Collector caused an estimate to be prepared and also got the tank repaired. The shrotriamdars were asked to contribute their proportionate shares payable by them. The shrotriamdars did not object to the estimate or to the work being carried out, but they objected to making any contribution to the cost of the repairs. The fact that they had the benefit of enjoying the result of the repairs got effected by the Government was undoubted and the Government and the shrotriamdars being jointly interested it was held that the shrotriamdars were liable to contribute to the cost of the work which the Government had carried out. The facts of the present case stand on a different footing. The case referred to in AIR 1943 Mad 85 and the other cases referred to therein are cases where there are joint interests between those that incur the expenses and the persons who are sought to be made liable. Such cases do not have any bearing on the plaintiff's case before me.

6. So, in view of the legal position discussed above, and the facts of this case I confirm the findings of the learned District Judge and the payment made by the plaintiff was voluntary and does not secure him the benefit of the provisions of Section 70 of the Indian Contract Act. The appeal is, therefore, dismissed and in the circumstances of the case I direct each party to bear his own costs.

7. Appeal dismissed

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