

Smith Vs. Dinonath Mookerjee and ors.

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Court : Kolkata

Decided On : Sep-02-1885

Reported in : (1885)ILR12Cal213

Judge : Mitter and; Macpherson, JJ.

Appellant : Smith

Respondent : Dinonath Mookerjee and ors.

Judgement :

Mitter and Macpherson, JJ.

1. The (plaintiff): appellant seeks to recover from the (defendants) respondents the sum of Rs. 1,035-4-3 under the following circumstances:

The appellant is the putnidar of certain mouzahs appertaining to a share of Taruff Shyampur, in respect of which the respondents, the owners thereof, have caused a separate account to be opened for the payment of the Government revenue either under s, 10 or Section 11 of Act XI of 1859. The whole of this revenue or a portion thereof not having been paid for several years past by the respondents, and the appellant having paid the same, the present suit was brought for the recovery of the amount so paid with interest.

2. The lower Courts have held that the appellants are not entitled to recover, taking the facts set forth above to be correct.

3. The Subordinate Judge who has decided this case in the Original Court was of opinion that the appellant was not interested in the payments which he made, because, if the share of the respondents' zamindari had been sold in consequence of their default, his putni right would not have been affected under the provisions of Section 54 of the Sale Law. Neither was the appellant entitled to recover, because in the opinion of the Subordinate Judge the appellant 'did nothing for the defendants' who are not shown to 'have been benefited by these payments.' He accordingly dismissed the suit, being of opinion that the present case did not fall under either Section 69 or Section 70 of the Indian Contract Act.

4. On appeal, the District Judge has taken the same view as the Subordinate Judge regarding the applicability of Sections 69 and 70 of the Indian Contract Act to the present case, and has further held that the claim did not fall within the purview of Section 9 of the Sale Law, upon which it seems the appellant also relied before him.

5. We are of opinion that the decision of the lower Courts is erroneous. It is clear that the respondents were bound, to pay the revenue which the appellant has paid. It seems to us that he was interested in its payment. It is true that if the 'separated' share had been sold under Section 13 of the Sale Law for the arrears of revenue due upon it, the appellant's putni rights would not have been affected by that sale. But if the entire estate had been, put up to sale under Section 14, the appellant's putni would have been avoided by such sale. Therefore, although in consequence of the respondents' non-payment of the revenue the risk to the appellant's putni was somewhat remote, still it cannot be denied that he had some interest in paying it. It has been said that if payments made under the circumstances of the present case are recoverable under Section 69, mischievous consequences would follow; because, as soon as a tenant committed a default in the payment of his rent, any under-tenant of his would be competent to drag him into Court by making the payment himself. But Section 69 only applies to payments made bond fide for the protection of one's own interest. A person may

be interested in the payment, but in making the payment if he is not actuated by the motive of protecting his own interest, he cannot recover under Section 69. See *Desai Himatsingji Joravarsingi v. Bhavabhai Kayabhai* I.L.R. 4 Bom. 643 cf. p. 652.

6. If this construction of Section 69 be correct, the mischievous result apprehended would not arise. Men do not readily pay another's debts, and if an under tenant under the circumstances mentioned above, believing that it is his interest to liquidate the arrears of the rent of his superior tenant does make the payment, we do not see any real hardship to the latter in being called upon by the former to reimburse him. The present case, therefore, in our opinion falls under Section 69 of the Indian Contract Act.

7. We are also of opinion that the lower Courts are in error in coming to the conclusion that the provisions of Section 70 of the Indian Contract Act and Section 9 of the Sale Law are not applicable to the facts of the present case. It has been contended before us on behalf of the respondents that the word 'does' in Section 70 of the Indian Contract Act does not include payment of money. This contention is negated by the decision of the Bombay High Court already cited, and is contrary to the view expressed by the Allahabad High Court in *Nath Prasad v. Baij Nath* I.L.R. 3 All. 66 and by a Division Bench of this Court in *Nobin Krishna Bose v. Mon Mohun Bose* I.L.R. 7 Cal. 573.

8. This contention is chiefly based upon the argument that if the word 'does' in Section 70 did include payment of money, Section 69 would be wholly unnecessary. But this would not be so, because there may be cases in which a person who is bound to pay a certain sum of money would not be necessarily benefited by its payment by another. Such a case would not fall under Section 70 but under Section 69. The Subordinate Judge says that it has not been shown that the respondents have been benefited by the payments made by the appellant. But a person who enjoys the profits of a property burdened with the payment of certain taxes is surely benefited by one who pays those taxes for him.

9. The present claim is equally sustainable under the provisions of Section 9 of the Sale Law. Under this section if the appellant 'believed in good faith' that his

interest would be endangered by the sale of this zamindari, he would be entitled to recover.

10. But it has been said that this case does not come under the section in question, because the money was not paid as a deposit, but in liquidation of the arrears of revenue, and was at once credited in payment thereof. But this circumstance, in our opinion, does not render the provisions of this section inapplicable. The liability of the landlord under this section does not depend upon this, viz., whether the money was originally deposited or not, but accrues upon its being credited in payment of the arrear. This is quite clear, because the person making the deposit is not entitled to recover until the money deposited has been credited in payment of the arrear. The provision relating to the deposit has been made for the convenience of the depositor in order to enable him to obtain refund of the money easily if before the 'sunset' day the arrears are paid by the zamindar, and has no bearing, upon the question of his liability to reimburse the person making the payment for his benefit. This liability arises, as already remarked, upon the money being credited in payment of the arrear. This was done in the present case, and we are therefore of opinion that the appellant's contention, based upon Section 9 of the Sale Law, is equally sound.

11. We set aside the decision of the lower Courts and remand the case to the Subordinate Judge to decide it upon the other issue arising in it. The costs to follow the result.