

Abdul Aziz and ors. Vs. Rahimullah and ors.

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Court : Kolkata

Decided On : Feb-14-1934

Reported in : AIR1934Cal667,152Ind.Cas.167

Appellant : Abdul Aziz and ors.

Respondent : Rahimullah and ors.

Judgement :

Mallik, J.

1. This Rule is directed against an order made by the Subordinate Judge, Second Court, Chittagong, exercising Small Cause Court powers whereby the petitioners' suit for contribution was dismissed. The facts on which the petitioners brought the suit were briefly these: The petitioners had a raiyati holding at a fixed rate in a tenure of the principal defendants. In execution of a rent decree obtained by the superior landlord against the principal defendants the tenure was put up to sale and was sold. The petitioners who as stated before had a raiyati holding at a fixed rate in the tenure deposited the decretal money plus 5 per cent of that amount and thereby had the sale set aside. On these facts the plaintiffs instituted a suit for contribution against the principal defendants, namely, the tenure holders, and it was the dismissal of that suit that has given rise to the present Rule.

2. The ground on which the learned Judge dismissed the plaintiff's claim was that the payment made by the petitioners was a voluntary one and that being so,

according to the learned Judge the petitioners were not entitled to have any decree in the case. The finding of the learned Judge is, in my opinion, an erroneous one. There is, in my judgment, no getting over of the provisions of Section 70, Contract Act, in the present case. There cannot be any doubt and indeed it has been found by the learned Judge that by the payment made by the petitioners the principal defendants were benefited. On behalf of the opposite party it was urged that the petitioners had no lawful interest in making the payment and in support of this contention reliance was placed on the decision of this Court in the case of Gopesivar Banerji v. Brojo Sundari Debt AIR 1922 Cal 353. The Calcutta case Gopeswar Banerji v. Brojo Sundari Debi AIR 1922 Cal 353 is in my judgment clearly distinguishable. In that case the payment had been made by a reversioner and as I understand the judgment in that case the reversioner was held not to have a lawful interest in making the payment for the reason that the interest which he had was only 1. AIR 1922 Cal 353 an expectant interest, interest which the reversioner may never have been able to realise. The interest which the petitioners in the present case had was certainly not an interest of that kind. Their interest was an existing interest and when in addition to that it is remembered that the payment made by the petitioners was an act done with the approval of the Court I am of opinion that the petitioners in the present case had a lawful interest in making the payment.

3. I would therefore make the Rule absolute with costs: hearing fee one gold mohur. The order of dismissal made by the lower Court will be set aside and the petitioners will get a decree for the decretal amount plus 5 per cent, of that amount against the principal defendants. The liability of each of the principal defendants will be in accordance with their respective share in the taluk in question which I am told by the learned Advocates on both sides can be ascertained from the Record of Rights.