

Harendra Lal Roy Vs. Bindubashini Dassi and ors.

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Court : Kolkata

Decided On : Nov-26-1897

Reported in : (1898)ILR25Cal305

Judge : Francis William Maclean, ;Knight, C.J. and ;Banerjee, JJ.

Appellant : Harendra Lal Roy

Respondent : Bindubashini Dassi and ors.

Judgement :

Maclean, C.J.

1. The question we have to decide upon this appeal is whether the plaintiff in this suit is entitled to recover a sum of Rs. 383 odd under the following circumstances. The plaintiff was the mortgagee of a putni tenure; the defendants were the mortgagors. On the 13th August 1888, the mortgagee having instituted a suit to enforce his mortgage security, a consent decree was made. The decree was for Rs. 35,000, but it went on to provide that, if that sum were not paid within a certain date which was mentioned in the solenamah which was embodied, in the decree, the amount was to be increased to Rs. 52,000, which the defendants were to be held liable to pay. On the 14th March 1891 the plaintiff applied for execution of that decree upon the footing that the smaller amount had admittedly not been paid within the stipulated period, and consequently that the larger amount was due to the plaintiff.

2. The Subordinate Judge of Backergunge, who heard that application, made an order on the 14th March 1891, disallowing the defendant's objections, and in effect allowing the present plaintiff's claim. That order was appealed from, and, on the 31st September 1891, the High Court reversed that order and directed an inquiry as to the circumstances under which, as it was alleged, the plaintiff had prevented or obstructed the sale of certain property, and an inquiry as to the conduct of the plaintiff in the matter.

3. On the 31st August 1892 the Subordinate Judge held that the plaintiff had been guilty of misconduct and that the decree had been fully satisfied.

4. The present plaintiff appealed from that order to the High Court, and on the 4th January 1894 it was heard by t(sic) is Court and dismissed. I understand from what has been said at the bar that that order is now under appeal to Her Majesty in Council.

5. In the meantime, on the 13th May, 1892, the plaintiff had paid a sum of Rs. 318 odd to prevent the sale by the superior landlord of the putni interest which was included in his mortgage. That payment was made on the very day fixed for the sale; and it had the effect of stopping the sale. Admittedly the defendants were not in a position to make the payment, and if it had not been made, the sale would have gone on. If the auction sale had not been stayed the plaintiff, assuming he were entitled to the larger of the above sums, in other words that his contention was correct, would have lost the benefit of his security for the balance due to him, and the defendants their interest in the equity of redemption. The payment was for the benefit of the defendants. But it is contended that, inasmuch as the effect of the judgment of the High Court on the 4th January 1894 was that the plaintiff must be taken to have been paid in June 1891 all he was entitled to, he had no interest whatever in the payment of this money; that it was a voluntary payment, and therefore the defendants cannot be required to repay it. This does not appear to me to be a very equitable contention, when the result of the payment was to benefit the defendants by saving their equity of redemption from being sold. It has not been suggested in argument before us that at that time the equity of redemption was of no value, or that it was not for the benefit of the defendants that

the sale should be stopped. Can it be said that at the time the payment was made, the plaintiff was not interested in the payment of the money The position was this: The Subordinate Judge in the first instant had decided in his favour. When the payment was made, no doubt an inquiry had been directed by the High Court by their order of the 31st September 1891, which inquiry was still pending. But the litigation was going on, the plaintiff was contending that he was entitled to the larger sum owing to the default of the defendants, and until the point which was then sub judice was decided, it can scarcely be said that he was not interested in the payment of this money. The point at issue was whether the plaintiff was entitled to the larger or to the smaller sum. If entitled only to the smaller sum, it is not contested that he has been paid off in June 1891. I am not prepared to hold that because after he had paid the money the judgment of the Court was against him he was not interested in the payment at the time he made it. I think he was interested in the payment of this money within the meaning of Section 69 of the Indian Contract Act. If the decision had been, as yet possibly it may be, in his favour, the effect of the payment was to preserve his security. This view appears to me consistent with the law as laid down by the Privy Council in the case of *Dakhina Mohan Roy v, Saroda Mohan Roy*, (1893) I.L.R. 21 Cal. 142, and also consistent with the case of *Nobin Krishna Bose v. Mon Mohun Bose* (1881) I.L.R. 7 Cal. 573.

6. On these grounds I am of opinion that the view taken by the learned Judge in the Court below was correct, and this appeal must be dismissed with costs.

Banerjee, J.

7. I am of the same opinion. The question raised in this appeal is shortly this, namely, whether the plaintiff who was the mortgagee of a putni tenure belonging to the defendants, and who had paid a certain sum of money to save the putni tenure from sale under Regulation VIII of 1819, and to protect the interest he was then claiming as mortgagee, can recover that sum from the defendants, notwithstanding that it has since been found by the Court that the mortgage debt had been satisfied before the date of the payment.

8. Having regard to the facts of the case, I think this question ought to be answered in the affirmative. The provision of the law that governs this case in my opinion is Section 69 of the Contract Act which says: 'A person who is interested in the payment of money which another is bound by law to pay, and who, therefore, pays it, is entitled to be re-imbursed by the other.'

9. There can be no question that the defendants were bound to pay the putni rent. In fact if they had not paid that money, the putni tenure would have been sold and lost to them. The only point that is disputed before us is, whether the plaintiff can be said to have been, at the time of the sale, a person interested in the payment of the putni rent. It is argued that as upon the finding of the Court ultimately arrived at in the proceedings in execution of the mortgage decree which were then pending, it appears that the mortgage debt had been satisfied before the date of the payment by the plaintiff, we must take it that he was not interested in the payment of the money. Now, the circumstances under which the Court ultimately came to the finding that the mortgage debt had been satisfied were of a somewhat peculiar nature. The compromise decree upon the mortgage bond provided that if a certain sum was paid within a certain time, the decree would be satisfied; but if that amount was not paid within that time, a larger amount would be recoverable by the mortgagee. As a matter of fact the smaller amount was not actually paid within the stipulated time; but what was found was this, that by reason of the acts and conduct of the mortgagee, decree-holder, either in not helping the mortgagor, judgment-debtor, or in actively opposing him, in selling the mortgaged property with a view to realize money for the payment of the mortgage debt, the decree-holder had become disentitled to recover the larger amount; and it was by reason of this decision, arrived at some time after the payment now in question, that the learned Vakil for the appellants contends we must hold that the mortgagee, plaintiff, was not interested in the payment of the money at the time when he paid it. I am not prepared to say that this contention is sound.

10. If the case had rested upon the determination of the simple question of Act as to whether the amount had or had not been paid within the stipulated time, the case might have stood on a different footing; but here, if we were to hold that the mortgagee was not interested in the payment of the money, because it was

eventually found that the debt had been satisfied before the date of such payment, we must not only hold that the mortgagee knew the facts that led to the adverse decision in the proceedings in execution of the mortgage decree, but we must further hold that he was bound to anticipate the conclusion of the Court upon a mixed question of law and fact that was ultimately arrived at. I do not think that that would be a right view to take of the matter. It is clear that there was a disputable question awaiting the determination of the Court with reference to the rights of the mortgagee; and, so long as that question remained undetermined, it cannot be said that the mortgagee was not interested in the payment of the money which was necessary to be paid to protect the interest which he was claiming as mortgagee.

11. The view I take is amply supported by the decision of this Court in the case of *Nobm Krishna Bose v. Mon Mohun Bose* (1881) I.L.R. 7 Cal. 573 and by the decision of the Privy Council in the case of *Dakhina Mohan Roy v. Saroda Mohan Roy* (1893) I.L.R. 21 Gal. 142. Some reliance was placed upon the case of *Ramtuhul Singh v. Biseswar Lal Sahoo* (1875) 15 B. L. R. 208: L. R., 2 I. A., 131: 23 W. R., 305, as shewing that the mere fact of a payment going to benefit the defendant would not be sufficient to entitle the party making the payment to recover it from the defendant. The facts of that case were very peculiar, and very different from those of this case. Here the defendants not only had the benefit of the payment made, but they would, as a matter of fact, have lost their property were it not for that payment.

12. That being so, I think upon the provisions of Section 69 of the Contract Act, as well as on general principles of justice, equity and good conscience the decree made in favour of the plaintiff is right and ought to be affirmed with costs.