

Serafat Ali Vs. Issar Ali

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Court : Kolkata

Decided On : May-22-1917

Reported in : 42Ind.Cas.30

Judge : Asutosh Mookerjee and ;Walmsley, JJ.

Appellant : Serafat Ali

Respondent : issar Ali

Judgement :

1. This is an appeal by the plaintiff in a suit for contribution. The facts material for the determination of the question of law raised before us, stripped of superfluous details, may be briefly stated. X, a mortgagee, sued A, B and C as representatives-in-interest of his mortgagor, and obtained a decree. The decree was by consent as to two of these persons and was ex parte as regards the other. A thereafter satisfied the judgment-debtor in full. A: now sues to recover two-thirds of the money paid by him from B and C, B and C deny that A had any interest in the mortgaged property and urge that the payment made by A must consequently be deemed voluntary. The Court of first instance, upon the evidence, came to the conclusion that A had an interest in the mortgaged property and was entitled to maintain the suit for contribution against B and C. Upon appeal the Subordinate Judge has held that A had no interest in the property, and in this view, he has dismissed the suit. The result is that though the decree for the sale of the mortgaged properties has been satisfied with the money of A, though B and C

have reaped the benefit of that payment, they escape all liability. The question arises, whether this position is supported by legal principle.

2. Section 69 of the Indian Contract Act provides that 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 reimbursed by the other. There has been some divergence of judicial opinion [Mothooranath Chuttopadhyaya. Kristo Kumar Ghose 4 C. 369: 2 Ind. Dec. (N. S.) 234. Futteh Ali v. Gunganath Roy 8 C. 113: 10 C. L. R. 20: 4 Ind. Dec. (n. s.) 72., Nawab Mir Kamaludin Husen-khan v. Partap Mota 6 B. 214: 6 Ind. Jur. 421: 3 Ind. Dec. (n. s.) 620., Swarnamoyee Debi v. Hari Das Roy 6 C. W. N. 903., Manindra Chandra Nandy v. Jamahir Kumari 32 C. 643: 9 C. W. N. 670.,Jinnat Ali v. Fateh Ali 9 Ind. Cas. 219: 13 C. L. J. 646: 15 C. W. N. 332. upon the question whether this section is applicable to suits for contribution properly so called, that is, suits where the plaintiff admits his liability to pay a portion of the money actually paid by him and claims to recover the balance from the defendant [Motichand v. Bajrang Sahai 17 Ind. Cas. 45: 16 C. L. J. 148., Jog Narain Singh v. Badri Das 12 Ind. Cas. 144: 16 C. L. J. 156., Satya Bhushan Bandopadhyaya v. Krishnakali Bandopadhyaya 24 Ind. Cas. 259: 20 C. L. J. 196: 18 C. W. N. 1308. Rajani Kanta Ghose v. Rama Nath Roy 27 Ind. Cas. 56: 20 C. L. J. 200: 19 C. W. N. 458.], But whether the section is or is not applicable to suits for contribution, it has never been disputed that it applies to suits where the plaintiff is, upon the facts found, entitled to recover the whole sum from the defendant on the ground that the same was in law payable by the latter. In the case before us, it has been found that the plaintiffs had no interest in the mortgaged properties, and was, indeed, the contention of the defendants. In this view, the plaintiffs would be entitled, if Section 69 applies, to recover the whole sum from the defendants. They have, however, claimed to recover only a portion of that amount. There can be no serious doubt that the money paid by the plaintiffs was money which the defendants were bound by law to pay. The only question in controversy is, whether the plaintiffs were persons interested in the payment of that money.

3. The true meaning of the expression 'interested in the payment of money' has formed the subject of judicial discussion in recent years, and in the case of Pankhabati Chaudhurani v. Nonihal Singh 21 Ind. Cas. 207: 19 C. L. J. 72: 18 C.

W. N. 778. it was ruled that the words 'interested in the payment of money which another is bound by law to pay,' were comprehensive enough to include the cases of persons who were under apprehension of any kind of loss or inconvenience and were not restricted to cases of individuals who were sure to suffer actual detriment capable of assessment in money. On this principle it was ruled in the cases of Bindubashini Dassi v. Harendra Lal Ray 25 C. 305: 3 C. W. N. 150: 13 Ind. Dec. (N. S.) 205. and Radha Madhub Samonta v. Sasti Bam Sen 26 C. 826: 13 Ind. Dec. (N. S.) 1129. that where payment is made by a person who puts forward a bona fide claim to the property in dispute, he is entitled to the protection afforded by Section 69 of the Indian Contract Act, even though it ultimately transpires, as a result of litigation, that he had not, in fact or in law, the interest for the protection whereof the payment was made. In the case before us, the plaintiffs were joined as parties to the mortgage suit by the mortgagee, on the allegation that they were some of the legal representatives of the deceased mortgagor. A decree was made against the property to the equity of redemption wherein they claimed an interest. In the present suit, the Court of first instance, upon the facts, came to the conclusion that they had an interest in the equity of redemption. The Court of Appeal below has, however, come to a different finding upon the evidence. In these circumstances, it is impossible to maintain the view that plaintiffs were persons in no way interested in the payment of the money which went to satisfy the decree. That decree bound the mortgaged properties wherein the defendants in the present litigation are undoubtedly interested; and the plaintiffs also bona fide claimed an equal interest. This case is consequently clearly distinguishable from Desai Himatsingji Joravarsingji v. Bharabhai Kayabhai 4 B. 643 at p. 653: 2 Ind. Dec. (N. S.) 935. mentioned in the judgment of this Court in Jinnat Ali v. Fateh Ali (6). It cannot be reasonably maintained, by any stretch of language, that the payment was made by the plaintiffs with a view to manufacture evidence of title to the mortgaged properties when they knew that they had no claim whatsoever.

4. It is also fairly clear that even if Section 69 were not applicable, the case would be covered by Section 70. That section provides that 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. There is no controversy that the payment was made by the plaintiffs without intention to do so gratuitously. The only question is whether this was done lawfully. Much reliance has been placed by the respondents on the cases of *Raja Baikunto Nath Bey Bahadur v. Udoy Chand Maiti* 2 C. L. J. 311. and *Panchkori Ghosh v. Hari Das Jati* 34 Ind. Cas 341: 25 C. L. J. 325: 21 C. W. N. 394. We do not in any way depart from the exposition of the law contained in these cases, which is perfectly consistent with the view we now take, namely, that a payment in satisfaction of a decree, by a person who is a party to the decree and is bound thereby, is a payment made lawfully within the meaning of Section 70.

5. We hold accordingly that whether Section 69 or Section 70 be applied, the plaintiffs are bound to succeed. In these circumstances, it is not necessary for us to consider whether the plaintiffs might not have successfully invoked the aid of the doctrine of subrogation [*Parbhu Narain Singh v. Bern, Singh* 5 Ind. Cas. 779: 14 C. W. N. 361., *Dhakeswar Prosad Singh v. Harihar Prosad Narain Singh* 27 Ind. Cas. 780: 21 C. L. J. 104., *Adusumalli Suryanarayana v. Vallurapalli Sriramulu* 20 Ind Cas. 825: 25 M. L. J. 16.], to support the line of reasoning that the plaintiffs are some of the joint judgment-debtors, that they have satisfied the mortgage-decree whereby they are bound, along with' the defendants, and that they have accordingly been subrogated to the rights of the mortgagee decree-holder.

6. The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and that of the Court of first instance restored. This order will carry costs both here and in the lower Appellate Court.