

(1958) 03 AP CK 0023

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 70 of 1956

Akella Suryanarayanamurty

APPELLANT

Vs

Akella Ayappa Sastry

RESPONDENT

Date of Decision : 11-03-1958

Acts Referred:

Contract Act, 1872 — Section 70

Citation : AIR 1960 AP 146

Hon'ble Judges : Basi Reddy, J

Bench : Single Bench

Advocate : J.V. Suryanarayana and Y. Suryanarayana, for the Appellant; B.V. Subrahmanyam and V.V. Krishnamurti, for the Respondent

Final Decision : Dismissed

Judgement

Basi Reddy, J.—The short question that arises in this Revision Petition is whether Section 70 of the Indian Contract Act is applicable to the facts of this case. The plaintiff is the petitioner and his son, the defendant, is the respondent. By a "Kararnama" (Ex. A-15) dated 14-3-1948 father and son effected a partition of their properties and as part of the arrangement the father agreed to transfer to the son 50 shares in the Godavari Sugars and Refineries Ltd., of the value of Rs. 5,000/-.

The shares stood in the name of the father, and half the value of the shares had been paid up and the other half remained unpaid. It was agreed that the necessary steps for the transfer of the shares had to be taken by the father while the necessary expenses had to be borne by the son. However, for a period of four years, for one reason or another, the transfer was not effected and the shares continued to stand in the name of the father.

2. The Godavari Sugars and Refineries Ltd. went into liquidation in 1952, and the Liquidator called upon the father to pay up Rs. 2,500/- being the balance of the share amount, failing which a suit would be filed to recover the amount from

him. The father filed an application (Application No. 4392 of 1953 in O. P. No. 112 of 1952) before the High Court of Madras to have his name removed from the register of share-holders and to substitute the name of his son, who was made a respondent in the application.

It was also stated in the application that it was through the default of the son that the registration of the transfer had not been effected. Ramaswami Gounder J., who heard the application, agreed to a suggestion made on behalf of the father that he would pay one half of the amount due namely, Rs. 1250/-, and the learned Judge, considering the offer to be reasonable in the circumstances of the case, directed that on payment of Rs. 1250/- by the father, his name should be removed from the register of share-holders and that of his son be substituted.

The amount was accordingly paid by the father. It is this amount that the petitioner sought to recover from the respondent in Small Cause Suit No. 3 of 1955 in the Court of the Subordinate Judge, Amalapuram.

3. The learned Subordinate Judge dismissed the suit, holding that the plaintiff had not lawfully made the payment on behalf of the defendant and the latter had not derived any benefit out of it. The learned Judge found on the contrary that the plaintiff had made the payment in his own interest with a view to escape paying a larger amount, and

"when the Company was in liquidation, it is idle to contend that the defendant had derived any benefit out of such payment. Indeed, it is only the plaintiff who has derived benefit from his payment."

In that view the learned Judge held that the plaintiff could not invoke the aid of Section 70 of the Contract Act.

4. It is contended by the learned advocate for the petitioner that the benefit derived by the respondent lay in this, namely, that had the petitioner not paid the amount, the respondent would have had to pay that amount if the shares had been transferred to him in pursuance of the "Kararnama". The benefit was negative in character but it was nonetheless a benefit which accrued to the respondent. This argument appears to me to be farfetched.

5. Section 70 provides "inter alia" that where a person lawfully does anything for another person, 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 the thing so done. Thus the section postulates three conditions ; (1) the thing must be done lawfully for another person; (2) it must be done by a person not intending to act gratuitously; and (3) the person for whom the act is done must enjoy the benefit of it.

6. In the present case the crucial questions are; (1) Did the petitioner pay the money for the respondent? and (2) Did the respondent enjoy the benefit of such payment? The answers to both these questions are plainly in the negative. At the time the payment was made, the respondent was under no obligation to pay the

balance of the share amount. The liquidator could not have called upon him to pay up the amount as the shares did not stand in his name in the company's register.

Further, as the company had been wound up and the value of the shares was nil, the respondent did not enjoy any benefit. That being the position, section 70 of the Contract Act cannot be pressed into service to fasten the liability on the respondent.

7. Learned advocate for the petitioner has relied on a judgment of the Lahore High Court in *Secretary of State v. Sobha Ram* AIR 1929 Lah 737. In that case one Sobha Ram had obtained a priority certificate from the Executive Engineer for some waggons of coal as he was unable to get coal for supply of bricks to Government. Sobha Ram sent an order for coal and made the consignor enter in the railway receipt the name of the Executive Engineer as the consignee. According to the terms of the agreement for obtaining priority certificate, Sobha Ram was liable to pay freight on the coal. He took delivery of the wagons of coal but did not pay the freight.

The Railway Company recovered the freight from the Secretary of State, and the latter brought a suit against Sobha Ram for the amount of the freight. On these facts it was held that the Secretary of State could be said to have lawfully paid the money for Sobha Ram, and as Sobha Ram had enjoyed the benefit thereof, and the Secretary of State did not intend to pay the money gratuitously, Section 70 of the Contract Act covered the case and Sobha Ram was liable to pay the amount of freight. It may be mentioned that the High Court gave a categorical finding that Sobha Ram, did enjoy the benefit of the payment made by the Secretary of State.

8. In this case, as already stated, the respondent did not enjoy any benefit whatever by reason of the payment made by the petitioner to the liquidator. Far from conferring a benefit on the respondent, the petitioner succeeded in getting rid of a burden. I therefore agree with the lower Court that the petitioner is not entitled to compensation from the respondent under the provisions of Section 70 of the Contract Act. The Revision Petition is accordingly dismissed but, in the circumstances, with out costs.