
(1912) 06 CAL CK 0074
In the Calcutta High Court

Batuk Nath Mandal

APPELLANT

Vs

Bepin Bihari Chaudhuri

RESPONDENT

Date of Decision : 14-06-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102
Contract Act, 1872 — Section 69

Citation : 17 Ind. Cas. 90

Hon'ble Judges : Stephen, J;Richardson, J

Bench : Division Bench

Judgement

Stephen, J.—The plaintiffs and others including the defendant No. 1 were co-sharers in a certain putni tenure, the share of the plaintiff being three-sevenths of the whole and that of the defendant No. 1 two-sevenths. It appears, however, that the name of the defendant No. 1 was alone recorded in the landlord's books as the holder of the tenure. The tenure, therefore, so far as the landlord was concerned, was represented by that defendant. In that state of things in the year 1307, the latter sold his share of the tenure to a stranger who is not a party to the suit, and the case has been argued on the footing that the share passed to the vendee with effect from the beginning of the year 1308. Subsequently, the landlord brought a suit for recovery of arrears of rent of the tenure in respect of the years 1307 and 1308, and no steps having been taken for the rectification of the landlord's books in which the name of the defendant No. 1 still stood as the holder of the tenure, the suit was brought and a decree was obtained against him alone. In execution of the decree, the tenure was sold by auction but the sale was set aside under the provisions of Section 310A of the Code of 1882 upon the plaintiff depositing in Court the sum of Rs. 383-8-6 consisting of the amount (Rs. 358-8-6) due under the decree and the amount (Rs. 25) due as statutory compensation to the auction-purchaser. The plaintiff's claim in the present suit relates to the sum so deposited and may be stated as follows. Deducting three-sevenths of the whole as payable in respect of his own share of the putni, he seeks to recover two-sevenths from the defendant No. 1, liability

for the balance being assigned in the plaint to other share-holders who have since paid what was due from them and with whom in this appeal we are not concerned. The defendant No. 1 by his written statement denied all liability on the ground that he had parted with his share of the tenure. The first Court found in the plaintiff's favour and gave him a decree for the whole amount of his claim against the defendant No. 1. On an appeal preferred by the latter, the Subordinate Judge in the Court below held that he was liable only in respect of so much of the claim as could be attributed to default in the payment of rent due for the year 1307 and that no liability rested upon him in respect of the year 1308. The Subordinate Judge accordingly modified the decree of the first Court and reduced the amount recoverable by the plaintiff thereunder by one-half. The plaintiff has appealed to this Court on the ground that no such reduction should have been made.

2. Two questions have been urged before us. The first arises upon a preliminary objection taken on the respondent's behalf to the admissibility of the appeal. It is contended that, inasmuch as at the date of the institution of the suit, the respondent had no interest in the tenure, the suit falls outside the scope of Article 41 of the second Schedule of the Provincial Small Cause Courts Act and being, therefore, a suit of the nature cognizable by a Court of Small Causes, no second appeal lies (section 102, Civil Procedure Code). The second question is as to the liability of the respondent in respect of the year 1308. He no longer disputes his liability in respect of the year 1307.

3. Before dealing with those questions, it will be convenient to indicate the nature of respondent's position in the suit brought by the landlord.

4. As regards the year 1308, the appellant's claim against the respondent is based upon the fact that the decree obtained by the landlord was made against the respondent alone. Now it may be--and for the present purpose it must be assumed--that the landlord was entitled to sue the respondent alone. But it must be admitted that as between himself and the other share-holders in the tenure, during the period to which the landlord's suit related, the respondent occupied the position of defendant in that suit in a representative capacity. He represented the share-holders for the time being. As regards the year 1307, he represented himself and others. As regards the year 1308, he had then ceased to have any interest in the tenure, and under the cloak of his name the real defendants were his vendee, the appellant and others.

4. The fact then that as between himself and the other co-sharers for the time being, the respondent as defendant in the landlord's suit filled a representative capacity has to be borne in mind in dealing with the questions which were argued before us.

5. The first of these questions is decided by the frame of the suit as disclosed in the pleadings. From this, there can be no doubt that the plaintiff's claim was based on the assertion that he was a co-sharer with the defendant. The plaintiff

has, indeed, sued on the assumption that defendant No. 1 was a co-sharer in 1308, an assumption which is incorrect in fact, and the purchaser is not included in the suit as, perhaps, he might have been: but this cannot alter the nature of the suit as it stands. The case of *Krishno Kamini v. Gopi Mohun* 15 C. 652 cited by the respondent, has no bearing on the present case, as it was not a suit for contribution between co-sharers, and was decided with reference not to Article 41 of the second Schedule to Small Cause Courts Act, but to an earlier enactment. As regards the second question, the case is not so clear. In the suit brought by the landlord, the present respondent alone was sued because he was the registered tenant. In so far as other persons, including his own vendee in 1308, were interested in the property in respect of which he was sued, he was, therefore, as between him and them their representative, and whether he was a co-sharer as was the case in 1307 or was not, as was the case in 1308, his position as their representative would be the same. Had he paid anything which was in fact due from them he might, no doubt, have his remedy against them. But his remedies against others cannot affect his liability to the landlord when once a decree against him is passed. He then becomes "bound by law to pay" the decreed amount to the landlord, in the terms of Section 69 or the Contract Act. There is no doubt that the plaintiff was a person interested in the payment of this debt, and the consequence follows that he is liable to be "reimbursed" by the respondent. In terms, this seems to give the plaintiff a right to recover the whole of the money that he has paid to the landlord. It cannot, however, be supposed that he could compel the respondent to pay him money which the respondent became "bound by law" to pay as his representative. But is it necessary to read any further restrictions into the very general terms of Section 69? No question arises here as to the respondent's liability to reimburse to the plaintiff the money which he paid, but which was really due from the other original co-sharers in respect of their shares; because those co-sharers have re-paid those sums to the plaintiff. But where the respondent has introduced a new co-sharer, whom he represents as much as he does the other co-sharers, is there any reason for saying that the reimbursement is to stop short of the money paid for the benefit of the assignee of the man bound by law to pay, who also represents him? No clear authority has been produced before us to show that this section should be considered not to apply to co-sharers; and if it does, the law seems to cast the burden of collection from defaulting co-sharers, whose common interests are affected by a decree, on the person bound by law to pay rather than on the person who in fact pays because he is interested in the payment, and this consideration applies with special force when such person is the assignor of one who may be taken to be a defaulting co-sharer. For these reasons, we consider that the appellant is entitled to recover from the respondent the amount he has paid in respect of the rent of the respondent's purchaser for 1308.

6 The appeal is, therefore, allowed. The decree of the lower Appellate Court is set aside, and that of the Munsif restored. The appellant is entitled to his costs in this appeal.

Richardson, J.

7. I agree to the judgment proposed by my learned brother with some hesitation as to the liability of the defendant No. 1 in respect of the year 1308.