

(1936) 11 PAT CK 0022
In the Patna High Court

Bibi Baratan and Others

APPELLANT

Vs

Mt. Ckandramani Kuer

RESPONDENT

Date of Decision : 09-11-1936

Acts Referred:

Contract Act, 1872 — Section 69, 70

Citation : AIR 1937 Patna 103

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This appeal arises out of an action for contribution. The defendants are the appellants although there is a cross-appeal as regards a part of the case. The action related to three wells which according to the plaintiff's case he had restored or put into repairs and he therefore sought to recover the costs or part of the costs for repairs from his joint owner. The learned Judges in the Courts below have granted the plaintiff a decree as regards one of the wells as it has been held that the repairs effected by him benefited the defendants. The only contention advanced on behalf of the defendant-appellants against the decision of the learned Judge in the Court below is that Section 70, Contract Act, does not apply as this section would not apply to cases where persons are jointly interested and that Section 70 refers to those cases where the defendant only benefits and not the plaintiff and the defendant together. Without reading words into Section 70 I cannot uphold the contention. When the plaintiff was doing the repair works, he was not only doing something for himself but, according to the finding of the lower Court, was doing something also for the defendants; and, so long as it is shown that the plaintiff did not intend to do the work gratuitously and that other persons enjoyed the benefit of the work, he is entitled to recover u/s 70 of the Act. For me to follow some of the authorities on this section, particularly the case in *Yogambal Boyee Ammani Ammal v. Naina Pillai Markayar*, (1910) 88 Mad 15, would be to read something in the section which does not there appear. The regrettable part of this decision is that although the learned Judges relied upon the decision in *Ram Tuhul Singh v. Biseswar Lall Sahoo*

(1874) 2 IA 131, it is quite clear that their Lordships of the Judicial Committee of the Privy Council there applied the common law rule with regard to this matter which it has been pointed out, and indeed, it is obvious, is very different from the rule laid down in Sections 69 and 70, Contract Act. Those sections are a great departure from the common law. It is not surprising that the Judicial Committee applied the common law rule as the action out of which the appeal arose commenced four years before the Contract Act in India was passed. There is a cross-appeal by the plaintiff as regards the other two wells, and, although it is admitted that Section 70 does not apply, it is contended that neither Section 70 nor Section 43 applies but Section 69 does. Section 69 provides:

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.

2. Now, the facts as found by the Court below are hardly adequate for the purpose of deciding that the learned Judge in the Court below is erroneous in law; and I would hold that the cross-appeal fails on an entirely different ground. It is somewhat technical perhaps to say that it has nowhere been found that the liability of the plaintiff and that of the defendants for the repairs of these wells was joint and several and, until it could be shown that the liabilities were joint and several, it is difficult to contend that the persons for whose benefit (i.e. the tenants) the repairs were to be done could not have sued either one or the other; and, so long as the tenants could sue either one or the other, it is difficult to say that the defendants themselves were liable to pay or do the repairs. In my judgment both the appeal and the cross-appeal fail and they must be dismissed with costs. Leave to appeal is refused.