

(1969) 02 AHC CK 0006
In the Allahabad High Court
Case No : Second Appeal No. 1447 of 1963

Ganga Saran and others

APPELLANT

Vs

Naryan Das

RESPONDENT

Date of Decision : 14-02-1969

Acts Referred:

Contract Act, 1872 — Section 70

Citation : (1969) 02 AHC CK 0006

Hon'ble Judges : GANGESHWAR PRASAD, J

Final Decision : Dismissed

Judgement

1. This is a defendants second appeal arising out of a suit brought against them for the recovery of a sum of money.

2. The plaintiff and the defendants are coowners of a shop, the share of the plaintiff being one half. The shop needed some urgent repairs. The plaintiff called upon the defendants to make the repairs and take from him half of the cost. In the alternative he asked the defendants to allow him to have the repairs effected and pay him half of the cost. The defendants did not carry out the repairs, and the plaintiff was compelled to have the repairs done entirely at his own cost incurring an expenditure of Rs. 506/7/9. These facts are no longer in dispute. The plaintiff claimed in the suit a sum of Rs. 249.98 Np. from the defendants, i.e. one half of the cost of repairs. The claim of the plaintiff has been decreed.

3. The only contention raised by the learned counsel for the appellants is that the plaintiff, being a coowner of the house, is not entitled to recover from the defendants any portion of the amount spent by him towards the repairs of the house unless the defendants had agreed to contribute to the repairs or to reimburse the plaintiff. The contention has no merit.

4. I may first refer to Section 70 of the Contract Act which is as follows :

"Where a person lawfully does anything for another 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".

Obviously the plaintiff did not carry out the repairs gratuitously and before undertaking that task he impressed upon the defendants their liability to share equally with him the burden of the repairs and asked them to contribute their share of the cost. He also gave to the defendants the option of carrying out the repairs and offered to pay half of the expenses. The defendants adopted an unreasonable attitude and did not accept either of the above alternatives. They are however, enjoying the benefit of the repairs. The claim of the plaintiff, therefore, falls within the ambit of the aforesaid provision. The learned counsel for the defendants has urged that Section 70 of the Contract Act is not applicable where the act done by a person is for his own benefit as well and its operation is confined to those cases where a person does something entirely for the benefit of some one else. I do not agree.

The section embodies an equitable principle and it should receive a liberal and not a narrow construction. In my opinion the case of a coowner of a property who has done an act in respect of that property for the common benefit of all coowners is not outside the purview of the section. In this view I am supported by *S. Srirama Raja v. Secy, of State*. AIR 1943 Mad 85 (FB) and *P. V. Muthusawami Ayyar v. A. Volammal*, AIR 1947 Mad 117.

5. Even if Section 70 of the Contract Act were not applicable to the situation the plaintiff would still be entitled to a decree against the defendants on the basis of the principle of contribution. That principle would clearly support a claim of the kind that the plaintiff has made and would cast an obligation on the defendants to recompense the plaintiff in proportion to their interest in the property which has been saved from a danger and which has benefited by the repairs effected by the plaintiff.

6. The appeal fails and it is accordingly dismissed. However, in the circumstances of the case I direct that the parties would bear their own costs throughout.

Appeal dismissed.