

(1956) 12 MP CK 0050
In the Madhya Pradesh High Court
Case No : S.A. No. 81 of 1956

Hiralal and Another

APPELLANT

Vs

Agarchand and Another

RESPONDENT

Date of Decision : 14-12-1956

Acts Referred:

Contract Act, 1872 — Section 38
Specific Relief Act, 1963 — Section 39

Citation : (1957) J LJ 36 : (1961) MPLJ 644

Hon'ble Judges : A.H. Khan, J

Bench : Single Bench

Advocate : Shiv Dayal Shrivastava, for the Appellant; Abdul Hamid Siddiqae and Bhagwati Prasad Singal, for the Respondent

Final Decision : Allowed

Judgement

A.H. Khan, J.

The facts giving rise to this second appeal shortly stated are that the plaintiff Agarchand and his son Kasturchand both rented a house to Hiralal and Shriram, the main defendants in this case. The plaintiff Agarchand filed this suit against Hiralal and Shriram for the recovery of rent due. The defence was that the rent had been paid to Kasturchand, one of the co-owners of the house. Kasturchand the co-owner was also impleaded as a defendant in this case and he admits that he received the rent. The trial Court decreed the suit of the plaintiff and this decision was affirmed in appeal by the Additional District Judge, Bhind. Now this is defendants' second appeal.

The short question for determination in this appeal is whether the payment of rent by the tenants to one of the two co-owners absolves them from the further responsibility of paying rent to the plaintiff. The trial Court appears to have been confused by the number of rulings that were cited in this case. Section 38 of the Contract Act makes it abundantly clear that an offer to one of the several joint premises has the same legal consequences as an offer to all of them. Thus

money tendered to and accepted by Kasturchand is money paid to the plaintiff. The plaintiff of course can claim his share from Kasturchand.

My attention has been invited to a decision of the Madras High Court Chochalingam Chetty v. Periya Karuppan Chetty and others AIR 1916 Mad. 208 in which it is said that where a tenant pays the entire rent due from him to one of the co-sharers, he can escape liability to the other, if he shows that his payment of the rent to the co-sharer was one made bona fide. With great respect to this decision, I do not find anything in section 38 of the Contract Act, about the payment being made bona fide or otherwise. The elementary principle of interpreting a statute is that when the words of a statute are precise and unambiguous, no more is necessary than to expound them in their natural and ordinary sense. The words themselves best declare the intention of the Legislature. In *Barrel v. Ferdee* 1932 AC 676, (682), it has been observed that the safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first place, reference to cases.

In this case it has been proved that the payment of rent has been made to one of the co-owners, and, it is neither just nor equitable that the tenants should be now asked to pay over again to other co-owner. It is, as I have said already, open to the co-owner to bring a suit for the recovery of his share, but to saddle the tenants to pay over the entire amount again to the other co-owner is most unjust.

It is argued that the plaintiff alone is the owner of the house and that Kasturchand is not a co-owner. But the rent-note which is on the record and which is the basis of the suit contains the names of both. And in this case no declaration is sought that the name of Kasturchand has been wrongly and fraudulently included in the rent-note. If this rent-note was wrongly and fraudulently executed, then according to section 39 of the Specific Relief Act, the plaintiff having a reasonable apprehension that such instrument would cause serious injuries to him, ought to have filed a suit for its cancellation. But he has not done so, I find no substance in the plea that the plaintiff alone is the owner of the house.

For reasons stated above, the appeal is allowed with costs throughout to defendants Nos. 1 and 2 and the decisions of both the Courts below are set aside.