(1911) 01 CAL CK 0028

In the Calcutta High Court

Jinnat Ali APPELLANT

Vs

Fateh Ali Mobbar Chowdhury and Others RESPONDENT

Date of Decision : 17-01-1911

Acts Referred:
Contract Act, 1872 — Section 43(2)

Citation : 9 Ind. Cas. 219

Hon'ble Judges : Chatterjee, J;Caspersz, J

Bench : Division Bench

Judgement

1. A sum of Rs. 1,587-15 was recovered from the plaintiffs as being the jotedars of a certain jote in the Noabad Mahal of the District of Chittagong. The money was realised in execution of a certificate under the Public Demands Recovery Act, It represented the rents of the years 1904-1907. But the title of the principal defendant to an eight annas share in the jote having been declared, in Title Suit No. 45 of 1906, the plaintiffs sued him for a moiety of the sum recovered from him by certificate process. The first Court declined to allow contribution. The lower appellate Court has reversed that decision.

2. The point for determination in this second appeal is whether a person in wrongful possession of property can bring a suit for contribution against the person really entitled? The learned Vakil for the defendant-appellant argues that the certificate was not directed against his client, who derived no benefit from the plaintiff''s payment of the sum mentioned therein. The argument involves a consideration of Sections 69 and 70of the Contrast Act. The defendants'' title to an eight annas share in the jote having been declared in the title suit, it must be taken that he was a co-sharer of the plaintiffs in the jote. It is true the certificate was not against the defendant and hence could not be enforced against him, but the plaintiffs, on satisfying it, would, according to the principles formulated in Section 43 (para. 2) of the Contract Act, have been entitled to sue the defendant for contribution. At the time of payment by the plaintiffs, however, they kept the defendant out of possession denying his title.

3. Section 69 of the Contract Act would apply where the payment is made for another person who is bound by law to pay. As already stated, though the defendant, being a co-sharer, was under an obligation to pay, the certificate was not against him, and he was kept out of possession of his share by the plaintiffs. Moreover, the words another person" in the section seem to indicate that the person making the payment is himself under no legal liability to make it. According to law, co-sharers are not only jointly but severally liable for rent. When, therefore, the plaintiffs paid up the rent, they may be considered to have done so in the discharge of their own liability for rent and not in satisfaction of the rent due by the defendant whom they had kept out of possession on denial of.

4. In these circumstances, we do not think that the case conies u/s 69 of the Contract Act.

5. Section 70 of the Contract Act covers a wider ground, and the generality of the language of the section is discussed in the recent case of Mohendra Ghoshal v. Bhuboom Mariana 6 Ind. Cas. 810 : 14 C.W.N. 945 : 12 C. L J. 566 where, however, the learned Chief Justice pointed out the responsibility of final Courts of fact ''to be guarded and circumspect in their conclusions and not to countenance acts or payments that are merely officious."

6. Section 70 of the Contract Act enacts 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 person is bound to make compensation to the former in respect of the thing so done. If, however, the former person (here the plaintiffs) made the payment for the purpose of manufacturing evidence of title to the land, he could not be regarded as having made the payment lawfully. See Desai Himatsingji v. Bhavabhai 4 B. 643 at p. 653. In the case of Bama Sundari Dasi v. Adhar Chunder Sarkar 22 C. 28 which was relied on by the lower appellate Court, the decree for rent was obtained by the landlord against the defendant while there was a dispute as to whether the property belonged to the plaintiff or the defendant, and plaintiff paid up the decree and preserved the property from sale.

7. In Tiluck Chand v. Saudamoni Dasi 4 C. 566 : 3 C.L.R. 456, it was held, in the circumstances of that case, that the trespasser must be content to bear the burden of his own wrong. But the principle which applies to cases like the present was laid down by the Judicial Committee in Dakhina Mohan Roy v. Saroda Mohan Roy 21 C. 142 : 20 I.A. 160. There it was observed: It seems to their Lordships to be common justice that when a proprietor in good faith pending litigation makes the necessary payments for the preservation of the estate in dispute, and the estate is afterwards adjudged to his opponent, he should be recouped what he has so paid by the person who ultimately benefits by the payment if he has failed through no fault of his own to reimburse himself out of the rents. Of course, he is bound to account for mesne profits, for all rents and profits which he has received or which with-out wilful default be might have received."

8. We have already said that the certificate against the plaintiffs covered the dues for the years 1904-1907. The Title Suit (No. 45 of 1906) was filed during that period. It was decreed on the 15th April 1907. Now, the Munsif found that the plaintiffs made the payment on their own account and with the ulterior motive of creating their own title to the entire jote. If that be so, the payment was voluntary, the plaintiffs must be regarded as being in wrongful possession of the half share of the jote, and their payment was not made in good faith. We should observe, however, that the Munsif also found that the defendant had been in possession of some of the jote lands (apparently, nine drones).

9. In these views, we must send back this case to the lower appellate Court for a decision of the point whether the plaintiffs made the payment under the certificate in good faith, having regard to the observations made in the cases we have cited. If this question be answered in the affirmative, the suit of the plaintiffs must be decreed, but the defendant will be entitled to have a deduction made on account of the mesne profits realised by the plaintiffs in respect of the defendant''s half share of the jote. If the payment was not in good faith, the suit must be dismissed.

10. The appeal is allowed in the terms mentioned. The case is remitted to the lower appellate Court to be dealt with in accordance with the instructions we have just given. Costs will abide the result.

