

(1888) 05 CAL CK 0007
In the Calcutta High Court

Jugdeo Narain Singh

APPELLANT

Vs

Rajah Singh

RESPONDENT

Date of Decision : 08-05-1888

Acts Referred:

Contract Act, 1872 — Section 15, 72

Citation : (1888) ILR (Cal) 657

Hon'ble Judges : Norris, J;Beverley, J

Bench : Division Bench

Judgement

Norris, J.—The facts of this case appear to be as follows:

Sheoram Singh, defendant No. 3, was the owner of a 1-anna 2-gundas share in certain mouzahs.

2. One Holloway obtained a decree against Sheoram, and in execution of his decree attached and put up for sale his (Sheoram's) 1-anna 2 gundas share, which was purchased by the plaintiff on the 4th March 1884. After the plaintiff's purchase, defendant No. 1, who had also obtained a decree against Sheoram, proceeded to attach the same 1-anna 2 gundas share. The plaintiff objected to the attachment; and his objection was investigated and disallowed on the ground that he had not obtained the sale certificate.

3. Upon his objection being disallowed the plaintiff deposited in Court Rs. 109-14-6, being the amount of the decree obtained by defendant No. 1 against defendant No. 3.

4. Defendant No. 2 is the assignee of the defendant No. 1.

5. Being defeated in his claim case plaintiff now brings this suit for the declaration of his purchased right in Sheoram's 1-anna 2-gundas share, and for recovery of the Rs. 109-14-6 deposited in Court.

6. The defendants Nos. 1 and 3 did not appear to defend the suit. The Munsif dismissed the plaintiff's suit upon the ground of misjoinder of causes of action.

7. On appeal the Subordinate Judge gave the plaintiff a decree for the amount claimed, and against this decree defendant No. 2 has appealed to this Court.

8. Two objections are urged on his behalf by Dr. Rash Behari Ghose first, that there was a misjoinder of causes of action; second, that the plaintiff's payment was a voluntary payment.

9. It is unnecessary to express any opinion upon the first point, for we find that in both Courts the defendant virtually admitted the plaintiff's title, and, therefore, we think the suit may fairly be looked upon as one brought only to recover the money.

10. In support of his second objection, Dr. Bash Behari Ghose argued that the case of *Fatima Khatoon Chowdrain v. Mahomed Jan Chowdkry* 12 M.I.A. 65 one of the cases relied upon by the Subordinate Judge as showing that the payment was not a voluntary one, was not really in point, as it was decided in the year 1868, before the passing of the Contract Act, which by Section 72 defines the cases in which money must be repaid or returned ; and by Section 15 defines what is "coercion."

11. In support of the argument the learned pleader referred to the case of *Ashibun v. Bam Proshad Das* 1 Shome 25.

12. The learned pleader further sought to distinguish the case of *Dooli Chand v. Ram Kishen Singh* 8 I.A. 93 : 7 C. 648 the case mainly relied upon by the Subordinate Judge, from this case.

13. For the respondent it was urged that the last-mentioned case was a conclusive authority in plaintiff's favour. It was further urged that the Contract Act was only an Act "to define and amend certain parts of the law relating to contracts," and that the provisions of Section 72 of the Act were not exhaustive. In reply it was argued that, even if the provisions of Section 72 were not exhaustive, those of Section 15 clearly were; and that no-payment could be said to be involuntary unless made in consequence of "coercion" as therein defined.

14. In *Fatima Khatoon Chowdhraïn v. Mahomed Jan Chowdhry* 12 M.I.A. 65 the facts were these. The appellants, two sisters, who had married individuals of the same family, became entitled to dower in the form of a charge on an estate or property which had belonged to a person of the name of Nyum Chowdhury. He died in debt, and his heirs and representatives were sued by the respondents to recover some very considerable sums of money alleged to have been due by him, in which suit they obtained judgment. Under that judgment certain other properties were attached and sold, and the judgment was in part satisfied. Under one of the many proceedings that took place in the suit, the decree-holders obtained authority to sell the estate upon which the dower of the appellants was charged. In order to prevent that sale, which would have been mischievous and prejudicial in the highest degree to the rights of the appellants, they, upon a proceeding which they instituted and under the authority of the Court, not

voluntarily, but under protest, and because they were compelled to take that step in order to prevent the sale of the estate, paid the sum of between Rs. 59,000 and Rs. 60,000 into Court. The appellants subsequently sued the decree-holders to recover the money thus paid into Court. The Zillah Court gave the appellants a decree. Upon appeal the High Court reversed the decision of the Zillah Court upon the ground "that by law the payment, under the circumstances in which it was made, constituted a voluntary payment with the full knowledge of the facts, and therefore that the money could not be recovered back." The Privy Council said that "the money had been paid into Court, not voluntarily, but under a species of compulsion, and for the purpose of preventing the injurious sale of the property." They further said in answer to the ground upon which the High Court had reversed the judgment of the Zillah Court that "it was not a payment at all it was originally a mere deposit in Court of the full amount recoverable by the decree-holder; it was deposited under protest for the purpose of preventing an injurious sale of the property."

15. They further said "those were the circumstances under which the money was paid, the payment being clearly no voluntary payment, and the suit having been determined on its merits in favour of the appellants they are clearly entitled to recover this money back again.?"

16. Now, if that case had come before a Court of co-ordinate jurisdiction, and we had been inclined to take a different view of the law as there laid down, we might have felt ourselves at liberty to say that we were not pressed by the decision upon the ground that the observations above referred to were obiter dicta.

17. That they are so appears from a reference to what Lord Romilly says at p. 77L.R.8 I: "Under that judgment certain other properties were attached and sold, and the judgment was in part satisfied. If it were necessary to look into the particulars of those numerous and somewhat complicated proceedings, it would probably appear (and that alone would be a ground upon which the respondent must be held disentitled to retain the money they have received) that this judgment was in effect satisfied; that all that the decree of the Court had entitled the respondents to take out of the different properties in question had been paid and satisfied in one way or another and was received by them so as to disentitle them to institute or to continue any further proceedings against those properties in respect of the claim now in question."

18. But though no doubt, as observed by Wilson, J., in *Kinu Ram Dass v. Mozaffer Hosain Shaha* 14 C. 809 even a "dictum of the Privy Council has not the weight of a decision," yet "it is of course entitled to the most careful consideration;" and it is binding upon us in a case similar in all respects to the one in which the dictum occurs. We cannot distinguish this case from the case before the Privy Council. The only point of difference appears to be that in the Privy Council case there was an express declaration of an intention to bring a suit on the rejection of the claim case; but we do not think that the absence of such

declaration in this case is at all material. Unless, therefore, the decision of the Privy Council can no longer be regarded as law, we must follow it and dismiss this appeal.

19. The Privy Council case was decided in 1868. In 1877, the Indian Contract Act having been passed in 1872, the Privy Council case was discussed by a Division Bench of this Court consisting of Markby and Peinsep, JJ., in the case of *Asbibun v. Bam Proshad Das* 1 Sbome 25. In that case Markby, J., said : "It appears to me that the facts of this case cannot be distinguished from those of the case reported in 12 Moore's Indian Appeals, 65"; and if that case is still law, it must govern the case before us. It is there laid down that a voluntary payment with a full knowledge of the facts cannot be recovered back. But it was held that where a man pays a money into Court to be paid to the decree-holder in order to stay a sale in execution, expressing his intention to bring a suit to contest the right of the decree-holder to attach and sell the property, that is not a voluntary payment, and may be recovered back if it turn out that the decree-holder had no right to sell the property. I have no doubt the plaintiff in this case was guided in what he did by the law as laid down in that decision.

But since that decision was given, and before this payment was made, the matter had been dealt with by the Legislature of this country Section 72 of Act IX of 1872 provides that a person to whom money has been paid by mistake or coercion must repay it. This, I take it, is the same general rule as that laid down by the Privy Council, only expressed in the reverse way. But just as the Privy Council go on to determine whether a particular act was a voluntary act, so the Legislature here de-fines generally what is " coercion," and it seems to me that the meaning which the Legislature had attached to the word " coercion" shows that a payment of the kind which the Privy Council declared to be involuntary does not come within the legislative definition of "involuntary payments." In other words, the legislature here takes a different view of what constituted an involuntary payment from that taken by the Privy Council. Section 15 declares that "coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement." The payment in this case was not made under any of the conditions here described.

The only question then is whether Act IX of 1872 contains the whole law upon this subject, or whether it may be supplemented by the law as laid down by the decisions of the Courts, and as contained in general principles of equity. In some respects, no doubt, Act IX of 1872 is incomplete. In the preamble, it is expressly said that it only explains and defines certain parts of the law of contract. But there are nevertheless, as it appears to me, some particular topics with which the legislature intended to deal completely, and I think that the matter now under consideration is one of those topics. It seems to me that, if we were to hold otherwise, the provisions of the Act as to the recovery of money paid

involuntarily would be entirely useless. Unless these provisions completely define the cases in which money paid may be recovered back, because the payment was not voluntary, they tell us nothing at all, for no one would doubt that by the law of this country the cases specified by the Act in Sections 72 and 15 are cases in which money may be recovered back on this ground. The important question is whether they are the only cases, and unless the legislature intended to say that they were the only cases, nothing whatever will have been done towards the simplification of the law upon this subject. Every one knows the extreme difficulty that has been experienced in determining what payments are, and what payments are not, voluntary, and when money once paid may be recovered back. I think the legislature intended to get rid of this difficulty by laying down a short and simple rule upon this subject, which the Courts of this country, not always trained to the discussion of these difficult questions, might easily apply. Of course we may thus find ourselves barred in some cases from applying a remedy when a remedy would seem desirable, but that is not unfrequently the consequence of having fixed and precise rules of law. I therefore think that the money was not paid involuntarily, and could not be recovered back, and that the decision of the Courts below should be reversed and the suit dismissed with costs.

I only wish to add that there is no contention, and I do not think there could be any contention that this case comes in u/s 15 of the Contract Act. But I do not wish to prejudice the question whether under some circumstances a man who sets the Court in motion to attach property in execution may not be said to detain property. That question does not now arise.

20. We are bound to say that we felt much pressed by the force of this judgment, the weight of which is considerably enhanced by the observations of the Privy Council in the case of *Ram Coomar Coondoo v. Chundercanto Mookerjee* 4 I.A. 23 : 2 C. 233 where their Lordships say, at page 50 : "When it is urged that the claim should be decided upon general principles of justice, equity, and good conscience, it is to be observed, in addition to the considerations already adverted to, that these principles are to be invoked only in cases for which no specific rules may exist." But upon a careful consideration of the judgment of Markey, J., we think the learned Judge misconceived the basis of the plaintiff's claim. It was not a claim based upon contract pure and simple; it was not a claim to recover money paid under an agreement entered into by the plaintiff in consequence of "coercion" as defined by Section 15 of the Contract Act.

21. If the case before Markey, J., and this case had been brought in England when the old system of pleading was in existence, the plaintiff would have claimed for "money payable by the defendant to the plaintiff for money received by the defendant for the use of the plaintiff."

22. In *Bullen and Leake's Pleadings*, 3rd Ed., 44, it is stated "that this is the most comprehensive of all the common counts; it is applicable whenever the defendant has received money which in justice and equity belongs to the

plaintiff, under circumstances which render a receipt of it, a receipt by the defendant, to the use of the plaintiff." In *Moses v. Macferlan* 2 Burr. 1,000. See p. 1012, Lord Mansfield thus speaks of the action for money had and received: "This kind of equitable action to receive back money which ought not in justice to be kept is very beneficial, and therefore much encouraged; it lies only for money which ex aquo et bono the defendant ought to refund; it does not lie for money paid by the plaintiff which is claimed of him as payable in point of honour and honesty, although it could not have been recovered from him in any course of law, as on payment of a debt barred by the statutes of limitation, or contracted during his infancy, or to the extent of principal and legal interest upon an usurious contract, or for money fairly lost at play; because in all these cases the defendant may retain it with a safe conscience, though by positive law he was barred from recovering. But it lies for money paid by mistake, or upon a consideration which happens to fail, or for money got through imposition (express or implied), or extortion, or oppression, or an undue advantage taken of the plaintiff's situation contrary to laws made for the protection of persons under those circumstances."

23. Though Lord Mansfield's application of the principles thus laid down to the facts in *Moses v. Macferlan* 2 Burr. 1,000. See p. 1012 has been held to be incorrect, the principles themselves have never been disputed.

24. We think, therefore, that, though it may be that in an action brought in this country to recover money paid under a contract entered into through "coercion," the coercion proved must be such as comes within the provision of Section 15 of the Contract Act (upon which point we express no opinion); yet it does not follow that in the form of action we have to consider in this case that the "coercion" need be of such a character.

25. And further we are not prepared to say that the defendant's conduct did not amount to "a detainer of the plaintiff's property to the prejudice of the plaintiff with the intention of causing him to enter into an agreement," viz., an agreement to pay the debt of a third person.

26. But we think the point in dispute is conclusively settled by the case of *Dooli Chand v. Ram Kishen Singh* 8 I.A. 93 It is unnecessary to set out the facts of that case in detail: it is enough to state that the respondent, the purchaser of a mouzah, paid money into Court to prevent the sale thereof in execution of the appellant's decree, which had been already satisfied.

27. The Privy Council said: "The arguments at the bar were not directed to show that there is any equity upon which the appellant could retain this money; but the objections taken to the action were that the payment was voluntary, and that the remedy, if any, was in the execution proceedings. Their Lordships think that there is no pretence for saying that the payment was voluntary. It was made to prevent the sale which would otherwise inevitably have taken place of the mouzah which the respondents had purchased, and was made therefore under

compulsion of law, that is, under force of these execution proceedings. In this country, if the goods of a third person are seized by the Sheriff and are about to be sold as the goods of the defendant, and the true owner pays money to protect his goods and prevent the sale, he may bring an action to recover back the money he has so paid ; it is the compulsion under which they are about to be sold that makes the payment involuntary : see *Valpy v. Manley* 1 C.B. 594

28. It was sought to distinguish that case from the present by pointing out that in the Privy Council case the appellant's decree had been already satisfied.

29. In our judgment this fact is immaterial. It was sought also to impugn this decision upon the ground that the Privy Council had not considered the effect of Sections 15 and 72 of the Contract Act.

30. It may be that these sections were not relied on; but looking to the fact that all the learned Counsel engaged in the case had practiced in this country, and that two of the members of the Board had been Chief Justices of Bengal, we must assume that any argument based upon these sections, such as has been urged before us, was felt to be untenable. If it had been urged, we think the answer given would have been the one we have pointed out.

31. The appeal will be dismissed with costs.