

(1958) 10 KL CK 0020
In the High Court Of Kerala
Case No : A.S. No. 42 of 1956

Ouseph Lukka

APPELLANT

Vs

Ananthanarayana Iyer Ramakrishna Iyer

Ananthanarayana Iyer Ramakrishna Iyer Vs Ouseph Lukka

RESPONDENT

Date of Decision : 06-10-1958

Acts Referred:

Contract Act, 1872 — Section 59

Citation : AIR 1959 Ker 233

Hon'ble Judges : K.T. Koshi, C.J;M.S. Menon, J

Bench : Division Bench

Advocate : K.K. Mathew and K.N. Narayanan Nair, for the Appellant;

Final Decision : Allowed

Judgement

Koshi, C.J.—Defendant 2 in O. S. No. 24 of 1120 on the file of the District Court of Alleppey has preferred, this appeal against the judgment and decree the learned Temporary Additional District Judge passed in the suit on 30-8-1952. The suit was on a hypothecation bond executed by defendants 1 and 2. on 24-2-1118 under which they acknowledged their indebtedness to the plaintiff for 1720 paras (Kalloorkadam measure) of paddy and charged the paddy crops in item 1 of the schedule appended thereto and also item 2 thereof.

Item 1 belonged to defendant 3 and the plaintiff had taken a lease of that property from that defendant. Defendants 1 and 2 were sub-lessees of that item under the plaintiff. It is a punja land and the crops which the sub-lessees were to raise for the Meenam, harvest formed part of the subject of the charge created by the document, the other part consisting of the entire interests defendant 1 had in item 2. Under the terms of the hypothecation bond (Ext. A) the debt was to be liquidated on the 30th of Meenam, 1118 by which time the crops would have been harvested. According to the plaintiff the debt remained undischarged and he therefore instituted the present suit for its recovery on 18-2-1121.

2. Defendants 1 and 2 filed a joint written statement in the case and in that they contended that the debt had been duly discharged. In 1118 Paddy Control Order was in force and under its provisions the State was entitled to compulsorily acquire a portion of the paddy raised by cultivators. It is common ground that out of 1118 Meenam harvest of item 1 the State purchased 2000 paras (standard measure) of paddy and that the value thereof amounting, to Rs. 2,500/- was with the consent of defendants 1 and 2 drawn by the plaintiff.

According to defendants 1 and 2 the plaintiff was allowed to draw the said amount in liquidation of the hypothecation debt as per Ext. A and the debts as per two simple bonds, Exts. C and E. Ex. C bears the date 16-4-1118 & under it defendants 1 and 2 borrowed 500 paras of seed paddy from the plaintiff. Ext. E is of 29-5-1118 and as per that document 25 paras of paddy were borrowed. While defendants 1 and 2 would have it that the amount of Rs. 2,500/- drawn by the plaintiff covered the value of the paddy as per these three bonds & interest, the plaintiff's case was that that amount went to liquidation of the debts as per Exts. C and E and two other bonds, namely, Ext. B dated 20-3-1118 and Ext. D dated 6-4-1118.

Ext. B is an agreement under which the plaintiff let his pumping engine to defendants 1 and 2 for a hire of Rs. 872/- and Ext. D is yet another bond defendants 1 and 2 executed in favour of the plaintiff purporting to borrow 650 paras of seed paddy. Defendants 1 and 2 while admitting the execution of Exts. B and D contended that no amount was payable as per Ext. B as the engine which was let out to them was not in working order and they had to hire another engine for purposes of pumping operations. With respect to Ext. D their contention was that no seed paddy was delivered as per that document and that all the seed paddy they took from the plaintiff was the 500 paras borrowed under Ext. C.

3. Between these two rival contentions of the parties, namely, the contention of defendants 1 and 2 that the amount of Rs. 2,500/- received by the plaintiff from the State went in liquidation of the debt as per Ext. A and Exts. C and E and the plaintiff's contention that the said amount was received in satisfaction of the debts as per Exts. B and E the lower court chose to accept the plaintiff's version and gave him a decree as sued for in the plaint. Exts. A, C and E as also Exts. B and D were in possession of the plaintiff on the date of the institution of the suit. When a document creating an obligation is in the hands of the obligee it would normally be taken to have been not discharged.

In this case it is not possible to draw such an inference inasmuch as the plaintiff himself admits that the liability under Exts. B to E have been discharged by the receipts of the amount referred to above from the State. In this view of the matter no inference adverse to the contesting defendants could be drawn from the fact that the plaintiff had possession of Ext. A. The plaint in the suit does not refer to the transactions as per Exts. B to E or to the receipt of Rs. 2,500/- from the State out of the sale proceeds of the paddy raised in item 1 during 1118. On

the other hand it is mentioned in the plaint that there were other outstanding causes of action also against the defendants and that appropriate action will in due course be taken in respect of them.

We do not know to which transactions that statement referred to. The original plaintiff died during the course of the suit. Ext. II is a copy of the deposition he gave in O. S. 179 of 1118 which defendants 1 and 2 instituted against him in the Kottayam District Court and there he had admitted that he was maintaining accounts with respect to his income and expenses. Those accounts have not been produced in this suit. It is therefore not possible to know how the amount of Rs. 2,500/- referred to above has been credited in the accounts. The production of the account books would also have shown as to whether the contention of defendants 1 and 2 that there was no borrowing under Ext. D is true.

Admittedly the parties fell out soon after the harvest of 1118 and differences arose between them about the continuance of the sub-lease of item 1 and ultimately defendants 1 and 2 took a lease of that property directly from defendant 3. On the strength of the earlier lease in his favour the plaintiff wanted to obstruct defendants 1 and 2 from entering upon the property and that led to the suit O. S. 179 of 1118 in which defendants 1 and 2 succeeded in obtaining a permanent injunction against the plaintiff from interfering with their possession. In Ext. II the original plaintiff had no doubt stated that the amount of Rs. 2,500/- was received in liquidation of the debts as per Exts. B to E.

As the parties had by that time fallen out and as Exts. B to E were notwithstanding their alleged discharge retained by the plaintiff himself and inasmuch as the plaintiffs account books have not been produced in the case we are unable to accept the plaintiffs version that the defendants allowed him to draw the amount in liquidation of the aforesaid debts. Defendant 2 as D. W. 1 has sworn in support of his case, but for obvious reasons it is difficult to accept his evidence at its face value. The evidence of D. W. 2 is unreliable and the additional plaintiff (P. W. 1) who came on record after the death of his father has apparently no direct knowledge of the transaction. In the circumstances we cannot accept either the version of the plaintiff or the versions of defendants 1 and 2 as to what the agreement or the understanding between the parties was when the plaintiff was allowed to draw that money.

4. The plaintiff did not choose to put Exts. B to E in suit and therefore we are not called upon to adjudicate any claim under them. The only claim before us is with respect to that evidenced by Ext. A. Ext. A specifically charged the crops on item 1 for the debts advanced under it and it also stipulated that the debt was repayable by the 30th of Meenam 1118. Without the consent of defendants 1 and 2 the plaintiff would not have got the money from the State. We will therefore allow the normal rule as to appropriation of payments to operate in this case. That rule is embodied in Section 59 of Contract Act and that section reads thus:

"Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly. When the crops were charged for the debt and the proceeds of the sale of the paddy obtained by the harvest of that crops is allowed to be drawn by the" creditor the proper inference to be drawn is that the payment was towards the liquidation of the debt for which the crops were hypothecated. The debt evidenced by Ext. A is the earliest among the five debts and Exts. B to E do not all provide that the debt will be paid on any specified date. A passage occurring at p. 363 of Pollock and Mulla's Contract Act (Eighth Edition) may usefully be quoted here:

".....where by a mortgage bond the debtor agreed to repay the loan made to him by the creditor in kind by delivery of certain species of grain, or at his option in cash at a specified rate of interest, and the creditor applied several payments in grain made by the debtor to o?her antecedent debts, it was held that the creditor was not entitled to do so, as the stipulation to repay the loan by delivery of grain, combined with the absence of evidence to show that the previous debts were to be liquidated by payments of grain, was a circumstance indicating that the payment was to be applied to the debt secured by the mortgage bond, Sungut Lal v. Baijnuth Roy ILR Cal 164."

The plaintiff could have appropriated the amount towards the debt as per Exts. B to E only with the consent of defendants 1 and 2 and in the circumstances of the case it is difficult to believe that they would have given their consent. Be that as it may there is no evidence that they ever gave consent for such appropriation. Regard being had to the charge created over the crops we are unable to hold that in this case the election rested with the creditor. On the plaintiffs own showing the amount received was more than sufficient to discharge the whole debt as per Ext. A. In the circumstances we feel constrained to set aside the judgment and decree of the lower court and accordingly we allow the appeal and dismiss the plaintiffs suit.

5. As we non-suit the plaintiff not because the case put forward by the contesting defendants is found to be true, but by a mere application of the rule as to appropriation of payments we do not think that the contesting defendants should be allowed any costs in this litigation. Their conduct in allowing the creditor to retain possession of the documents has brought about this unsatisfactory situation. In our view the plaintiff was ill-advised not to put the claims under Exts. B to E also in suit after setting off the amount admittedly received. We therefore direct the parties to bear their respective costs in both the courts. Order accordingly.