

(1960) 08 MP CK 0041

In the Madhya Pradesh High Court

Case No : Civil Revision No. 184 of 1959

Pannalal and Others

APPELLANT

Vs

Mahachandi Sawaldas and Others

RESPONDENT

Date of Decision : 20-08-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47, 7
Contract Act, 1872 — Section 70

Citation : AIR 1961 MP 107 : (1960) JLJ 1152 : (1961) 6 MPLJ 156

Hon'ble Judges : Shiv Dayal, J

Bench : Single Bench

Advocate : M.L. Gupta, for the Appellant; N.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.

This revision is directed against an order passed by the Small Cause Judge, Gwalior, whereby he has overruled preliminary objections of the defendant. A compromise decree was passed in an earlier suit arising out of a dispute relating to a wall between the respective properties of the parties. One of the terms of the compromise was that the defendant would construct a wall from the road to the patio, mentioned therein, at his own expense. The present suit instituted by Mahachandi was based on the allegation that the defendant constructed the wall only 9" wide instead of 1'-6" wide and the plaintiff had to complete it by spending Rs. 190/- which he claimed to recover from Pannalal defendant.

Shri Gupta's contention is that the suit was barred by Section 47 of the C. P. C.; the only remedy open to the plaintiff was to execute the compromise decree. Reliance is placed on AIR 1947 53 (Nagpur) . In my opinion, this contention is untenable. I have perused the compromise decree. It is not mentioned there what the consequence would be if Pannalal did not construct the wall wholly or partly. It is true that Mahachandi could have put the decree into execution with a

prayer to compel the defendant to complete the wall at his expense.

But that is an entirely different question. This suit is not for specific performance. The plaintiff has already completed the construction and "he claims the amount spent by him. For this relief he could not put the decree into execution. The Nagpur case is not in point. It only lays down when a preliminary condition stated in a consent decree is fulfilled the decree becomes as fully executable as any executable decree and the compromise between the parties becomes a rule of the Court as soon as it is embodied in the decree.

It was no term of the compromise that the plaintiff would do the construction work, should the defendant fail to do it, nor is it on record that the plaintiff did the work at the defendant's request. The question is whether the plaintiff was entitled to bring a suit for recovery of the expenses incurred by him on the construction. In my opinion section 70 of the Contract Act is attracted. The relation u/s 70 is created by the fact that one person lawfully does something for another and the other person enjoys the benefit thereof provided the act is not intended to be gratuitous.

This section is clearly intended to operate as compensation for benefits enjoyed by a person against whom liability is endeavoured to be enforced. A person must be said to have enjoyed the benefit of an act within the meaning of section 70 when he in fact enjoyed the benefit by accepting or adopting it, without objecting to it Section 70 of our Contract Act is wider in scope than the doctrine of quantum meruit. (8 Halsbury (Salmond) 226).

The principle enunciated by this section recognises what may be said to be a rule of conscience. It does more than reproduce the English Law. As aptly observed in *Gajapathi v. Srinivasa Charlu* ILR 38 Mad 235: (AIR 1915 Mad 95), our courts must be guided more by justice, equity and good conscience than by English precedents and not cut down the beneficent provisions of this section. In that case, *Sadasiva Aiyar J.* observed:

"The Roman law is admittedly wider than the English law in this matter, and Section 70 was suggested rather "by the notes to *Lampleigh v. Braithwaite* (1616) 1 Sm. L. C. 141 and perhaps, indirectly by the Roman law" than by the strict rules laid down in English cases."

Whether the defendant did not construct as much as he was bound to, whether the plaintiff actually constructed the wall and how much he spent on it are questions which the Small Cause Court has yet to try.

It is then urged on behalf of the defendant that the suit was not cognizable in a Court of Small Causes, Learned counsel has not been able to point out to me any particular article of the schedule which excludes the suit and makes it not cognisable by a Small Cause Court. It is held In *Krishna Kamini v. Gopi Mohun Chose* ILR 15 Cal 652 (FB) and *Qutub Hussain v. Abdul Hasan*, ILR 4 All 134 and *Ali Mazhar v. Gopinath* ILR 4 All 152, that a suit falling within the provisions of

Section 70 of the Contract Act are cognisable by a Small Cause Court.

No other point is urged on behalf of the defendant.

This revision is dismissed, but in the circumstances of the case I leave the parties to bear their own costs. The case shall now go back to the Small Cause Court for disposal on merits.