

(1954) 08 MAD CK 0031

In the Madras High Court

Case No : Civil Revision Petition No. 1252 of 1952

Payachi Etathil Krishnan Atiydti

APPELLANT

Vs

Chanderakkaran Kizhakke Veetil Kannan

RESPONDENT

Date of Decision : 31-08-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35
Contract Act, 1872 — Section 43

Citation : AIR 1955 Mad 721 : (1955) 68 LW 54

Hon'ble Judges : Ramaswami Goundar, J

Bench : Single Bench

Advocate : A. Atchuthan Nambiar and C.P. Louis, for the Appellant; T.K. Raman Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami Goundar, J.—This is a revision filed by the defendant against the decree of the learned District Munsif in a small cause suit filed against him by the plaintiff respondent herein For contribution. The present plaintiff was the first defendant and the defendant was the second defendant in another suit O. S. No. 69 of 1949 brought against both of them by a third party in respect of land for a declaration of title and injunction. In that suit both defendants 1 and 2 set up title and possession" in their respective right. That ig to say, the first defendant filed a written statement contending that the property belonged to him and was in his possession in his own right and likewise the second defendant put forward the contention that the property was in his possession in his own right.

The trial Judge found against the contentions put forward by both the defendants and decreed the suit in favour of plaintiff with costs payable by both the defendants. In execution that plaintiff recovered the whole of the costs from the first defendant to that suit who is the present plaintiff and so he has filed the present suit to recover from the present defendant who was the" second defendant to that suit his share of the costs. The question is whether the present

defendant is liable to contribute his share of the costs. .

The learned counsel for the present defendant who is the petitioner in this revision relied on two decisions, one in -- "Fakire v. Tasaduq Husain", 19 All 462 (A), and the other in -- Muthuswami Aiyar Vs. Subramania Aiyar, . The learned counsel for the respondent-plaintiff relied on the decision in -- Edara Venkata Rao Vs. Edara Venkayya, . The principle of the decisions is that the liability for contribution will arise if the .liability that was discharged by one of the parties was the joint liability of both.

If on the other hand the liability was the exclusive liability of one, and if that one discharges that liability, he cannot turn round and claim contribution as against the other who was not liable at all, though as against a third party both of them might be liable. In the present case having regard to the contentions put forward by the parties to this suit in the previous suit and the judgment of the court it is clear that court intended the costs to be paid jointly by both the defendants in that Suit, that is to say, the liability for the costs was the joint liability of both the parties to the pre sent suit and so it follows that the decree of the learned District Munsif was correct and this revision is dismissed with costs.