

(1928) 09 BOM CK 0023
In the Bombay High Court
Case No : Second Appeal No. 98 of 1928

Punjabai Bhilasa

APPELLANT

Vs

Bhagvandas Kisandas

RESPONDENT

Date of Decision : 14-09-1928

Acts Referred:

Contract Act, 1872 — Section 65, 70

Citation : (1929) 31 BOMLR 88 : (1929) ILR (Bom) 308 : 117 Ind. Cas. 518

Hon'ble Judges : Patkar, J;Mirza, J

Bench : Division Bench

Judgement

Mirza, J.—The question raised in this second appeal is whether on the facts found the appellant can maintain her claim under the provisions of Section 70 of the Indian Contract Act. The Court of first instance found in favour of that plea and decreed the claim. The appellate Court reversed the decree and dismissed the suit with costs in both Courts.

2. The appellant is the widow and legal representative of one Bhilasa. The respondent obtained a money decree against Bhilasa in suit No. 192 of ltd 2 and sought after his death by Darkhast No. 1076 of 1918 to execute the decree against his estate. While the darkhat was pending the appellant purported to sell certain lands belonging to the estate to one Dhanraj Shivilal for Rs. 4,200. The amount due to the respondent was then about Rs 4,000, The respondent owed a sum of Rs. 500 to the panch of the Dasalat Gujarati community of which he was a member. Dhanraj Shivilal through the intervention of certain panchas of that community purported to compromise on appellant's behalf the decretal amount due to the respondent by payment of Rs. 500 in cash to the panchas for the claim of the panch against the respondent and passing a demand promissory note for Kb. 8,000 in favour of the respondent. The respondent executed a pavti in favour of the appellant acknowledging the receipt, of lull consideration of the decretal amount. It was well-known to everybody concerned at the time that the respondent was of unsound mind and that no guardian had been appointed to

enter into the compromise on his behalf. The appellant set up the pavti in the darkhast proceedings. It was then contended on behalf of the respondent that at the date of the pavti he was of unsound mind and that the compromise arrived at was not binding on him. The appellant then filed a suit against the respondent, being suit No. 264 of 1920, to have it declared that the pavti was binding on the respondent, but subsequently withdrew it. The execution Court held that the respondent was at the date of the pavti of unsound mind and that the compromise was not for his benefit. The Court ordered the sale of the attached properties and the respondent's claim under the darkhast proceedings has since been satisfied in cash. This suit was brought by the appellant to recover from the panchas, the original defendants Nos. 1 to 7, or in the alternative from the respondent, the original defendant No. 8, the sum of Rs. 500 paid to the panchas for the debt due by the respondent to the panch.

3. The Court of first instance applying the provisions of Section 70 of the Indian Contract Act decreed the appellant's claim against the respondent and dismissed the suit against the other defendants.

4. The lower appellate Court reversed the decree of the first Court holding that as the payment of Rs. 500 was alleged to be made at the express request of defendant No. 8, Section 70 of the Indian Contract Act would not apply.

5. Mr. Shingne on behalf of the appellant has urged that the view taken by the first Court should be adopted. In the lower appellate Court, the pleader on behalf of the present appellant had conceded that Section 70 of the Indian Contract Act would not apply to the case and had relied upon Article 65 of the Indian Contract Act as being applicable. Mr. Shingne concedes that so far as the argument u/s 65 of the Indian Contract Act is concerned it is concluded by the ruling of the Privy Council in (1903) ILR 30 539 (Privy Council) . and of this Court in *Motilal Mansukharam v. Maneklal Dayabhai* I.L.R (1920) Bom 225: Bom L.R. 1195. that Section 65 of the Indian Contract Act would not apply where one of the parties is wholly incompetent to contract. Mr. Shingne, however, relies upon Section 70 of the Indian Contract Act. Mr. Shingne is not precluded from arguing this point.

6. Section 70 has been held by the lower appellate Court to be inapplicable on the ground that the case pleaded and proved for the appellant has been that the payment of Rs. 500 to the panchas was made at the request of the respondent. Under normal conditions no doubt that would create a contractual relationship between the parties and the case would not come u/s 70 which applies not to a contract but to certain relations resembling those created by contract. Here, however, the request made was a nullity as the person making it was of unsound mind and the request could not create a contractual relationship between the parties. In considering, whether Section 70 applies it must be assumed that what was done on behalf of the respondent was without his authority and not at his request.

7. By Section 70 of the Indian Contract Act three conditions are required to

establish a right of action at the suit of a person who does anything for another : (1) the thing must be done lawfully; (2) it must be done by a person not intending to act gratuitously; and (3) the person for whom the act is done must enjoy the benefit of it. In the present case conditions 2 and 8 appear to be satisfied. It is clear from the evidence that the appellant did not make the payment of Rs. 500 gratuitously, but as part of the consideration for the compromise of the decretal amount. If the patti evidenced a binding contract between the parties the payment of Rs. 500 would be regarded as the discharge of an obligation undertaken by the appellant in consideration of the contract. It must also be conceded that the respondent has enjoyed the benefit of the payment of the sum of Rs. 500 by the appellant, for the debt due by the respondent to the panch has thereby been extinguished. But whether the act of the appellant can be said to be "lawfully" done for the respondent requires further consideration.

8. The term "lawful" no doubt has a wider meaning than the term "legal." "Legal" is what is in conformity with the letter or rules of the law as administered in the Courts; "lawful" is what is in conformity with (or frequently not opposed to) the principle or spirit of the law whether moral or judicial. In ascertaining whether an act is "lawfully" done for another the test to be applied should be, as was laid down by Straight and Mahmood JJ in *Chedi Lal v. Bhagwan Doss* I.L.R (1888) All. 234. viz., whether the person so acting held such a position to the other as either directly to create or by implication reasonably to justify the inference that by the act done for the other person he was entitled to look for compensation for it to the person for whom it was done. According to Mahmood J. (p. 244) any other view of the law would amount to saying that the effect of Section 70 of the Indian Contract Act is to enable a total stranger, without any express or implied request on behalf of a debtor, to put himself into the shoes of the creditor by the simple fact of paying the debts due by such debtor, The section, in the opinion of the learned Judge, could not have been intended to involve such a result. With great respect it seems to me that this is the proper test to apply in interpreting the term "lawfully" in Section 70. In *Ram Tuhul Singh v. Biseswar Loll Sahoo* I.L.R (1875) IndAp 131. their Lordships of the Privy Council remark (p. 143) :?

...it is not in every case in which a man has benefited by the money of another, that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit there must be an obligation, express or implied, to repay. It is well settled that there is no such obligation in the case of a voluntary payment by A, of B's debt.

9. In *Suchand Ghosal v. Balaram Mardana* I.L.R (1910) Cal 1. Jenkins C.J. observes (p. 7):?

The terms of Section 70 are unquestionably wide, but applied with discretion they enable the Courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations actually created by

contract. It is, however, especially incumbent on final Courts of fact to be guarded and circumspect in their conclusions and not to countenance acts or payments that are really officious.

10. In the same case Doss J. remarks (p. 11) :?

...notwithstanding the apparent generality of the language of Section 70 of the Contract Act, it seems to me reasonable to presume that it was not the intention of the Legislature that this section should be invoked where relief might be obtained under any other section of the Act,....

11. In *Gordhanlal v. Darbar Shri Surajmalji* I.L.R (1902) Bom. 504: 4 Bom L.R. 299. where the Chief of a State had paid case to Government and had thereafter sought to recover it from the holders of the village, this Court held that the Chief had such an interest in the village as would entitle him to pay the cess to Government if there was any danger of forfeiture in consequence of non-payment by the holders of the village. In such a case the Court held Section 69 of the Indian Contract Act would enable him to sue for reimbursement; but it did not appear that any such emergency had arisen or was likely to arise. The Court expressed the opinion that Section 70 of the Indian Contract Act had no application, for it could not be said that the Chief had "lawfully" made payments for the holders of the village as he had no authority from them and was under no obligation to pay.

12. Applying the principle to be gathered from these cases it would seem that the act of the appellant does not come under the description of being "lawfully" done for the respondent. The appellant in making the payment was really making it on her own behalf in pursuance of the terms of the compromise arrived at, The compromise, as found by the execution Court, was certainly for the benefit of the appellant and in complying with its terms she was seeking to benefit herself rather than the respondent. In my opinion the payment of the sum of Rs. 500 by the appellant cannot be taken as a separate transaction but must be regarded as part of the compromise. The compromise as found by the execution Court was detrimental to the interest of the respondent. With regard to the discharge by the appellant of the debt due by the respondent to the panch that must, in my opinion, in the absence of a valid authority from the respondent, be deemed to be an "officious" and not a "lawful" act within the meaning of Section 70 of the Indian Contract Act. There was no relationship subsisting at the time between the appellant and the respondent which would, apart from such authority, have made it "lawful" for the appellant to intermeddle in the private affairs of the respondent by paying off a debt on his behalf. In my opinion the terms of Section 70 of the Indian Contract Act are inapplicable to the case and the appeal should be dismissed with costs.

Patkar, J.

13. I agree. In this case a decree was obtained by defendant No. 8 against the plaintiff's husband. In order to pay off the decretal debt to the extent of Rs.

4,000 the plaintiff sold her land to one Dhanraj Shivilal for Rs. 4,200. Defendants Nos. 1 to 8 are the panch of Dasalat Gujarati community. Defendant No. 8 was not then in a sound state of mind. The panch of the community brought about an arrangement under which defendant No. 8 was made to pass a receipt acknowledging that the whole debt was settled at Rs. 3,500 and the amount was paid to the judgment creditor by Dhanraj Shivilal, The panch got a sum of Rs. 500 paid to themselves in satisfaction of the debt due by Bhagwan, defendant No. 8, to the community and got a promissory note for Rs. 3,000 in his favour from Dhanraj. In the execution on proceedings the guardian sought to recover the whole of the decretal debt. The Court in execution held that the pavi was taken from the judgment-creditor Bhagwan while he was in an unsound state of mind, and was not, therefore, binding on the judgment-creditor, that the panch had no business to seure their own money directly from Dhanraj, and that though Bhagwan was forced to pass the receipt under pressure, he was not in a fit state to understand his own interest. The whole of the decretal amount was ordered to be recovered in execution, The present suit is brought by the plaintiff to recover the amount of Rs. 500 paid for defendant No. 8 and damages from the defendants. The learned Subordinate Judge allowed the claim as against defendant No. 8 alone, On appeal by defendant No. 8, it was conceded before the learned Assistant Judge that Section 70 of the Indian Contract Act did not apply to the present case. The learned Assistant Judge held that 8, 65 of the Indian Contract Act did not apply on the ground that the section applied when the parties to the contract, were competent to contract and as defendant No. 8 was of unsound mind when the agreement was entered into, the section had no application.

14. Before us it is conceded on behalf of the appellant that Section 65 of the Indian Contract Act would not apply according to the ruling of the Privy Council in *Mohori Bibee v. Dharmodas Ghose* I.L.R (1903) Cal. 539: Bom. L.R. 421. and the decision in *Motilal Mansuhhram v. Manelclal Dayabhai* I.L.R (1920) Bom. 225: 22 Bom. L.R. 1195. and reliance is placed on Section 70 of the Indian Contract Act. In the lower Court it was conceded that Section 70 of the Indian Contract Act had no application. But the pleader's admission on a pure question of law is not binding on his client and amounts to no more than his view that the question is unarguable See *Narayan v. Venkatacharya* I.L.R (1904) Bom. 408: 6 Bom. L.R. 434.

15. The question, therefore, in this appeal is whether Section 70 of the Indian Contract Act applies to the facts of the present case. It Is urged on behalf of the respondent that the payment was not made by the plaintiff but by Dhanraj, and, therefore, the plaintiff cannot claim the benefit of Section 70 of the Indian Contract Act. It appears, however, from the circumstances proved in the case that Dhanraj made the payment as agent of the plaintiff. u/s 70 it must be proved firstly that the plaintiff has lawfully done anything for defendant No. 8, secondly that the plaintiff 1928 did not intend to do so gratuitously, and thirdly that defendant No. 8 has enjoyed the benefit thereof. It is clear that the plain-tiff

or Dhanraj on her behalf in making the payment did not intend to do so gratuitously, and it is not disputed that defendant No. 8 has enjoyed the benefit thereof as the debt due by him is discharged to that extent. The only question, therefore, is whether the plaintiff has lawfully made the payment for defendant No. 8. In *Chedi Lal v. Bhagwan Das* I.L.R (1888) All. 234. it was held that by the use of the word "lawfully" in Section 70 of the Indian "Contract Act, the Legislature had in contemplation cases in which a person held such a relation to another as either directly to create or reasonably to justify an inference that by some act done for another person, the person doing the act was entitled to look for compensation to the person for whom it was done. The plaintiff held no relation either directly to create or by implication reasonably to justify an inference that by the payment made for defendant No. 8, the plaintiff was entitled to look to defendant No. 8 for compensation for it. The payment was made by or on behalf of the plaintiff in order to support the compromise which was beneficial to the plaintiff and detrimental to the interests of defendant No. 8 who was not then in a sound state of mind. It was held in the execution proceedings that the panch intermeddled and brought about an arrangement under which they got themselves paid Rs. 500 on account of the debt due by defendant No. 8. The transaction thus brought about by the panch was held not binding on defendant No. 8. Defendant No. 3 being then in an unsound state of mind was incompetent to bind himself by any agreement.

16. In *Suchand Ghosal v. Balaram Murduna* I.L.R (1910) Cal. 1.7. Sir Lawrence Jenkins observed that the terms of Section 10 are unquestionably wide, but applied with discretion they enable the Courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations actually created by contract, and that it was incumbent on Courts of fact to be guarded and circumspect in their conclusions and not to countenance acts or payments that were really officious. In that case, the person making the payment had a tenant's right and the payment was made for the benefit of himself and the other tenants who were liable under the decree and had no alternative but to pay the decretal debts. In the present case, the plaintiff was under no legal obligation to pay the amount due by defendant No. 8, She was trying to support the compromise which was beneficial to her and detrimental to the interests of defendant No. 8. In *Gordhanlal v. Darbar Shri Suajmalji* I.L.R (1902) Bom. 504: 4 Bom. L.R. 299. where the plaintiff, the Chief of Patri, paid the local cess and sued to recover the Same from the defendants as Bhayats to whom the village had ?" been granted as jiwak giras, it was held that Section 70 of the Indian Contract Act had no application, for it could not be said that the plaintiff had lawfully made the payment for the defendants as he had no authority from them and was under no legal obligation to pay.

17. In *Ram Tuhul Singh v. Biseswar Lall Sahoo* (1875) L.R. 2 I.A. 134. it was held by the Privy Council (p. 143) :?

It is not in every case in which a man has benefited by the money of another,

that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit there must be an obligation, express or implied, to repay. It is well settled that there is no such obligation in the case of a voluntary payment by A. of B.'s debt. Still less will the action lie when the money has been paid, as here, against the will of the party for whose use it is supposed to have been paid.... Nor can the case of id. be better because he made the payment not ex mero motu, but in the course of a transaction which in one event would have turned out highly profitable to himself, and extremely detrimental to the person whose debts the money went to pay.

See also *Jyanibegam v. Umravbegam* (1908) 10 Bom. L.R. 746.

18. In order that the payments should have been made lawfully u/s 70 of the Indian Contract Act, it must be proved that they were not; made for any fraudulent purpose nor with any improper or ulterior motive nor for any undue gain to the payer. See *Desai Himatsingji Joravarsitigji v. Bhavabhai Kayabhai* I.L.R (1880) 4 Bom. 643. It is not shown that the plaintiff had either lawful authority to pay or was under a legal obligation to pay. The plaintiff in this case in making the payment on behalf of the defendant was endeavouring to support the compromise which was beneficial to her and detrimental to the interests of defendant No. 8 who was then in an unsound state of mind. The payment, therefore, made by the plaintiff cannot, under the circumstances of the present case, be considered to have been made lawfully and cannot be placed on a higher footing than an officious or voluntary payment. In the present case the plaintiff could have safeguarded her own interest by taking an assignment of the debt. I think, therefore, that Section 70 of the Indian Contract Act has no application to the facts of the present case.

19. I would, therefore, confirm the decree of the lower appellate Court and dismiss the appeal with costs.