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**(1949) 10 MAD CK 0055**  
**In the Madras High Court**  
**Case No : Second Appeal No. 1795 of 1946**

Ramaswami Naicken

APPELLANT

Vs

Viswanatha Chetty alias Subramania Chetty and Others

RESPONDENT

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**Date of Decision :** 13-10-1949

**Acts Referred:**

Contract Act, 1872 — Section 69, 70

**Citation :** AIR 1950 Mad 343

**Hon'ble Judges :** Viswanatha Sastri, J

**Bench :** Single Bench

**Advocate :** B.V. Viswanatha Aiyar, for the Appellant; A. Viswanatha Aiyar, O.V. Baluswami and R. Desikan, for the Respondent

**Final Decision :** Allowed

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## Judgement

Viswanatha Sastri, J.—The Courts below have differed on the question whether the plaintiff, here respondent, is entitled to reimbursement of

a sum of Rs. 1007 together with interest subsequent to the suit, from defendant 1, the appellant in this second appeal. The relevant facts are these.

2. Subramania Chetti (defendant 2) and Rajagopapala Chetti (the deceased father of defendants 3 and 4 and the husband of defendant 5) were

brothers and sons of Chinnu Chetti alias Muniappa Chetti on whose death they inherited an extent of 3 acres 95 cents of land as the heirs of their

father. The two brothers sold this land to one Kandaswami Chetti who not having been put in possession of the land, filed a suit O. S. No. 741 of

1939 on the file of the District Munsif's Court of Salem for recovery of possession of the property sold. He impleaded as parties to the suit

Subramania the present defendant 2 and his brother Rajagopala Chetti, as defendants 1 and 2. Rajagopala Chetty died pending the suit whereupon

his legal representatives, the present defendants 3 to 5 were c impleaded as defendants 7 to 9 in that suit. On 8th March 1941, the suit O. S. No.

741 of 1939 was compromised and a consent decree was passed to the effect that Kandaswami Chetti should be paid a sum of Rs. 1900 with

subsequent interest on or before 7th March 1942 and on receiving such payment, should reconvey the properties purchased by him to defendants

1 and 7 to 9 in that suit and defendants 2 to 5 in the present suit. On default of such payment, Kandaswami Chetti was to take possession of the

properties as absolute owner. Under Ex. D-2 dated 1st March 1942 the present defendants 3 to 5 sold the entire extent of 3 acres 95 cents to the

present plaintiff who was no other than the son-in-law of Rajagopala Chetti and defendant 5, as well as the brother-in-law of defendants 3 and 4.

Under Ex. D.2 the plaintiff was directed to put into Court a sum of Rs. 2014 for payment of Kandaswami the decree-holder in O. S. No. 741 of

1939 that sum representing the principal and interest payable to him under the compromise decree. The plaintiff also got an assignment of the rights

of the present defendants 3 to 6 under the decree in O. S. No. 741 of 1939 entitling them to a reconveyance of the property along with the present

defendant 2. The plaintiff paid the sum of Rs. 2014 into Court before the due date, for payment to Kandaswami.

3. Under Ex. D-3 dated 6th March 1942 Subramania Chetti the present defendant 2 sold his share of the 3 acres 96 cents to the present

defendant 1 for Rs. 1400 out of which a sum of Rs. 1007 was directed to be paid to the credit of O. S. No. 741 of 1939, the said sum of Rs.

1007 representing the vendor's half share of the amount payable to Kandaswami under the compromise decree in O. S. No. 741 of 1939. It is the

case of defendant 1 that when he went to deposit Rs. 1007 into Court on 7th March 1942, he found on enquiry that the entire sum of Rs. 2014

payable under the decree had been deposited by the plaintiff and that he therefore kept the money in a bank and give a telegram to defendant 3

that the money was ready for payment. Apparently he was not aware of the sale-deed Ex. D-2 in favour of the plaintiff. That defendant 1 had the

money ready on that date is shown by the extract from the bank book.

4. On 7th March 1942 the present plaintiff, along with defendants 3 to 5, filed an execution petition. E. P. No. 350 of 1942 wherein it was stated

that the decree in O. S. No. 741 of 1939 had been assigned to the present plaintiff, that the amount payable to Kandaswami Chetti the decree-

holder had been paid into Court on 7th March 1942 and that he should be directed to execute a sale-deed of the property in favour of the plaintiff.

Notice of the execution petition was served on the present defendant 2 (defendant 1 in O. S. No. 741 of 1938) who objected to the execution of

a deed of sale of the entire property in favour of the plaintiff in as much as he, defendant 2, was entitled to a moiety of the property. Thereafter, the

present defendant 1 as purchaser from defendant 2, deposited Rs. 1007 into Court on 16th July 1942 to the credit of O. S. No. 741 of 1939 as

undertaken by him in the sale deed, EX. D-3. Notice of this deposit by the present defendant 1 was given to Mr. T. V. Narayanaswami Iyer,

pleader for defendants 3 to 5 who was-also the pleader for the plaintiff and had filed E. P. No. 350 of 1942 on behalf of the present plaintiff as

well as defendants 3 to 5. The dispute between the parties related to the question whether the plaintiff was entitled to a conveyance of the entire

property as claimed by him or whether defendant 2 or rather his vendee, defendant 1, was entitled to a conveyance of a moiety of the property.

The sale of the entire property by defendants 3 to 5 to the plaintiff under EX. D-2 was clearly in excess of the vendor's rights as they were entitled

only to a half share, defendant 2 being entitled to the other half share therein. But the plaintiff had professed to purchase the entire property and in

the assertion of his right as such purchaser had deposited the sum of Rs. 2014 payable by defendants 3 to 5 his vendors as well as defendant 2.

On 25th July 1942, all the parties to the present suit, as well as Kandaswami Chetti the decree-holder in O. S. No. 741 of 1939, filed a joint

memo in E. P. No. 350 of 1942 to the effect that without prejudice to the contentions of the parties Kandaswami Chetti should draw out Rs. 2014

deposited by the present plaintiff and execute a sale-deed jointly in favour of the present plaintiff and defendant 1 as nominees of defendants 3 to 5

and defendant 2 respectively. The present defendant 1 was defendant 6 in O. S. No. 741 of 1939 and was also a party to the compromise.

Pursuant to the compromise a sale-deed Ex. D-8 dated 4th August 1942 was executed by Kandaswami Chetti in favour of the plaintiff and

defendant 1, as nominees of their respective vendors under EX. D-2 and Ex. D-3. A sum of Rs. 1007 deposited into Court by defendant 1 to the

credit of O. S. No. 741 of 1939 (vide challan Ex. D-4 dated 16th July 1942) for payment to Kandaswami, the decree-holder in that suit,

remained in Court and was not drawn out by the decree-holder who was paid out of the sum of Rs. 2014 deposited by the plaintiff. This sum of

Rs. 1007 deposited by the present defendant 1 was subsequently attached by another decree-holder of defendant 2 and drawn out, though the

money had been paid to the credit of O. S. No. 741 of 1939 for payment to the decree-holder therein, namely, Kandaswami Chetty. The order

for payment out to the attaching decree-holder in O. S. No. 660 of 1939 was as pointed out by the appellate Court, clearly erroneous. The

learned Subordinate Judge in his judgment repeatedly states that defendant 1 had notice of the execution petition filed by the decree-holder who

attached the sum of Rs. 1007, that he raised no objections and that he was himself to blame for having allowed the third party who held a decree

against defendant 2 to attach the amount of Rs. 1007 and draw it out of Court. This statement of the Subordinate Judge is not supported by the

record and there is nothing to show that defendant 1 who was not a party to the suit or the execution petition filed by the decree-holder against

defendant 2 was aware of the attachment or the payment out.

5. The plaintiff filed the present suit for the recovery of a sum of Rs. 1007 and subsequent interest from defendant 1 and the claim was dismissed

by the trial Court but decreed by the appellate Court on the ground that

the plaintiff is entitled to recover the amount from defendant 1 because defendant 1 is the owner of half the property and he is bound to pay to the

plaintiff half the amount deposited by the plaintiff.

No reference is made to any legal principle recognised by statute or case law as justifying or supporting the conclusion of the appellate Court. In

this Court the plaintiff's learned counsel rested his case on Sections 69 and 70, Contract Act.

6. I am of opinion that neither Section 69 nor Section 70, Contract Act entitles the plaintiff to any relief against defendant 1. Defendant 1

purchased the moiety of the three acres 95 cents from defendant 2 under Ex. D-3 on 6th March 1942 for a sum of Rs. 1400 out of which he was

required to pay and paid Rs. 1007 into Court for payment to the decree-holder in O. S. No. 741 of 1939. This sum of RS. 1007 was defendant

2's half share out of the total amount of Rs. 2014 payable to the decree-holder by defendants 2 to 5. Defendant found that the entire sum of Rs.

2014 had already been paid into Court by the plaintiff who had taken a conveyance of the entire property from defendants 3 to 5 on 1st March

1942 under Ex. D-2 for Rs. 2500 out of which he was directed to pay Rs. 2014 to Kandaswami Chetti the decree-holder in O. S. No. 741 of

1939. Defendant 1 kept the money in a bank for some time and deposited Rs. 1007 into Court on 16th July 1913 at a time when the plaintiff

wanted a conveyance of the entire property under Ex. D-2 and the assignment of the decree in O. S. No 741 of 1989 in his favour. Even when the

parties filed a compromise memo EX. P. 2 dated 25th July 1942, in E. P. No. 350 of 1912, agreeing to take a conveyance in the names of both

the plaintiff and defendant 1, the question whether the plaintiff was entitled to the entire property as claimed by him or whether defendant 1 was

entitled to a moiety of the property as purchaser from defendant 2 was left open. It was evidently for this reason that the sum of Rs. 1007 paid into

Court by defendant 1 and lying there to the knowledge of all the parties, was not drawn out by the plaintiff and no provision was made in the joint

memo, for payment of that sum to the plaintiff. Defendant 1 purchased a moiety of the property from defendant 2, the rightful owner of that moiety

and paid the entire consideration for it. Defendant 2 could not--and did not--complain of any failure of consideration for the sale Ex. D-3. The

plaintiff purchased the entire property from his own mother-in-law and brother-in-law and also took an assignment of the entire rights under the

decree in O. S. No. 741 of 1939 ignoring the rights of defendant 2 who was entitled to a moiety of the property and to a reconveyance jointly

along with defendants 3 to 5. Having purchased the entire property and got assigned to himself the entire decree in O. S No. 741 of 1939 in denial

of the rights of defendant 2 of which he must have been aware the plaintiff paid Rs. 2014 into Court and also prayed for the execution of a

reconveyance of the entire property in his favour in his execution petition No. 350 of 1942. Ex. P-1 in the case. Defendant 2 who had sold his

rights in the property to defendant 1 under Ex. D-3 resisted the claim of the plaintiff in the execution petition. Thereupon without deciding whether

the plaintiff was entitled to the entire property as claimed by him or only to a moiety thereof as asserted by defendant 2 it was agreed for the time

being that a conveyance should be taken in the names of both the plaintiff and defendant 1 in order to get rid of the claim of the decree-holder

Kandaswami Chetti in O. S. No. 741 of 1939. That this was the arrangement entered into between the parties at the time when the joint memo

was filed on 25th July 1942 is clearly stated in para. 13 of the plaint. It was only in his notice Ex. P-5 dated 19th July 1943 that the plaintiff, for the

first time conceded that defendant 1 was entitled to a moiety of the property. The present suit for reimbursement was filed on 5th October 1943.

7. On these facts I am of the opinion that neither Section 69 nor Section 70. Contract Act, entitles the plaintiff to a reimbursement or contribution

in whichever way the claim might be reviewed. The sum of Rs. 2014 payable to the decree-holder in O. S. No. 741 of 1939 was not a charge on

the property and the plaintiff does not claim to have been subrogated to the rights of Kandaswami Chetti, the decree-holder. The plaintiff when he

put this money into Court was bound under his sale-deed EX. D-2 to pay the entire sum of Rs. 2014. The vendors and the vendee under Ex. D 2

agreed that the plaintiff was to take the entire property by way of sale and pay Rs. 2014 as part of the consideration for the sale. Exhibit D-2 was

executed and taken in denial of the right of defendant 2 to a moiety of the property. The plaintiff being bound to pay Rs. 2014 under the terms of

Ex. D 2 paid that sum. Defendant 1 was not bound to pay Rs. 2014. He was bound to pay and paid into Court Rs. 1007 on behalf of his vendor

though beyond the time fixed by the decree in O. S. No. 741 of 1939. Defendant 1 carried out his undertaking in the sale-deed Ex. D-3 and

defendant 2 does not complain that there was a failure of consideration for the sale. The plaintiff therefore was not a person merely interested in the

payment of Rs. 2014, but he was himself bound to pay it under Ex. D-2. The plaintiff's claim for payment of Rs. 1007 by defendant 1 is not a

claim for reimbursement u/s 69, Contract Act. Nor can the claim be based on Section 70. On all the dates when the plaintiff took the conveyance

Ex. D-2 paid the sum of Rs. 2014 into Court, filed E. P. No. 350 of 1942, and entered into the compromise memo Ex. P 2 and indeed till the

issue of the notice Ex. P 5 dated 19th July 1943 the plaintiff was insisting that he alone was exclusively entitled to the whole of the property and

denying that defendant 1 or his vendor defendant 2 had any rights thereto. It was in assertion of such exclusive title and to support such exclusive

assertion, that he paid Rs. 2014 into Court. In these circumstances, it is not possible to say that the plaintiff lawfully did anything for defendant 1

within the meaning of Section 70, Contract Act. If the plaintiff found that he had not got all that he bargained for from his vendors under EX. D-2,

his remedy was in damages for breach of the covenant for title. Defendant 1 has paid the full consideration for his sale Ex. D-3. If the plaintiff had

recognised the title of defendant 1 to a half share of the property at the time of the compromise, Ex. P 2, dated 25th July 1942, the sum of Rupees

1007 which has been paid into Court by defendant 1 could have been paid over by consent of the parties to the plaintiff, but this could not be done

as the plaintiff insisted even then on asserting his exclusive title to the property. He could not now turn round and say that he paid Rs. 2014 for the

benefit of defendant 1 also when in fact he was denying the title of defendant 1 and making a payment in assertion of his own exclusive title, which

assertion, is now to be found untenable.

8. Lastly it was urged by the learned counsel for the respondent that if the plaintiff failed in the present suit, defendant 1 would be getting the

property freed from liability with the aid of the plaintiff's money. It was therefore argued that the plaintiff was entitled to a decree on general

principles of justice and equity. It is not as if defendant 1 has not paid consideration for the sale deed Ex. D-3. In fact, he has paid the entire

consideration for the sale and the money has been attached and taken out by the creditors of his vendor. It is no doubt true that the plaintiff's

money went in discharge of the claim of Kandaswami Chetti the decree-holder in O. S. No. 741 of 1939. But that circumstance alone would not

give the plaintiff a right to contribution or reimbursement from defendant 1. The contention of the plaintiff-respondent is best answered in the

language of the Judicial Committee in *Ram Tuhul v. Biswarlal*, 2 I. A. 131: 15 Beng. L. R. 208.

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.

9. For these reasons, I reverse the decree of the appellate Court and restore the

decree of the trial Court. The plaintiff will pay the costs of defendant 1 in this and in the lower appellate Court.

10. Leave refused.