(1982) 09 KL CK 0001

In the High Court Of Kerala

Case No : C.R.P. No. 172 of 1980-D

Ramaswamy Kounder APPELLANT

Vs

Appuchami Kounder RESPONDENT

Date of Decision : 24-09-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Contract Act, 1872 — Section 69, 70

Citation : (1982) 09 KL CK 0001

Hon'ble Judges : Balakrishna Menon, J

Bench : Single Bench

Advocate : C.S. Ananthakrishna Iyer, for the Appellant; P.K. Shamsuddin and Abul Hassan, for the Respondent

Judgement

Balakrishna Menon, J.—The Defendant is the revision Petitioner. The suit is for recovery of Rs. 2641-21 from the Defendant on the basis of Sections 69 and 70 of the Indian Contract Act. According to the Plaintiff, the Defendant had borrowed certain amounts from the Moolathara Service Go-operative Bank and the Plaintiff was surety for the loan taken by the Defendant. The Co-operative Bank obtained a decree for the amount covered by the loan and since the Defendant defaulted payment of the decree amount, certain goods belonging to the Plaintiff were attached and brought to sale by the Co-operative Bank. The Plaintiff at this stage required the Defendant to pay and discharge of the decree amount and get the Plaintiff''s goods released from attachment whereupon the Defendant requested the Plaintiff himself to make the payment on his behalf for the purpose of getting the Plaintiff''s goods released from attachment in execution of the decree. Accordingly on the express undertaking of the Defendant to make good the payment, the Plaintiff paid the decree amount in two instalments and obtained Exts. A-1 and A-2 receipts from the Co-operative Bank. The total amount paid is Rs. 2641.21 and the present suit is for realisation of this amount from the Defendant. The Defendant denies the plaint claim. According to the Defendant the Plaintiff was not a surety for the loan taken by the Defendant from the

Cooperative Bank. The movables attached also did not belong to the Plaintiff. The attached movables were certain agricultural implementations, a pair of bullocks and seed paddy that belonged to the Defendant and on attachment the movables were entrusted to the Plaintiff on kychit by the sale officer of the Co-operative Department. It was the Defendant who made the payments in discharge of the decree debt, even though the receipts Exts. A-1 and A-2 stand in the name of the Plaintiff. The trial court found chat the Plaintiff was not a surety for the loan taken by the Defendant from the Co-operative Bank, the goods attached belonged to the Defendant and money paid for discharge of the decree debt also belonged to the Defendant. On these findings the trial court dismissed the suit. In appeal the lower appellate court has concurred with the findings of the trial court that the Plaintiff was not a surety for the loan taken by the Defendant from the Co-operative Bank and the goods attached belonged to the Defendant and not to the Plaintiff as contended by him. The lower appellate court on the strength of Exts. A-1 and A-2 receipts standing in the name of the Plaintiff has found that the amount was actually paid by the Plaintiff and a decree was granted for recovery of the amount on the basis that he is entitled to such recovery u/s 70 of the Indian Contract Act. It is against this decree of the lower appellate court that the Defendant has come up in revision.

2. Even accepting the findings of the lower appellate court the decree granted in favour of the Plaintiff cannot be supported in law. Section 69 of the Indian Contract Act cannot have any application as on the findings of both the courts below the Plaintiff is not a person interested in the payment of money which the Defendant is bound by law to pay. The lower appellate court has based its decision on Section 70 of the Indian Contract Act. The question therefore is as to whether the Plaintiff is entitled to recovery of the suit amount on the basis of Section 70 of the Indian Contract Act. The goods attached were certain agricultural implements, a pair of bullocks and seed paddy belonging to the Defendant. The finding of both the courts below is that the Plaintiff had no interest in the goods attached. The goods attached were entrusted to the Plaintiff on kychit by the sale officer of the Co-operative Department, who is examined as D.W. 2. It is pointed out by counsel for the Appellant that the goods attached were such in respect of which a contention would have been available to the Defendant that the goods are exempt from attachment under Clause (b) of the proviso to Section 60 of the CPC being implements of husbandry, cattle and seed-grain belonging to an agriculturist. The finding of the lower appellate court is that the Plaintiff did make the payments in discharge of the decree debt against the Defendant and obtained Exts. A-1 and A-2 receipts. He had no legal obligation to make the payments and had voluntarily discharged the decree debt against the Defendant. By such payment the Defendant has lost a valid defence in execution that the goods attached are exempt from attachment. Whether the payment under such circumstances can be considered to be one that would entitle the Plaintiff to recover the amount from the Defendant u/s 70 of the Indian Contract Act is the point arising for decision in this C.R.P. In the decision of the Supreme

Court in State of West Bengal v. B.K. Mandal and Sons AIR 1962 S.C. 779 it is stated thus:

There is no doubt that the thing delivered or done must not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them. Section 70 deals with cases where a person does a thing for another not intending to act gratuitously and the other enjoys it. It is thus clear that when a thing is delivered or done by one person it must be open to the other person to reject it. Therefore, the acceptance and enjoyment of the thing delivered or done which is the basis for the claim for compensation u/s 70 must be voluntary. It would thus be noticed that this requirement affords sufficient and effective safe guard against spurious claims based on unauthorised acts.

In the decision of a learned single Judge of this Court in Mariam Vs. Narayanan Thrathar Nambooripad, it is stated thus:

It is not the law u/s 70, Contract Act that a benefit which is the basis for compensation, can be thrust upon a person to make him liable for reimbursement.

A Division Bench of this Court in the decision in Krishnadas v. P.S. Soma Iyer 1972 KLT 178 stated thus at page 182:

Section 70 says that, where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, etc. The person (the Plaintiff) must, not only establish that he did something lawfully for another (the Defendant) or delivered something to him, but must, in addition, prove that he did so not intending it to be gratuitous: the onus is on the Plaintiff to show that the act or the delivery was not gratuitous.

In the decision of the Privy Council in Ram Tuhul Singh v. Biseswar Lall Sahoo and Soodisht Lall 2 IA 131 it is stated at page 143:

But even if this were true, 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 consideration 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: Stokes v. Lewis. Nor can the case of A 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.

3. In the present case the Plaintiff has not adduced any evidence to prove that

the payment was not intended to be gratuitous. By such payment voluntarily made, the Defendant has lost a valid defence that he could have raised against the attachment and sale of agricultural implements, cattle and seed grains belonging to him. The payment even if true was one thrust upon the Defendant. The Plaintiff in those circumstances is not entitled to recover the amounts so paid from the Defendant u/s 70 of the Indian Contract Act.

4. The result is I allow the C.R.P. and in reversal of the judgment and decree of the lower appellate court restore the decree of the trial court. There will be no order as to costs.