
(1958) 02 PAT CK 0016
In the Patna High Court
Case No : A.F.A.D. No. 875 of 1951

State of Bihar

APPELLANT

Vs

Jhawarmal

RESPONDENT

Date of Decision : 21-02-1958

Acts Referred:

Contract Act, 1872 — Section 72

Citation : AIR 1958 Patna 310

Hon'ble Judges : V. Ramaswamy, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : K.P. Varma, for the Appellant; Ragho Saran Lall, for the Respondent

Final Decision : Allowed

Judgement

1. In the suit which is the subject- matter of this appeal the plaintiff prayed for recovery of Rs. 612/9/0 which is said to have been illegally realised from him on account of arrears of cess by the defendant. The case of the plain tiff was that no cess was due from him in all the three certificate cases, namely, No. 429 of 1938-39, No. 2251 of 1938-39 and No. 104 of 1943-44, with regard to the estate called Malhani Goth, bearing tauzi No. 547 of the Bhagalpur Collectorate. The plaintiff alleged that a warrant of arrest was issued against him in all these cases and under pressure of the process of court the plaintiff paid the amount to the peon who had come with the warrant of ar rest.

The case of the defendant, namely, the State of Bihar, was that the plaintiff had purchased at a revenue sale tauzi No. 547 of the Bhagalpur Collectorate and that he was liable to pay cess and revenue for that tauzi. With regard to Certificate cases Nos. 429 and 2251 06 1938-39, the defendant alleged that the plaintiff had admitted that he was the purchaser of the estate and that he was laible to pay the dues with regard to revenue and cess.

As regards Certificate Case No. 104 of 1943-44, the defendant alleged that though the plaintiff was not the certificate debtor he was liable to pay the

amount of cess due in that case and the realisation on the amount in that case also was legal and just and the plaintiff was not entitled to succeed in the present suit. The suit has been partly decreed by the lower appellate court on the finding that the plaintiff was the purchaser of tauzi No. 547 and that he was the certificate debtor in two of the certificate cases, namely, in case No. 429 and case No. 2251 of 1938-39. With regard to case No. 104 of 1943-44, the finding of the lower appellate court is that the plaintiff was not named as the certificate debtor and the amount realised from him under threat of warrant of arrest was, therefore, an involuntary payment and the plaintiff was, therefore, entitled to realise the amount of Rs. 288/- together with proportionate costs and interest at 6 per cent per annum.

2. This appeal is presented on behalf of the State of Bihar against the judgment of the lower appellate court.

3. In support of this appeal the main contention put forward on behalf of the appellant is that the plaintiff was 16 annas owner of tauzi No. 547 and that he was liable to pay the cess in question in Certificate Case No. 104 of 1943-44 and, therefore, the plaintiff has made out no case for recovering the amount back from the State of Bihar. The learned Standing Counsel on behalf of the defendant also drew our attention to the evidence of D. W. 1, Kashi Singh, the peon of the Bhagalpur Collectorate, to show that he showed the warrant of arrest to the plaintiff who replied that he would pay the money after making proper enquiry in the office.

The witness goes on to say that the plaintiff made enquiries in the office and then made payment to him with regard to Certificate Case No. 104 of 1943-44, and the other two certificate cases. It is not disputed on behalf of the respondent that he is the owner of tauzi No. 547. It is also not disputed on his behalf that the amount of cess which is the subject-matter of case No. 104 of 1943-44 was actually due from him. In these circumstances the question arises whether the plaintiff is entitled to maintain the suit u/s 72 of the Contract Act, which states as follows:

"72 A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it".

4. In our opinion, Section 72 of the Contract Act has no application to this case. The principle of law is well established that money paid under pressure or compulsion of legal process cannot be recovered, and when money is paid in these circumstances Section 72 of the Contract Act has no application. The leading case on the point is *Marriot v. Hampton* (1797) 2 Sm. LC 386 (A) in which money had been paid by the plaintiff to the defendant under the compulsion of legal process and it was afterwards discovered that the money was not due. Even so it was held that the plaintiff could not recover it back in an action for money had and received. The principle of this case has been applied by the Allahabad High Court in *Kishen Sahai v. Bakhtawar Singh* ILR A11 237 (B)

and in a case of the Bombay High Court in the Secretary of State v. Tatyasaheb Yeshwant Rao ILR Bom 501: AIR 1932 Bom 386 (C).

In the last case the Government of Bombay had notified certain land in the defendant's possession for acquisition under the Land Acquisition Act, 1894. In the notification the land was described as Khoti Khajan, denoting thereby that it was not Government land. After acquisition disputes arose between the defendant and another person who claimed the compensation awarded, and in 1912 the High Court decided that the amount should be paid to the defendant. Later on, in 1924, the Government discovered that the land was their own and thereupon brought a suit, in the name of the Secretary of State, to recover from the defendant the amount paid to him as compensation as money paid to him by mistake. In these circumstances it was held by Beaumont, C. J. and Broomfield, J. that the money could not be recovered back u/s 72 of the Contract Act as it was not paid under a mistake but under compulsion of legal process.

This view is also supported by a decision of this High Court in Bhikhari Mahto Vs. Bansropan Ram and Another, Counsel on behalf of the respondent referred to Trikamdas Udeshi Vs. Bombay Municipal Corporation, But that case is not in point because the money was not recovered by judicial process in that case.

On the other hand, the present case is covered by the principle enunciated in : The Secretary of State for India in Council Vs. Tatyasaheb Yeshwantrao Holkar, Bhikhari Mahto Vs. Bansropan Ram and Another, We, therefore, hold that the lower appellate court has taken an erroneous view of law with regard to the interpretation of Section 72 of the Contract Act, and the suit of the plaintiff must be dismissed even with regard to the money recovered in Certificate Case No. 104 of 1943-44.

5. For those reasons we accordingly allow this appeal and order that the suit brought by the plaintiff should be dismissed in toto. The appeal is accordingly allowed, but there will be no order as to costs.