

(1912) 08 MAD CK 0007
In the Madras High Court

Subramanya Chettyar

APPELLANT

Vs

Arunachellam Chettyar and Others

RESPONDENT

Date of Decision : 15-08-1912

Acts Referred:

Contract Act, 1872 — Section 70

Citation : 16 Ind. Cas. 692

Hon'ble Judges : Sundara Aiyar, J; Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. The basis of the plaintiff's claim before the Subordinate Judge was undoubtedly Section 70 of the Contract Act. The plaintiff's case is that he

repair a certain channel. He holds a village called Pambur irrigated by a branch channel leading from Koothankal which itself takes its rise from the

Vaigai river. He alleges that lower down, certain channels used to take off irrigating a village belonging to the defendants, that plaintiff expended

money in repairing the Koothankal from a point, a deal above the place where his branch channel takes off from the Koothankal and up to his own

village, that the defendants have been benefited by the repairs made by him, that he made the repairs on behalf of himself and the owners of other

villages, including the defendants, that he did not intend to do so gratuitously and that, therefore, he is entitled to recover contribution from the

defendants on account of the expenditure incurred by him.

2. It is admitted that there is now no branch channel which irrigates the defendant's village taking off from the Koothankal. Assuming that a branch

channel existed at one time, the defendant would derive no benefit from the repairs -unless he re-excavates a branch channel. At present, no

benefit has been actually derived by the defendant from repairs made by plaintiff. It is quite clear that the plaintiff has, therefore, no present cause of action for contribution. It was clearly laid down in *Damodara Mudaliar v. The Secretary of State for India* 18 M.K 88 : 4 M.L.J. 205, that one of the essential requisites, which a plaintiff claiming compensation u/s 70 must prove, is that the defendant actually has received benefit. See also *Raja Krishna Das v. The Municipal Board of Benares* 27 A.K 592 : (1905) A.W.N. 111 : 2 A.L.J. 321. It is argued that the plaintiff would be entitled, u/s 70 to compensation in all cases where the act done by the plaintiff would) be beneficial if the defendant could derive advantage from the act by any further acts to be done by him. This is a proposition for which there is absolutely no warrant. The defendant is not bound to do anything for his own benefit and plaintiff has no right to compel him indirectly to do so by claiming compensation in the case of this sort. The second appeal is dismissed with costs.