

(1906) 12 CAL CK 0021
In the Calcutta High Court

Umesh Chandra Banerjee

APPELLANT

Vs

Khulna Loan Company

RESPONDENT

Date of Decision : 07-12-1906

Acts Referred:

Contract Act, 1872 — Section 69

Citation : (1907) ILR (Cal) 92

Hon'ble Judges : Chunder Madhub Ghose, J;Caspersz, J

Bench : Division Bench

Judgement

Chunder Madhub Ghose and Caspersz, JJ.—This appeal arises out of a suit described as one for contribution. The suit was instituted against three persons-- Umesh Chandra Banerjee, Matangini Debi and Brojendra Nath Banerjee, they being the recorded share-holders in a putni taluk, which had been mortgaged to the plaintiffs, the Khulna Loan Company, by Matangini Debi, Brojendra Nath Banerjee and Akshayanund Banerjee. Subsequent to this mortgage, this lastmentioned individual executed a kobala in favour of Umesh Chandra, and, as we gather, Umesh Chandra on the strength of his purchase applied for the registration of his name in the zemindar's sherista in place of Akshayanund; and this was allowed. Subsequent to this transaction, there were various proceedings in Court between other parties and Umesh Chandra, in which he (Umesh Chandra) put himself forward as the real holder of the taluk in place of Akshayanund. Recently, however, the putnidars defaulted to pay the rent due from them to the zemindar, and the plaintiffs, the Loan Company, in order to save their mortgage interest paid up the zemindar's demand and thus saved the putni from sale; and subsequently they brought the present suit against Umesh Chandra, Matangini and Brojendra Nath Banerjee for recovery from them of the respective quotas of the monies that the Company paid on their account with reference to their respective interest in the putni taluk. Umesh Chandra, however, contended that he was but a benamdar for Akshayanund, and that he was in no way liable. Thereupon Akshayanund was added as a party defendant.

2. The Court of first instance found that the plea of benami set up by Umesh Chandra was true, and so it gave a decree to the plaintiffs against Matangini, Brojendra and Akshayanund, dismissing the claim against Umesh Chandra. On appeal by the plaintiffs, the learned District Judge has taken a different view of the liability of Umesh Chandra. He has not dealt with the question whether Umesh Chandra, notwithstanding the execution of the kobala in his favour, is but a benamdar for Akshayanund, because he holds that, in law, Umesh Chandra is the person primarily liable to the plaintiffs for the amount demanded from him.

3. It has been contended by the learned vakil for the appellant Umesh Chandra that, whereas a suit for contribution proceeds upon equitable principles, if, as a matter of fact, Umesh Chandra be but a benamdar for Akshayanund, it would be inequitable to pass a decree against Umesh Chandra and not against Akshayanund. Our attention however has been called to the provisions of Section 69 of the Indian Contract Act, under which a liability attaches to a person in circumstances like those that exist in the present case. That section runs as follows:--"A person, who is interested in the payment of money, which another is bound by law to pay and who, therefore, pays it, is entitled to be reimbursed by the other." The plaintiffs were certainly the persons, who were interested in the payment of the putni rent due to the zemindar; and the question, and the only question, which under this section arises is, whether Umesh Chandra was bound in law to pay his quota of the putni rent. The case is not strictly speaking a case for contribution, properly so called. It is not a case where one co-sharer in a joint estate having paid the entire liability due upon the entire body of shareholders brings a suit for contribution against the other co-sharers for recovery of the amounts respectively due from them. But this is a case where a third party, who is not a co-sharer in the putni estate, in order to save his interest in the estate pays up the zemindar's demand--a demand which the several shareholders in the putni estate were bound to have satisfied, and brings a suit for recovery from them of the amount which he paid on their account in respect of the several quotas of their liability. We have, however, to consider as the learned vakil for the appellant has contended whether Umesh Chandra was bound in law to pay his quota of the rent to the zemindar. Prima facie, it seems to us he was bound to pay it, for he having represented to the zemindar that he had purchased this property from Akshayanund, and the zemindar having, upon the faith of his purchase, registered his name in place of Akshayanund, he (the zemindar) was entitled to call upon Umesh Chandra to pay his share of the rent due to him. No doubt, as has been pointed out to us by the learned vakil for the appellant, if the zemindar had brought a suit for recovery of the rent due to him, Umesh Chandra might have set up a defence that in the matter of the registration of his name in "the zemindar's" sherista, he (the zemindar) was perfectly aware of the circumstances under which the application was made, and that the registration was but the outcome of some arrangement or other that was come to between all the parties concerned. That is no doubt a possible case, but we hardly think that any matter like this could be considered in the case now before us, for,

prima facie, Umesh Chandra was bound in law to pay rent to the zemindar. In this view of the matter, and as already mentioned, Umesh Chandra having put himself forward in various proceedings as the real owner of the putni in question, the Loan Company was perfectly justified in bringing the suit against him and the other co-sharers for the recovery of the amount that was due from them. For these reasons we are of opinion that this appeal should be dismissed with costs.