

(1940) 02 MAD CK 0039
In the Madras High Court

Vemuri Ramjee Rao

APPELLANT

Vs

The Municipal Council

RESPONDENT

Date of Decision : 29-02-1940

Acts Referred:

Contract Act, 1872 — Section 72

Citation : AIR 1940 Mad 956 : (1940) 52 LW 437 : (1940) 2 MLJ 469

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The only question that arises in this appeal is whether the plaintiff, who had paid property tax to the defendant municipality upon

demand in a wrong belief that he was bound to pay that tax, is entitled to have it refunded. Both the lower Courts held that as the payment was a

voluntary one, he is not entitled to have any such refund. His suit was therefore dismissed and his appeal to the Subordinate Judge, Masulipatam,

was also dismissed.

2. Mr. Raghava Rao, in his very able argument, has put forward two contentions. They are that u/s 72 of the Indian Contract Act the plaintiff is

entitled to a refund of money paid by mistake of law and that even though Section 72 would debar a person from recovering money paid under a

mistake of law in a quasi-contract, there would still be open to such a person the equitable relief that a Court can give to a person who has wrongly

parted with money independently of any contract.

3. Municipal Council, Dindigul v. Bombay Co., Ltd. (1928) 56 M.L.J. 525 : ILR 52 Mad. 207, is a decision on which Mr. Raghava Rao has

placed great reliance. It discusses the English principles to be applied in a case

somewhat similar to the present one, in which a person made a payment to a corporate body under protest and then claimed it back. The question that arose was, whether the suit was in time; because it had been filed more than six months after the payment had been made, six months being the period allowed by Section 350 of the Madras District Municipalities Act for bringing a suit against a Municipality in certain classes of suits, Both Coutts-Trotter, C.J. and Madhavan Nair, J., held that the suit claim was not one arising out of a contract and that therefore principles of the English Courts of Equity could be applied; for in Indian Courts no distinction had ever been drawn between equitable jurisdiction and legal. Such equitable principles being applied, it was considered by these learned Judges that the suit was one for "money had and received" and not an action for damages and compensation. It was held therefore that Section 350 of the Madras District Municipalities Act did not apply, but Article 62 of the Limitation Act. It has therefore been argued by Mr. Raghava Rao that it is unnecessary to apply the principles of the Common Law Courts of England, which, he says, have been reproduced in Section 72 of the Indian Contract Act and that this suit may be looked upon as one in the general equitable jurisdiction of Civil Courts. Municipal Council, Dindigul v. Bombay Co., Ltd. (1928) 56 M.L.J. 525 : ILR 52 Mad. 207, may be regarded as an authority for the position that either a cause of action arises independently of Section 72 of the Contract Act or that when applying Section 72 of the Indian Contract Act, one should not be bound by the somewhat narrower principles of the Common Law Courts of England; but may well have regard to the decisions of the Court of Equity.

4. That a suit for "money had and received" will lie apart from Section 72 of the Contract Act, has been held in Narayanasami Reddi v. Osuru Redd ILR (1901) Mad. 548, where a person was obliged to pay his landlord some money which was really not due, in order to avert a summary sale of his land. It was held that although the money was not paid by mistake, yet the person who paid it was entitled to have it back. But even if we regard this suit as one to which Section 72 of the Contract Act does not apply, I do not consider that the plaintiff's claim would be any stronger; because Courts have generally held that where a payment is made by

mistake of law, there is no room for the application of equitable principles. The person who makes the payment is under no obligation to do so; and if he, of his own free will and accord, having the same opportunity of knowing the general law as the person to whom he pays, it, makes such a payment, there is no injustice done which Courts of Equity should remedy. It is pointed out in Halsbury's Laws of England (Vol. 23 at page 168, in paragraph 246 and Vol. 7 at page 278 in paragraph 249) that it is not an absolute rule that a payment made under a mistake of law cannot be recovered. A few exceptions do exist, especially where the person who makes the payment has much less opportunity of knowing the law than the person to whom he pays it and relies on the word and experience, of the person paid. It has however never been held, even by Courts of Equity, that a payment made under circumstances like the present is recoverable in a Court, Mr. Raghava Rao has been at some pains to point out that in more recent decisions in England there has been a tendency to interpret more liberally the rule against the recovery of money paid by mistake of law; but Ramesam, J., who was apparently dealing with the same argument in *Appavoo Chettiar v. The South Indian Railway Co.* (1928) 56 M.L.J. 269, thought that the recent decision of the House of Lords and the remarks of Lord Justice Scrutton indicated that there had been no modification of the general principle against forcing a person to return money paid under a mistake of law.

5. Returning to Section 72 of the Contract Act, it has been held in a number of cases that payments made in India by mistake of law cannot be recovered. *Appavoo Chettiar v. The South Indian Railway Co.* (1928) 56 M.L.J. 269, is a direct authority with regard to a payment of the kind here made. In *B. Raja Rajeswara Sethupathi Avergal alias B. Muthu Ramalinga Sethupathi Avergal, Rajah of Ramnad Vs. The Right Honourable The Secretary of State for India in Council*, , it was held that a wrong payment of Income Tax could not be recovered for the same reason. In recent cases the principle that a person who makes payment under a mistake of law cannot recover it back again has been accepted without question see *The Municipal Council, Tuticorin v. Ralli Brothers* (1933) 67 M.L.J. 566 and *The Chairman, Municipal Council Vs. Nyapathi Subba Rao*,

6. I have therefore no doubt that as the law stands at present, a person who makes a payment of tax under a misapprehension as to his liability to

do so cannot recover it in a Court of Law, although one would expect a corporate body to refund voluntarily any amount which had been paid to it

in error.

7. The appeal is accordingly dismissed with costs.