

(1968) 12 MAD CK 0038
In the Madras High Court

V.S. Chockalingam Chettiar

APPELLANT

Vs

A. Karupan Chettiar

RESPONDENT

Date of Decision : 06-12-1968

Acts Referred:

Contract Act, 1872 — Section 70

Citation : (1969) 82 LW 435 : (1969) 2 MLJ 538

Hon'ble Judges : A. Alagiriswami, J

Bench : Division Bench

Judgement

A. Alagiriswami, J.—The defendant is the appellant. The appeal arises out of a suit for contribution filed by the respondent plaintiff. The plaintiff and defendant were joint owners of a tea estate in Ceylon. Subsequently the defendant sold his share in it to the plaintiff. On 21st August, 1956, an agreement was entered into between the parties in connection with it. Clause 3 of the agreement is the provision on the interpretation of which the decision in this case will depend. It appears that a penalty had been levied by the Income Tax Department in respect of this tea estate. Under that clause the plaintiff was authorised to take necessary steps to have the penalty cancelled. But if the penalty was not so cancelled, the plaintiff was to bear two thirds of the penalty and the defendant the one-third. The plaintiff filed a suit for a half share of the expenses which he had incurred in connection with the proceedings taken to have the penalty cancelled. Those proceedings seem to have been ultimately successful. The Lower Appellate Court allowed the plaintiff's appeal and decreed the plaintiff's suit on the ground that Section 70 of the Contract Act would apply to the facts of this case, and I am of opinion that it is right. "

2. The action taken by the plaintiff was for the common benefit of the plaintiff and the defendant. If action had not been taken, both of them would have had to pay the penalty. To the extent that the penalty was cancelled as a result of the action taken by the plaintiff, both of them had the benefit of the expenses incurred by the plaintiff. It certainly does not appear that the services rendered

by the plaintiff were intended to be rendered gratuitously. The fact that the agreement did not say anything about the expenses and how the parties were to bear the expenses does not mean that the plaintiff was to bear all the expenses himself. The agreement does not say that the plaintiff was to bear the expenses. The matter therefore seems to fall squarely within Section 70 of the Contract Act. The plaintiff has lawfully done something of which the defendant has had the benefit. It is true that he has done something for himself as well as for the defendant, but it also means that he has done something for the defendant. What the plaintiff did need not wholly be for the benefit of the defendant. The fact that the plaintiff incidentally obtained some benefit by the expenses that he incurred in this case only means that the plaintiff would also have to bear the expenses to the extent that he was benefited by the expenses incurred in this case. It does not appear to be the law that where a person spends something and as a result benefits himself and another person at the request of that person not intending to do it gratuitously he is not entitled to recover from the person so benefited a share of the expenses proportionate to the benefit obtained by that person. The defendant in this case has certainly enjoyed the benefit of the expenses incurred by the plaintiff. I do not think that the decision in *Avudayappa Pillai Vs. T.S. Thillai Thandavaraya Pillai*, , relied on by the defendant can help him. In that case, the plaintiff and the defendant each owned lands under two tanks, the tanks themselves being owned by plaintiff. The tanks were breached. The defendant pressed to have them repaired after joint consultation and under the supervision of their respective agents. The plaintiff preferred to do the work himself and demanded contribution from the defendant. It was in those circumstances that a Bench of this Court held that the plaintiff was not entitled to demand contribution from the defendant because the work was not done for the defendant. The decision could really be explained on the basis that the defendant had no choice in the matter of execution of this work and the plaintiff in that case did work in spite of the defendant. On the other hand a Full Bench of this Court in *S. Srirama Raja and Others Vs. The Secretary of State for India in Council*, now the Province of Madras, , has held that even in a case where a work which benefited the plaintiff's cost without the defendant's consent, the plaintiff was entitled to claim contribution from the defendant. Unlike in that case, in the present case the work was done by the plaintiff in pursuance of an agreement with the defendant. This decision of the Full Bench may require reconsideration in view of the decision of the Supreme Court in *State of West Bengal Vs. B.K. Mondal and Sons*, , on the ground that the defendant in the case before the Full Bench did not have an opportunity to refuse the benefit sought to be conferred on him. But no such consideration arises in this case. The work was done by the plaintiff in pursuance of the agreement with the defendant and the defendant had the benefit of the expenses incurred by the plaintiff. As the plaintiff has done the work lawfully for himself as well as for the defendant, the plaintiff is entitled to succeed.

3. But in one respect the defendant is entitled to succeed. The plaintiff's claim

was for half the expenses. Under the agreement between the parties already referred to, the benefit was in the proportion of one third to the defendant and two-third to the plaintiff. It stands to reason that the contribution which a party has to make towards expenses incurred by the other party for his benefit can only be in proportion to the benefit he has obtained as a result of that expenditure. Therefore the defendant will be bound to pay the plaintiff only one-third of the expenses incurred by the plaintiff and not half as claimed by him and decreed in his favour by the Lower Appellate Court.

4. The second appeal is therefore allowed in part and in the place of the decree passed by the Lower Appellate Court, there will be a decree for two third of the amount decreed by the Lower Appellate Court! The parties will bear their own costs in this Court. No leave.