

(1880) 02 AHC CK 0014

Allahabad High Court

Case No: None

Badr-un-nisa

APPELLANT

Vs

Muhammad Jan and
Another

RESPONDENT

Date of Decision: Feb. 27, 1880

Citation: (1880) ILR (All) 671

Hon'ble Judges: Straight, J; Spankie, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Straight, J.

This is a reference u/s 617 of Act X of 1877 by the Judge of the Small Cause Court, Allahabad, in respect of certain questions of law that have arisen in a case before him, in which one Badr-un-nisa is the plaintiff and Muhammad Jan and Abdul Ghani are the defendants. It appears that the plaintiff was the obligor of a bond for Rs. 200 of which defendant No. 1 was the obligee. On the 1st April 1877, at the request of defendant No. 1, she paid to defendant No. 2 the sum of Rs. 9, on the understanding that it was to be credited to her in the amount due from her on the bond. On the 20th June 1878, the plaintiff, upon his demand, paid to defendant No. 1, Rs. 299 in satisfaction of her debt to him. It now appears that she has paid, over and above what was actually due from her Rs. 15-7-0 and it is this amount she seeks to recover.

2. The questions properly arising on the Judge's reference appear to be,--(i) Does the plaintiff's claim fall within the terms of Section 72 of the Contract Act? (ii) If it does, can the plaint as filed be altered from its present shape to meet the case, without contravening the directions of the proviso of Section 53, Act X of 1877? (iii) If not, does the plaint upon its face sufficiently disclose what the suit is for, so as to enable the Judge to treat it as one for damages without doing the defendant injustice or taking him by surprise?

3. It appears to me that the circumstance of the Rs. 9 having been paid to defendant No. 2 in no way affects the nature of the plaintiff's claim. She ought to have been credited in account with that sum by defendant No. 1, but she was not, and consequently, when she satisfied his demand of Rs. 299 on the 20th June 1878, and paid Rs. 15-7-0 too much, her cause of action arose. The suit falls directly within Section 72 of the Contract Act, and, the plaintiff having paid this money by mistake and the defendant having refused to repay it when requested to do so, the plaintiff is entitled to recover it from him.

4. As to the second point the plaint as originally framed no doubt treated the plaintiff's claim as based upon a quasi contract. According to English precedents, suits for the recovery of money paid by mistake are founded upon the fiction of an implied contract and promise to pay. But the provisions of the Contract Act, chapter V, have superseded this fiction of implied contract and promise, and the repayment of money by a person to whom it has been paid in mistake is by Section 72 declared to be a duty on the part of such person, the refusal to perform which, when requested, is proper ground of an action for damages. The suit of the plaintiff in the present case therefore is for damages against defendant No. 1 and defendant No. 2 can in no way be a party. The plaint was originally filed on the 3rd October, 1879 and was returned for amendment within twenty-four hours on the 19th October. It was amended within the time limited by the Court and re-filed in its present shape.

5. I have considerable doubt as to whether it is competent now for further amendment of the plaint to be made, if it be necessary. According to the terms of Section 53, Act X of 1877, it was returned for amendment "at the first hearing," and was amended within the "time fixed by the Court." I am disposed to think that it is now too late for any further alterations in its shape to be made, but as the view I entertain upon the third point obviates the necessity for any amendment, it is unnecessary to express any determinate opinion as to this. It appears to me that the plaint in its present shape, although it may be inartistically framed, indicates sufficiently what the suit is for. It shows clearly on its face that a sum of Rs. 15-7-0 is demanded by the plaintiff of the defendant, and, as the application of the Contract Act determines the cause of action and the precise nature of the relief to be asked under a state of facts such as exists in the present case, I think, without infringing the provisions of Sections 50 and 53 of Act X, the Judge may take cognizance of the plaint as one for damages and dispose of the case u/s 6, Act XI of 1865.

6. As I have already remarked, defendant No. 2 must be struck off, and he will of course be entitled to his costs.

Spankie, J.

7. I concur.