

(1964) 07 KL CK 0047

High Court Of Kerala

Case No: S.A. No. 472 of 1960

Mariam and Others

APPELLANT

Vs

Parameswaran Nambooripad
and Others

RESPONDENT

Date of Decision: July 3, 1964

Acts Referred:

- Contract Act, 1872 - Section 69, 70
- Transfer of Property Act, 1882 - Section 100, 82, 92

Citation: (1964) KLJ 855

Hon'ble Judges: S. Velu Pillai, J

Bench: Single Bench

Advocate: R. Krishnaswami, for the Appellant; M.K. Narayana Menon, for the Respondent

Final Decision: Dismissed

Judgement

S. Velu Pillai, J.

This second appeal arises out of a suit to recover the sum of Rs. 94-8-6 paid by the plaintiff by way of land tax to Government for the suit property for the years 1120 to 1131. The pattah for the property was in the name of the plaintiff, but the property was in the possession of one Poranchu from the year 1060. He assigned his rights by Ext. D7 in the year 1119 to the first defendant. In that year, the plaintiff sued the first defendant and her husband the second defendant, in O. S. 208 of 1119 for recovery of the suit property, alleging that it was an accession to the adjoining property mortgaged by the plaintiff; the suit was ultimately dismissed by the Cochin High Court, by Ext. D3 judgment. The plaintiff sued them again in O. S. 103 of 1124, alleging that the property was held by them on oral lease; that suit also was ultimately dismissed by the High Court, so far as the suit property was concerned, by Ext. D4 judgment. The plaintiff, having paid land tax in the meanwhile for the period aforesaid, has sued the defendants for reimbursement. The munsif dismissed the suit, while the Subordinate Judge in appeal gave the plaintiff a decree.

The first defendant has come up in second appeal. The first contention in second appeal was, that the claim for reimbursement is not sustainable, whether u/s 69 or Section 70 of the Indian Contract Act. The first defendant has a case, that she applied for the transfer of pattah to her name soon after Ext. D7 and that this was successfully opposed by the plaintiff. However, there has been a live dispute between the plaintiff and the first defendant as to the title to the property ever since Ext. D7, the plaintiff trying to recover the property, alleging in the first suit that it was held by the first defendant as an accession to the mortgaged property and in the second suit as a lessee. In these circumstances, it is more than clear, that the plaintiff had been paying land tax more in support of his alleged title to the property than with an intention to benefit the defendants. The latter had no option to refuse the benefit of the payment. It is not the law u/s 70, that a benefit can be thrust on a person, to make him liable for reimbursement. In [State of West Bengal Vs. B.K. Mondal and Sons](#), the Supreme Court said :

S. 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them... It is thus clear that when a thing is delivered or done by one person it must be open to the other person to reject it. Therefore, the acceptance and enjoyment of the thing delivered or done which is the basis for the claim for compensation under S. 70 must be voluntary. It would thus be noticed that this requirement affords sufficient and effective safeguard against spurious claims based on unauthorised acts.

The claim cannot therefore fall within Section 70.

2. Section 69 of the Contract Act is 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.

To exclude the operation of this Section, learned counsel for the first defendant put his argument thus. The plaintiff as the pattadar or the registered holder of the property was the person liable to pay tax and not the first defendant who, though the real owner, was not the pattahdar. Under the revenue law the pattahdar is the defaulter and is personally liable to Government for tax as specified in the pattah, even though the property for which tax is due is not in his possession, and does not even belong to him. On this reasoning the Madras High Court held in *Boja Sellappa Reddy v Vridhachala Reddy* (I.L.R. 30 Mad. 35) that the real owner is not bound by law to pay the tax within the meaning of Section 69. Speaking with respect, I am unable to agree with this view. Even under the revenue law, the property is liable to be proceeded against for arrears of tax due thereon. While in the case of the pattahdar the liability is personal, in the case of the owner who is not the pattadar the liability is of his property; but I do not find any compelling reason to introduce this distinction into "bound by law," words of general application, occurring in a rule

providing for the right of reimbursement. In *Govindram Gordhandas Seksaria v State of Gondal* (A.I.R. 1950 P.C. 99 at p. 104) the Privy Council considered that these words "extend to any obligation which is an effective bond in law." The Calcutta High Court said in *Mothooranath Chattopadhyaya v Kristokumar Ghose* (T.L.R. 4 Cal. 369):

It is therefore clear that that section was intended to include the cases not only of personal liability, but all liabilities to payments for which owners of lands are indirectly liable, those liabilities being imposed upon the lands held by them.

The Calcutta High Court in [Joy Chand Seraogi and Another Vs. Dole Gobinda Das and Others](#), expressly dissented from *Boja Selappa Reddy v Vridhachala Reddy* (ILR 30 Mad. 35) and also from *Subramania Chetty v Mahallngasami Sivan* (I.L.R. 33 Mad. 41) which followed it. In *Ittiyeenam v Chakkunni* (12 Cochin Law Reports 19) decided by the former Cochin High Court, Narayana Menon J., observed that "there is nothing in the section to show that the legal obligation should be according to the Revenue Law alone." I am of the view, that the defendants were bound by law to pay tax, and on account of his personal liability, the plaintiff was interested in making the payment. These are enough to attract Section 69.

3. The right to a charge for the amount claimed was based on Section 82 read with Section 100, and on Section 92 of the Transfer of Property Act. The entire property, being survey No. 543 has an area of 1 acre 56 cents, out of which according to the plaintiff, he is even now in possession of 29 cents and the defendants are in possession of 1 acre and 27 cents. The suit property is 1 acre and 27 cents and reimbursement claimed is of the proportionate tax paid with respect to it. Though the defendants have not accepted this case, the plaintiff's witnesses have sworn to it. The two previous suits related only to 1 acre and 27 cents. So the plaintiff's case on this point may be accepted. For the application of section 82 of the Transfer of Property Act, the plaintiff and the defendants are to be considered as owners of distinct portions of the property which is liable for a common debt and the plaintiff to be regarded as suing for contribution. In *Rajah of Vizianagram v Rajah Setrucherla Somasekhararaz* (I.L.R. 26 Mad. 686) it was held, that where one of two or more co-sharers owning an estate subject to the payment of revenue to Government pays the whole revenue, he is by operation of law entitled to a charge upon the share of each of his co-sharers for the realisation of the latter's share of the revenue. Whatever be the cleavage of judicial opinion in the different High Courts, this case has been followed by a Division Bench of this Court in *Ayyappau Raman v Kunju Varki Ithappiri* (1957 K.L.J. 574). The same view has been held by the Travancore High Court in *Parameswara Iyer Anantha Iyer v Rama Iyer Ananthanarayana Iyer* (19 T.L.T. 7) and by the Nagpur High Court in AIR 1941 245 (Nagpur) As held in *Ayyappan Raman v Kunju Varki Ithappiri* (1957 KLT 656) when a person interested only in a portion of the mortgaged property redeems the mortgage he derives two distinct rights, one for contribution and the other by subrogation. These rights are not mutually exclusive. On these decisions, the right

to a charge for the amount sued for, has to be held. The result is, that the decree under appeal is affirmed and this second appeal dismissed. I do not allow costs to the plaintiff in this court, as I am of the view, that the plaintiff paid the tax more to support his alleged title to the property, than to save it from being lost by sale for arrears of revenue.