

(1925) 12 CAL CK 0043

Calcutta High Court

Case No: None

Debendra Nath Haldar

APPELLANT

Vs

Prosonna Kumar Haldar and
Others

RESPONDENT

Date of Decision: Dec. 16, 1925

Acts Referred:

- Contract Act, 1872 - Section 69

Citation: 95 Ind. Cas. 47

Hon'ble Judges: Cuming, J; B. B. Ghose, J

Bench: Division Bench

Judgement

Cuming, J.

The facts of the case out of which this appeal has arisen are shortly these: One Gunamani Dassi obtained a Rent Decree No. 1170 of 1912 against the present appellant and the respondents. In execution of this rent-decree the tenure was put up to sale and was sold. The present appellant paid the decretal amount and the sale was, therefore, set aside. He now sues his co-defendants in that rent suit for contribution. The case of the defendants was that they had no interest whatever in the land and that they never had any possession of the land.

2. The Trial Court found that the plaintiff had failed to prove that the defendants had any substantial interest in the holding and on this finding he dismissed the plaintiff's suit. This decree was upheld by the learned Subordinate Judge who dismissed the appeal.

3. Against the order the plaintiff has appealed to this Court. His case is shortly this: That the present case comes within the provisions of Section 69 of the Indian Contract Act. He contends that it is immaterial that it has been found in the present case that the defendants-respondents have no interest in the land. To succeed it is sufficient for him to prove that the decree had been obtained against him and the

defendants. He argues that under the decree the defendants were obliged to pay this sum of money. This payment that the plaintiff made of the rent due under the decree was a payment of money which the defendants were bound by law to pay, because the rent-decree had been obtained against them and the plaintiff was interested in the payment of the money, because if the money were not paid the property in which he was co-sharer with the defendants was liable to be sold.

4. It seems to me that this contention is correct. So far as the present case is concerned it is immaterial whether the defendants have or have not any interest in the land which was the subject of the rent suit. It is sufficient to bring the defendants within Section 69 of the Indian Contract Act that there was, decree, against them, in other words there was a payment of money which they were bound to make under the decree and the plaintiff was interested in the payment of this money because if the money were not paid his property will be sold. Therefore, u/s 69 of the Contract Act he was entitled to be re-imbursed by his co-defendants in that suit.

5. The result, therefore, is that this appeal must succeed and the plaintiff's suit will be decreed with costs both here and in the lower Courts.

B.B. Ghose, J.

6. I agree.