(1914) 02 CAL CK 0029

Calcutta High Court

Case No: Appeal from Appellate Decree No. 915 of 1911

Rajani Kanta Ghosh and Others	APPELLANT
Vs	
Rama Nath Roy and Others	RESPONDENT

Date of Decision: Feb. 4, 1914

Final Decision: Allowed

Judgement

1. This is an appeal by the Plaintiffs in a suit for contribution. The circumstances antecedent to the litigation arc not in controversy and may be briefly stated. The first two Defendants and the predecessor-in-interest of the Plaintiffs held a tenancy under the fourth Defendant. The rent fell into arrears, with the result that the fourth Defendant brought a suit for rent and obtained a decree on the 18th June 1907. On the 23rd January 1908 the Plaintiffs made a payment of Rs. 8 to the decree-holder. On or about the 24th January 1908 the decree-holder assigned the decree to the third Defendant who applied for execution on the 25th January 1908. The Court made an order for execution and a decree obtained by the Plaintiffs against one of their debtors was attached. On the 14th March 1908, the assignee, by process of execution, realised Re. 119-8. Subsequently on the 29th April 1908 he realised another sum of Rs. 73 and on the 27th May 1908 after the moveables of the Plaintiffs had been attached, they paid to the assignee Rs. 390-15-3 in satisfaction of the decree. On the 19th August 1909 the Plaintiffs commenced this suit to compel the first two Defendants to contribute in respect of the sum they had paid in satisfaction of the joint decree. The Defendants resisted the claim on various grounds. The Court of first instance overruled their objections and made a decree in favour of the Plaintiffs for one-third of the admitted amount paid by them, against each of the first two Defendants. The first Defendant appealed to the District Judge and persuaded him to hold that no contribution could be claimed in respect of payments made to the assignee of the decree, inasmuch as under sec. 148, cl. (h), of the Bengal Tenancy Act the assignee was not entitled to execute the decree as he had not obtained an assignment of the land itself. The District Judge accordingly allowed the appeal and made a decree in favour of the Plaintiffs in respect of the

payment made to the original decree-holder himself. The Plaintiff''s have now appealed to this Court.

2. On behalf of the Respondents a preliminary objection has been taken that the appeal is incompetent under sec. 102 of the CPC which provides that no second appeal shall lie in any suit of the nature cognizable by the Court of Small Causes when the amount or value of the subject-matter of the original suit does not exceed Rs. 500. The amount claimed in the suit is less than Rs. 500; consequently the question arises whether the suit is of a nature cognizable by a Court of Small Causes. On behalf of the Appellants, it has been contended that the suit is excluded from the cognisance of the Court of Small Causes by Art. 41 of the Second Schedule to the Provincial Small Cause Courts Act of 1887. That clause excludes from the jurisdiction of the Small Cause Court a suit for contribution by a sharer in joint property in respect of payments made by him of money due from a co-sharer. On behalf of the Respondents, it has further been contended that assuming the decree to be capable of execution at the instance of the assignee, it could be executed only as a. money decree and that consequently the liability which was satisfied by the payment made by the Plaintiffs was a personal liability of the judgment-debtor and not a liability which rested upon their joint property.. In our opinion there is no foundation for the contentions of the Respondents. Art. 41 of the Second Schedule to the Provincial Small Cause Courts Act clearly contemplates suits of three classes, first, a suit for contribution, by a sharer in joint property in respect of payments made by him of money due from a co-sharer; secondly, a suit for contribution by a manager of joint property in respect of payments made by him on account of the property, and, thirdly, a suit for contribution by a member of an undivided family in respect of payments made by him on account of the family. The case before us falls within. the first description of suits. It is clearly a suit for contribution as it is a, suit by some of several persons, bound by a common liability, who have discharged the joint obligation, to compel their co-sharers to make good their shares. [Satya Bhusan v. Krishna Kali Since reported at 18 C. W. N. 1308 (1914).] It has been commenced by persons who are sharers in joint property; at any'' rate, they were sharers in joint property at the time when the money fell due from their co-sharers, and the suit is in rispect of payments made by them of money due from their co-sharers.. All the three elements are consequently satisfied and- the case falls within the scope of Art. 41.
3. The preliminary objection consequently fails.

4. As regards the merits of the appeal it has been argued on behalf of the Respondents in support of the view taken by the District Judge that the case does not fall either within sec. 69 or sec. 70 of the Indian Contract Act. It has been contended that the assignee of the decree for rent was not entitled at all to execute the decree in view of the provisions of sec. 148 (h) of the Bengal Tenancy Act, that is, he was not free to execute the decree either as a decree for rent or as a decree for

money. It is not necessary for us to determine whether this contention is or is not well-founded. As was pointed out by this Court in the case of Manurattan Nath v. Harinath Das I C. L. J. 500 (1904), there is a conflict of judicial opinion upon this question; while some of the authorities are in favour of a strict and literal construction of sec. 148, cl. (h), of the Bengal Tenancy Act, there are other cases which support a liberal interpretation of this provision of the law. We shall, however, for the purpose of the argument placed before us, assume in favour of the Eespondents that the assignee of the decree was not entitled to execute the decree even as a decree for money, as he had not obtained an assignment of the landlord''s interest in the land. It does not follow, however, that the effect of the assignment was. to extinguish the liability of the judgment-debtors under the decree. In the first place, it is plain that if at any time before the decree was extinguished by limitation, the assignee of the decree obtained an assignment of the landlords'' interest in the land, the bar imposed by cl. (h) of sec. 148 would be removed and he would be in a position to enforce the decree. In the second place, it is equally clear that if the assignee retransferred the decree to the assignor, the latter would be in a position to enforce the decree. Neither of these positions could be supported if the view were maintained that the effect of the assignment was to extinguish the judgment-debt completely. The true position consequently is this. The judgment-debtors were liable under the decree, but the person who held the decree was not in a position to apply to the Court for execution till a certain contingency had happened. It was in these circumstances that an application for execution was made by the assignee, and the Court ordered execution to issue. Execution was taken out against the Plaintiffs and they satisfied the decree by payment made to the assignee under compulsion of legal process. In these circumstances it is plain that what was done by the Plaintiffs was done lawfully within the meaning of sec. 70 of the Indian Contract Act. To bring a case within the scope of that section, three conditions must be fulfilled. First, the thing must be done lawfully; secondly, it must be done by a person not intending to act gratuitously; and, thirdly, the person for whom the act is done must enjoy the benefit of it. Now we have held that the payment was made lawfully and in this view we are supported by the decision of this Court in the case of Suchand Ghosal v. Baloram Mardana ILR 38 Cat. 1 (1910). Was then this payment made by persons who did not intend to act gratuitously? It is obvious that when they made the payment, they did not intend to act gratuitously. Finally, the question arises, whether the person for whom the act was done has enjoyed the benefit of it. It has been argued on behalf of the Respondents that as the decree was not capable of execution at the moment when the payment was made, the Plaintiffs have not by the payment conferred any benefit upon the Defendants. This argument is obviously fallacious. As we have already explained, the judgment-debt had not been extinguished and the Defendants were still liable to have the decree executed against them by the assignee if he obtained an assignment of the landlords'' interest or by the assignor if he obtained a re-transfer of the decree. The benefit which has been conferred upon them by the payment is

that they have been absolved from the liability to be pursued either by the assignee or assignor of the decree. It has been suggested on behalf of the Respondents that the payment made to the assignee does not operate as a valid discharge of the decree. For this contention, there is, in our opinion, no foundation. Section 148 (h) of the Bengal Tenancy Act does not provide, either directly or by implication, that if a payment is made to the assignee and is accepted, the decree is not thereby satisfied. There is nothing to prevent the assignee from accepting the payment of the decree and certifying such payment to the Execution Court.

5. The position consequently reduces to this. The Defendants along with the Plaintiffs were liable to satisfy the judgment-debt under a decree held by the fourth Defendant. That decree was assigned to the third Defendant. He was, under certain circumstances, entitled to execute the decree and it was not impossible that the fourth Defendant might also be placed in a position to execute it by re-assignment. The third Defendant did, as a matter of fact, take out eixecution of the decree. Under compulsion of legal process the Plaintiffs have satisfied that decree. We are clearly of opinion that the case is covered by sec. 70 of the Indian Contract Act and that the Defendants are liable to be called upon by the Plaintiffs to contribute. It is not necessary to discuss In detail the terms of sec. 69 of the Indian Contract Act, but it is obvious that the case is covered by that section as well. That, section provides that 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. Here the Plaintiffs were interested in the payment and were even bound by law to make it. It is by reason of that payment that the decree-holder, who would otherwise have proceeded with execution, has not enforced the decree. The view we take is supported by the decision of this Court in the case of Pankhabati Choudhurani v. Nanilal Singh, where the earlier decisions will be found reviewed; We are therefore of opinion that whether we apply sec. 69 or sec. 70, it is clear that the Plaintiffs are entitled to succeed and this conclusion is obviously in harmony with the principles of justice, equity and good conscience. The result is that this appeal is allowed, the decree of the District Judge set aside and the suit decreed against each of the first two Defendants for the sum claimed in the plaint together with interest and costs. The other Defendants will bear their own costs.