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**(1920) 01 CAL CK 0019**

**Calcutta High Court**

**Case No:** None

Kangal Chandra Pal and Another

APPELLANT

Vs

Gopinath Pal and Others

RESPONDENT

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**Date of Decision:** Jan. 9, 1920

**Acts Referred:**

- Contract Act, 1872 - Section 69, 70

**Citation:** 68 Ind. Cas. 104

**Hon'ble Judges:** Syed Shamsul Huda, J; Richardson, J

**Bench:** Division Bench

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### **Judgement**

1. This appeal is preferred by defendants Nos. 6 and 7 in a suit for contribution. The plaintiffs in the suit held a two-anna odd share in a dar-patni tenure. The patnidar sued for arrears of rent due in respect of the years 1313 to 1316. The defendants in that suit were the defendants Nos. 5, 6 and 7 in the present suit. The patnidar obtained a decree and in execution the dar-patni was sold in September 1911 and purchased by the present defendant No 4. On the 25th October 1911 the plaintiffs deposed in Court the amount of the decree, namely, Rs. 4,180, together with the statutory compensation of five per cent, on the purchase money due to the auction-purchaser, Rs. 285, and in consequence the sale was set aside. The plaintiffs allege that in this connection they incurred costs amounting to Rs. 2115 10. The suit was brought for contribution from the co sharers in the dar-patni in respect of the three sums I have stated.

2. In the course of the suit, defendants Nos. 1 and 4 came to terms with the plaintiffs and a petition of compromise was filed. Defendants Nos. 8 and 11 died and their heirs were not brought on the record. A decree for contribution was made against defendants Nos. 5, 6, 7, 9 and 10. Defendants Nos. 5, 9 and 10 have not appealed.

3. The first point taken on behalf of the appellants is, that the appellants and the defendant No 5 being only some of the co sharers in the dar-patni, the decree

obtained against them was only a money-decree, that the dar-patni could not be sold in execution but only the right, title and interest of the appellants and the defendant No. 5, and that the payment made by the plaintiffs for the purpose of having the sale set aside was simply officious. The answer is that, rightly or wrongly, the dar-patni was in fact sold in execution. The appellants and the defendant No. 5 are the present representatives of the original dar-patnidars. Other persons including the plaintiffs and other defendants on the record hold shares in the dar-patni acquired from the grantees of the lease or their successors. The patnidar has refused to recognise them on the ground that the lease forbade alienation. He brought a suit for ejectment on that ground which, we are told, was unsuccessful but neither the judgment in the suit nor the lease is before us. In the circumstances, however, it is quite unnecessary for us to form or to express any opinion on this question. The case of *Mohendra Ghoshal V. Bhuvan Mardana : Suchind V. Balram* (1) 6 Ind.Cas, 810 : 33 C. L. J. 45 : 12 C. L. J. 566. where the facts were similar, shows that a suit for contribution will lie in such circumstances. Separate judgments were delivered in that case, but though the learned Judges gave different reasons they came to the same conclusion. The Chief Justice (Sir Lawrence Jenkins) upheld the decision of the Court below u/s 70 of the Contract Act. Mr. Justice Douglas was of opinion that the case came more properly within the terms of Section 69. With great respect we prefer the view expressed by the Chief Justice, which also accords with the view expressed in *Jog Narain v. Badri Das* 13 Ind. Cas. 144 : 16 C. L. J. 156. The case of *Batuk Nath Singh v. Bepin Bihari* 17 Ind. Cas, 90, 16 C. L. J. 17 C.L.J.170 cannot be regarded as a decision to the contrary, because the case turned on other questions and the applicability of Section 69 was assumed without being considered or discussed. In the case before us, the appellants were, no doubt bound by law to satisfy the decree obtained against them but it can hardly be said that after the sale of the dar-patni they were bound by law to make the payments necessary for the purpose of having the sale set aside. There is that difficulty in the way of applying Section 69. No difficulty attends the application of Section 70. Nobody suggests that the payments made by the plaintiffs were not made lawfully, or that the plaintiffs intended to make them gratuitously. Their interest in the tenure, which is admitted by the appellants, is an answer to the argument that they acted officiously. In our opinion this ground of appeal fails.

4. The second point taken is this. It is established that out of the sum deposited to set aside the sale Rs. 2000 was deposited by the defendant No. 15. The decree in the rent suit was, as we have said, for the arrears of rent due in respect of the years 1313-1316. From 1313 to 1315 the dar-patni had been in the possession of the defendant No. 15 as ijaradar. It was stipulated in his lease that he should pay the patnidar his dues. He was responsible, therefore, in the first instance for the rent due for that period. He has himself a small share in the dar-patni and the appellants contend that they are entitled to the benefit of the payment made by him. We are of opinion that this contention should prevail. Whether he was moved by a belated

sense of duty or whether he acted at the instance of the plaintiffs or for some other reason, the payment may well be regarded as a payment made in discharge or part discharge of obligations which he had neglected. The appellants, therefore, will receive credit out of this sum for an amount proportionate to their share in the dar-patni.

5. The third point taken is that the appellants should receive credit in respect of a further sum of Rs. 1,450 said to have been deposited by all the share holders with the father of defendants Nos. 1---4 for the purpose of satisfying the landlord's decree. The point, however, was not taken, or at any rate was not insisted on, in the Court below and the material facts have not been sufficiently elucidated. The contention must, therefore, be rejected.

6. One point remains. The learned Subordinate Judge reduced the amount claimed by the plaintiffs on the score of costs to Rs. 20 and as to that no question is raised. The decree, however, makes the appellants liable to contribute towards the statutory compensation. They contend that in that respect the decree is wrong. We were referred to Suchand's case (1) already cited. There Mr. Justice Doss, dealing with the matter u/s 69 of the Contract Act, no doubt, held that statutory compensation should be excluded from the reckoning. It will be observed that the Chief Justice merely said that the materials before the Court were insufficient for a decision and that the amount at stake was so trifling that it would not be profitable to direct a further enquiry. In the present case there is no doubt as to the facts and if the case falls within Section 70, as we think it does, there is no difficulty. The contention put forward for the appellants, therefore, fails.

7. In the result, the decree of the Court below will be modified in accordance with our decision on the second point above dealt with. In other respects, it will be confirmed. The parties will bear their own costs in both Courts.