

(1878) 04 CAL CK 0014

Calcutta High Court

Case No: None

Mothooranath
Chuttopadhya

APPELLANT

Vs

Kristokumar Ghose
and Others

RESPONDENT

Date of Decision: April 10, 1878

Acts Referred:

- Contract Act, 1872 - Section 69

Citation: (1879) ILR (Cal) 369

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

He (the plaintiff) now brings the present suit for contribution, claiming that the defendant is liable for the mortgage-debt in proportion to the property comprised in the mortgage which was purchased by him.

2. Both Courts have dismissed the suit, and the plaintiff has come here in special appeal. Now, from some passages of the judgment of the Court below, it would seem that it was considered that there was an arrangement between the plaintiff and his vendor when his purchase was made, that he should take upon himself the whole of this liability, and that upon that ground he is precluded from recovering against the defendant. No doubt, it was understood between the plaintiff and his vendor that the whole of the vendor's debts should be discharged by the plaintiff, but having had the deed read to us, we do not think that there is anything which shows that there was any intention of the parties to exonerate the defendant from any liability which the law would cast upon him. Therefore, as far as the arrangement between the plaintiff and his vendor is concerned, there is nothing to prevent the plaintiff from asserting his right to contribution against the defendant, if he has any such right.

3. Now, one decision has been cited to us which strongly favours the plaintiff's contention. It was held in the case of *Bhairab Chandra Madak v. Nadyar Chand Pal* (3 B.L.R. A.C. 357 : 12 W.R. 291), that where two parties had purchased two different properties at one execution-sale, and both these properties were liable to a mortgage-debt which was afterwards enforced, that one who paid more than his share of the mortgage-debt, estimated according to the value of the property, could recover the difference from the other. That decision does not appear ever to have been questioned, and the difference between that case and the present that I can see is that there the sales were simultaneous, and were sales in execution, here the sales were private sales, and the sale to the defendant was about a year or somewhere thereabouts prior to the sale to the plaintiff. But it does not appear to us to be necessary to consider whether this is a substantial difference, or to reconsider the decision in the case of *Bhairab Chandra Madak v. Nadyar Chand Pal* (3 B.L.R. A.C. 357 : 12 W.R. 291), because it appears that the principle of law is laid down by the Contract Act, which governs this case. Section 69 of the Contract Act says, 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". Now, I think it is rightly argued that taking that section by itself, it is possible to say that that section only applies to cases where the person who is there called "the other" was personally liable for the debt, but it is clear from the illustration that that is not the intention of the Legislature. The illustration gives the case of a lessee paying off revenue due to Government; but the liability to pay revenue due to Government is not a personal liability of the zamindar, but a liability which is imposed upon the zamindar's land. 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. It is also argued that the words "bound by law" restrict the section to liabilities created by some Statute, such as liabilities to pay revenue, but exclude liabilities which arise out of contracts by parties. That would be putting on the section far too narrow a construction, because it was no doubt intended to include such a case as a lessee paying rent to the superior landlord for which the intermediate lessee was liable under a covenant. Therefore it seems to us that that section governs this case. The plaintiff was interested in the payment of this money, because, he says, if he had not paid it his land would have been sold, and it was a debt which the defendant was bound by law to pay, because the mortgagee had legal means to recover it against him. It seems, therefore, impossible to say that the case does not fall within that section. That being so, whether this case comes within the decision in the case of *Bhairab Chandra Madak v. Nadyar Chand Pal* (3 B.L.R., A.C. 357 : 12 W.R. 291), and whether that case laid down a correct principle of law or not, it is not necessary for us to enquire. It is quite clear now that, under the provisions of the Contract Act, the Court below ought to have held that the plaintiff was entitled to recover so much of the mortgage-debt as he had paid in excess of his share. The plaintiff asks that that should be calculated in

proportion to the respective value of the properties held by the parties. It is not denied here that that is a correct principle. If the parties cannot agree as to what the amount to be recovered by the plaintiff would be, the case will be remanded to the lower Appellate Court to try the third issue.