

(1957) 10 BOM CK 0020

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Application No. 174 of 1957

Ramkrishna Shankarrao

APPELLANT

Vs

Rangoobai and Another

RESPONDENT

Date of Decision: Oct. 29, 1957

Acts Referred:

- Central Provinces and Berar Courts Act, 1917 - Section 18
- Civil Procedure Code, 1908 (CPC) - Section 80
- Contract Act, 1872 - Section 70
- Provincial Small Cause Courts Act, 1887 - Section 25

Citation: AIR 1959 Bom 519 : (1958) 60 BOMLR 459

Hon'ble Judges: J.R. Mudholkar, J

Bench: Single Bench

Advocate: G.J. Ghate, for the Appellant; M.R. Rajkarne, for the Respondent

Judgement

1. This is an application for revision u/s 25 of the Provincial Small Cause Courts Act of the judgment of the Civil Judge, Amraoti, empowered u/s 18 of the C.P. Courts Act, dismissing the applicants suit for the recovery of Rs. 167-8-0.

2. It is common ground that the applicant ploughed 7 acres and 28 gunthas of land belonging to the non-applicant No. 1 with his tractor. According to the applicant the non-applicant No. 1 According to the applicant the non-applicant No. 1 and other cultivators of mauza Belora, tahsil Morshi, applied to the Development Officer, Amraoti, for getting their fields ploughed by a tractor and agreed to defray the cots of the work done. Further according to him, he commenced the work of ploughing in the presence of the non-applicant No. 1 and that the later acknowledged hat he had done the work satisfactorily. He claims his charges at the rate of Rs. 22/- per acre. According to the non-applicant No. 1, her agreement was with the officers of the Development Department and not with the applicant and that thought the applicant had ploughed 5 acres of her land she was not liable to pay anything to

him. She also pleaded that the Development Officer had agreed to give a taccavi loan for the purpose of meeting the expenses of ploughing the land but as shown as not granted any loan she was not liable for the applicant's claim.

3. The trial Court held that an agreement between the applicant and the non-applicant No. 1 had not been proved and that therefore the latter was not liable for the claim.

4. It may be mentioned that the Development Officer was also joined as defendant No. 2 to the suit but the claim against him was dismissed on the ground that no notice u/s 80 of the CPC was served on him. Though he has been made a party to this revision application the applicant does not press his claim against him.

5. What is urged on behalf of the applicant is that he is entitled to be paid his charges because the non-applicant No. 1 had received the benefit of what he had done. In support of his claim the learned counsel for the applicant relied upon Section 70 of the Contract Act and the decision in [Babu Bhagwati Saran Singh Vs. Maiyan Murat Mati Kuer](#), . Section 70 of the Contract Act reads thus:

Where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered."

6. Now, it is not disputed before me on behalf of the non-applicant No. 1 that what the applicant did not do or was not intended to be done gratuitously, nor is it disputed that the non-applicant No. 1 had received the benefit of what was done by the applicant. What is however contended on her behalf is that there was no such prior relation between the applicant and the non-applicant No. 1 as would entitle the applicant to claim reimbursement in respect of what was actually done by him. Further according to her, what was done by the applicant cannot give rise to any legal liability against her. The learned counsel relying on *Punjabbai v. Bhagwandas*, ILR Bom 309: AIR 1929 Bom 89 urged that though the word "lawfully" has a very wide meaning, for the purpose of ascertaining whether an act is lawfully done within the meaning of Section 70 of the Contract Act, the test to be applied should be the one laid down in *Chedi Lal v. Bhagwan Das*, ILR All 234, viz. whether the person so acting held such a position with respect to the other as either directly to create or by implication reasonably to justify the inference that by the act done for the other person he was entitled to look for compensation for it to the person for whom it was done. He further contended that any other view would amount to saying that the effect of Section 70 of the Indian Contract Act would be to enable a total stranger without any express or implied request on behalf of the debtor to put himself into the shoes of the creditor which is something which the debtor did not want him to do. This test appears to have been accepted in *Punjabbai's* case ILR Bom 309: AIR 1929 Bom 89, but a different view has been taken by another Division Bench of this

Court in *Pallonjee Edjljee and Sons v. Lonavala City Municipality*, ILR (1937) Bom 782: AIR 1937 Bom 417. The observations of Tyabji J. at pages 787 (of ILR Bom): (at p. 419 of AIR) are pertinent. He says:

"The relation u/s 70 is created by the fact that one person lawfully does something for another or delivers any thing to him and by the fact that the other person enjoys the benefit thereof, and when this relation arises, the liability to make compensation or to restore the thing delivered arises as a statutory liability not arising out of contract."

He then referred to the observations in *Chedi Lal's case*, ILR All 234 and the test laid down therein which was accepted in *Punjabai's case*, ILR Bom 309: AIR 1929 Bom 89 and added:

"But with all respect the observation throws no light on the subject. It reads into the word "lawfully" the existence of a relation before the act was done, viz. such a relation as either:

(1) directly creates or

(2) by implication reasonably justifies the inference that by doing some act the plaintiff is entitled to look for compensation to the defendant.

But the very purpose of the section is to lay down in what circumstances such a relation must be taken to exist, viz. in what circumstances the plaintiff may claim that his act has directly created or reasonably justified the inference that he is entitled to compensation, (p. 788).

If the word "lawfully" is given its usual, ordinarily understood meaning, there is no doubt that the acts for doing which compensation is claimed, were done lawfully."

The other Judge constituting the Bench agreed with what was stated by Tyabji J. I am in respectful agreement with the view taken in this case and would respectfully follow it in preference to that taken in *Punjabai's case*. ILR Bom 309: AIR 1929 Bom 89.

7 In the instant case, it is admitted that the non-applicant I wanted to have the field ploughed with a tractor. Further we have evidence to show that the non-applicant No. 1's son was present when the ploughing operation began. There is also the circumstances that after the operation was completed the non-applicant No. I herself sent an intimation to the District Development Officer, stating that the field had been ploughed and that the work had been done to her satisfaction. The applicant had offered to do the work only upon payment. It would therefore be clear from this that the act which the applicant did was neither gratuitous nor purely voluntary but was an act which was done in pursuance of the wishes of the non-applicant No. 1 and in the presence of her son. That being the position, it must clearly be regarded as something which was lawfully done within the meaning of

Section 70 of the Contract Act. She is thus liable to reimburse the plaintiff to the extent of Rs. 165/- as claimed by him.

8. Accordingly, I allow this application and decree the plaintiff's claim in full with costs.

9. Revision allowed.