

The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and that of the Court of first instance restored. The appellants are entitled to their costs in this Court, but there will be no order for costs before the Subordinate Judge.

This judgment will govern the other two cases, viz., S. A. 2501 and 2502 of 1912, in each of which a similar order will be drawn up.

L. R.

*Appeals allowed.*

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## APPELLATE CIVIL.

*Before Mookerjee and Walmsley JJ.*

SERAFAT ALI

v.

ISSAN ALI.\*

1917  
 May 22.

*Contribution, suit for—Contract Act (IX of 1872) ss. 69, 70.*

X, a mortgagee, obtained a decree against A, B and C as representatives in interest of his mortgagor. A satisfied the decree-holder in full, and instituted a suit for contribution against B and C for recovery of two-thirds of the money. B and C denied that A had any interest in the mortgaged property, and urged that his payment was voluntary. The Court of first instance found, on the evidence, that A had an interest in the property, but the lower Appellate Court dismissed the suit holding that A had none :

*Held*, that a payment in satisfaction of a decree, by a person who is a party to the decree and was bound thereby, was a payment made lawfully within the meaning of s. 70 of the Indian Contract Act.

*Bindubashini Dasi v. Harendralal Roy* (1), *Radha Madhub Samonta v. Sasti Ram Sen* (2) discussed.

\* Appeal from Appellate Decree, No. 2587 of 1914, against the decree of Sarada Prasad Baksi, Subordinate Judge of Midnapore, dated June 4, 1914, reversing the decree of Nitai Charan Ghose, Munsif of Tamluk, dated Feb. 24, 1913.

(1) (1897) I. L. R. 25 Calc. 305.      (2) (1899) I. L. R. 26 Calc. 826.

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*Desai Himat Singji v. Bhavabhai Khayabhai (1), Jinnat Ali v. Fateh Ali Matbar (2) distinguished.*

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SECOND APPEAL by Serafat Ali and another, the plaintiffs.

It is unnecessary to recapitulate for the purposes of this report the facts and circumstances which led to the execution of the mortgage deed, but suffice it to say that a mortgage decree was made against the plaintiffs Serafat, Etimali, Isu the defendant No. 1, and certain other defendants. The two plaintiffs satisfied the decree in full, and instituted a suit for contribution against Isu and the other defendants, for the recovery of two-thirds of the money.

The defendants contended that the plaintiffs had no interest in the mortgaged property, and that the payment made by them was voluntary. On the 29th August 1911, the Court of first instance overruled the contentions of the defendants and decreed the suit in favour of the plaintiffs. On appeal, the lower Appellate Court, on the 8th July 1912, set aside the decision of the Court of first instance and remanded the suit for retrial on the two following issues : (i) "Whether the plaintiffs have any interest in the mortgaged lands described in the plaint? If so, what is the extent of their interest?" (ii) "What amounts, if any, are the plaintiffs entitled to recover from defendant No. 1 by way of contribution?" On retrial, the Court below passed a decree against defendant No. 1 for one-third the amount of money, holding that his share was one-third; also that the plaintiffs had an interest in the mortgaged property and in the payment of the decree. On appeal, the lower Appellate Court on the 4th June 1914 set aside the decision of the Court below. From that decision

(1) (1880) I. L. R 4 Bom. 643.

(2) (1911) 13 C. L. J. 646 ;

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the plaintiffs preferred this second appeal to the High Court.

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*Babu Dwarkanath Chakravarty* and *Babu Manmatha Nath Roy*, for the appellants.

*Babu Ram Chandra Majumdar* and *Babu Manindra Nath Dutt*, for the respondents.

MOOKERJEE AND WALMSLEY JJ. This is an appeal by the plaintiffs in a suit for contribution. The facts material for the determination of the question of law raised before us, stripped of superfluous details, may be briefly stated. X, a mortgagee, sued A, B and C, as representatives in interest of his mortgagor, and obtained a decree. The decree was by consent as to two of these persons and was *ex parte* as regards the other. A thereafter satisfied the judgment debt in full. A now sues to recover two-thirds of the money paid by him from B and C. B and C deny that A had any interest in the mortgaged property and urge that the payment made by A must consequently be deemed voluntary. The Court of first instance, upon the evidence, came to the conclusion that A had an interest in the mortgaged property and was entitled to maintain the suit for contribution against B and C. Upon appeal, the Subordinate Judge has held that A had no interest in the property, and, in this view, he has dismissed the suit. The result is that though the decree for the sale of the mortgaged properties has been satisfied with the money of A, though B and C have reaped the benefit of that payment, they escape all liability. The question arises, whether this position is supported by legal principle.

Section 69 of the Indian Contract Act 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.

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There has been some divergence of judicial opinion [*Mathooranath v. Kristo Kumar* (1), *Futteh Ali v. Gunganath* (2), *Nawab Mir v. Partap* (3), *Swarnamoyee v. Hari Das* (4), *Manindra v. Jamahir* (5), *Jinnat v. Fateh* (6)] upon the question whether this section is applicable to suits for contribution properly so called, that is, suits where the plaintiff admits his liability to pay a portion of the money actually paid by him and claims to recover the balance from the defendant: *Motichand v. Bajrang* (7), *Joynarain v. Badri Das* (8), *Satya Bhusan v. Krishna Kali* (9), *Rajani v. Ram Nath* (10). But whether the section is or is not applicable to suits for contribution, it has never been disputed that it applies to suits where the plaintiff is, upon the facts found, entitled to recover the whole sum from the defendant on the ground that the same was in law payable by the latter. In the case before us, it has been found that the plaintiffs had no interest in the mortgaged properties, as was, indeed, the contention of the defendants. In this view, the plaintiffs would be entitled, if section 69 applies, to recover the whole sum from the defendants. They have, however, claimed to recover only a portion of that amount. There can be no serious doubt that the money paid by the plaintiffs was money which the defendants were bound by law to pay. The only question in controversy is, whether the plaintiffs were persons interested in the payment of that money.

The true meaning of the expression "interested in the payment of money" has formed the subject of

(1) (1878) I. L. R. 4 Calc. 369.

(2) (1881) I. L. R. 8 Calc. 113.

(3) (1880) I. L. R. 6 Bom. 244.

(4) (1902) 6 C. W. N. 903

(5) (1905) I. L. R. 32 Calc. 643.

(6) (1911) 13 C. L. J. 646 ;

15 C. W. N. 332.

(7) (1911) 16 C. L. J. 148.

(8) (1911) 16 C. L. J. 156.

(9) (1914) 20 C. L. J. 196.

(10) (1914) 20 C. L. J. 200.

judicial discussion in recent years, and in the case of *Pankhabati v. Nani Lal* (1), it was ruled that the words "interested in the payment of money which another is bound by law to pay" were comprehensive enough to include the cases of persons who were under apprehension of any kind of loss or inconvenience and were not restricted to cases of individuals who were sure to suffer actual detriment capable of assessment in money. On this principle it was ruled in the cases of *Bindubashini Dasi v. Harendralal Ray* (2) and *Radha Madhab Samonta v. Sasti Ram Sen* (3), that where payment is made by a person who puts forward a *bonâ fide* claim to the property in dispute, he is entitled to the protection afforded by section 69 of the Indian Contract Act, even though it ultimately transpires, as a result of litigation, that he had not in fact or in law the interest for the protection whereof the payment was made. In the case before us, the plaintiffs were joined as parties to the mortgage suit by the mortgagee on the allegation that they were some of the legal representatives of the deceased mortgagor. A decree was made against the property to the equity of redemption wherein they claimed an interest. In the present suit the Court of first instance, upon the facts, came to the conclusion that they had an interest in the equity of redemption. The Court of appeal below has, however, come to a different finding upon the evidence. In these circumstances, it is impossible to maintain the view that the plaintiffs were persons in no way interested in the payment of the money which went to satisfy the decree. That decree bound the mortgaged properties wherein the defendants in the present litigation are undoubtedly interested; and the plaintiffs also *bonâ fide* claimed an equal interest. This case is

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(1) (1913) 19 C. L. J. 72.

(2) (1897) I. L. R. 25 Calc. 305.

(3) (1899) I. L. R. 26 Calc. 826.

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consequently clearly distinguishable from *Desai v. Bhavabhai* (1) mentioned in the judgment of this Court in *Jinnat Ali v. Fateh Ali* (2). It cannot, we think, be reasonably maintained by any stretch of language, that the payment was made by the plaintiffs with a view to manufacture evidence of title to the mortgaged properties when they knew that they had no claim whatsoever.

It is also fairly clear that even if section 69 were not applicable, the case would be covered by section 70. That section provides that where a person lawfully does anything for another person or deliver 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. There is no controversy that the payment was made by the plaintiffs without intention to do so gratuitously. The only question is whether this was done lawfully. Much reliance has been placed by the respondents on the cases of *Raja Baikunto v. Uday* (3) and *Panchcowri v. Hari Das* (4). We do not in any way depart from the exposition of the law contained in these cases, which is perfectly consistent with the view we now take, namely, that a payment in satisfaction of a decree, by a person who is a party to the decree and is bound thereby, is a payment made lawfully within the meaning of section 70.

We hold accordingly that whether section 69 or section 70 be applied, the plaintiffs are bound to succeed. In these circumstances, it is not necessary for us to consider, whether the plaintiffs might not have successfully invoked the aid of the doctrine of subrogation

(1) (1880) I. L. R. 4 Bom. 643.

(3) (1905) 2 C. L. J. 311.

(2) (1911) 13 C. L. J. 646 ;

(4) (1916) 25 C. L. J. 325.

15 C. W. N. 332.

[*Parbhu Narain v. Beni* (1), *Dhakeswar v. Harihar* (2), *Adusumalli v. Valurapalli* (3)], to support the line of reasoning that the plaintiffs are some of the joint judgment debtors, that they have satisfied the mortgage decree whereby they were bound, along with the defendants, and that they have accordingly been subrogated to the rights of the mortgagee decreeholder.

The result is that this appeal is allowed, the decree of the Subordinate Judge set aside, and that of the Court of first instance restored. This order will carry costs both here and in the lower Appellate Court.

L. R.

*Appeal allowed.*

(1) (1909) 14 C. W. N. 361.

(2) (1914) 21 C. L. J. 104.

(3) (1913) 25 Mad. L. J. 16.

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### CIVIL RULE.

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*Before Mookerjee and Walmsley JJ.*

BALAKESHWARI DEBI

*v.*

JNANANANDA BANERJEE.\*

1917

July 4.

*Examination on Commission—Purdanashin lady—Practice—Right of purdanashin lady to be examined on commission—Civil Procedure Code (Act V of 1908), s. 132, cl. (1).*

The petitioner, a *purdanashin* lady, applied under s. 132, cl. (1), of the Civil Procedure Code, to be examined on commission. The opposite party objected on the ground that she had on a former occasion appeared before a Criminal Court to institute a complaint :—

*Held*, that she was entitled to be examined on commission and ought not to be compelled to appear in public.

\* Civil Rule No. 47 of 1917, against the Order of N. N. Ghosh, Subordinate Judge of Burdwan, dated June 7, 1917.