

CIVIL RULE.

Before Sanderson C. J. and Chotzner J.

1921

July 28.

GOPESWAR BANERJEE

v.

BROJO SUNDARI DEVI*.

Reversioner—Revenue, payment of arrears of, by reversioner—Contract Act (IX of 1872) s. 70—"Lawfully" meaning of.

A payment made by a Hindu reversioner to stop a sale under the Public Demands Recovery Act (Beng. I of 1895) of a property in possession of a Hindu widow is not a payment "lawfully" made under section 70 of the Indian Contract Act (IX of 1872).

Panchcowri Ghose v. Hari Das Joti (1), *Suchand Ghosal v. Balaram Mardana* (2) referred to.

Sambasiva Aiyar v. Seethalaksmi Ammal (3) disapproved.

THIS was a Rule obtained by the plaintiffs Gopeswar Banerjee and another, to set aside an order of dismissal of a Small Cause Court suit by them against the defendant Brojo Sundari Devi. The plaintiffs were the reversionary heirs of the defendant's husband and as such paid the amount in suit to stop a sale under the Public Demands Recovery Act (Beng. I of 1895) of certain property belonging to the estate of the defendant's husband and held by her as a Hindu widow.

Babu Sarat Kumar Mitra, for the petitioner. The plaintiffs claim the money under section 70 of the Indian Contract Act. It was a payment "lawfully"

* Civil Rule No. 161 of 1921, against the order of J. M. Das Judge, Small Cause Court of Birbhum, dated Dec. 21, 1920.

(1) (1916) 25 C. L. J. 325.

(2) (1910) I. L. R. 38 Cal. 1.

(3) (1908) 19 M. L. J. 331.

made under that section. The plaintiffs were interested in protecting the property. *Sambasiva Aiyar v. Seethalakshmi Ammal* (1), *Ra'ani Kanta Mondal v. Haji Lal Mahommad* (2), *Sarafat Ali v. Issan Ali* (3).

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Babu Mohesh Chandra Banarjee, for the opposite party. This was not a payment "lawfully" made under section 70 of the Contract Act. The plaintiffs have no present interest in the property. The widow could have sold the property for necessity or there might be other contingency by which the plaintiffs might not get the property at all. An interest in making the payment should be the criterion for deciding whether the payment was "lawfully" made. *Ajodhya Sing v. Jamroo Lal* (4), *Suchand Ghosal v. Balaram Mardana* (5), *Pankhabati v. Nani Lal Sing* (6).

SANDERSON C. J. This is a Rule which was granted, at the instance of the plaintiff, by my learned brothers Mr. Justice Richardson and Mr. Justice Cuming calling upon the opposite party to show cause why the judgment and decree of the Small Cause Court Judge of Birbhum complained of in the petition should not be set aside.

The plaintiff sued to recover a certain sum of money which he alleged he had paid on behalf of a widow, called Brojo Sundari Devi, and he claimed to be reimbursed in respect of that sum of money. I take the facts, as to which there is no dispute, from the judgment of the learned Small Cause Court Judge. The learned Judge said, "Brojo Sundari has 6 annas share in lot Bakulia as heir of her husband. On account of that share she has to pay Rs. 29 odd as

(1) (1908) 19 M. L. J. 331.

(2) (1917) 21 C. W. N. 628.

(3) (1917) I. L. R. 45 Calc. 691.

(4) (1910) 14 C. W. N. 699.

(5) (1910) I. L. R. 38 Calc. 1.

(6) (1913) 18 C. W. N. 778.

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“road-cess in each *kist*; she defaulted in making payments for *kists* and her share was advertised for sale under the Public Demands Recovery Act; the plaintiff who is the reversionary heir of her husband paid the amount and claims to be reimbursed. The question is whether she is entitled to be reimbursed. The plaintiff’s pleader relied upon section 70 of the “Contract Act.” The learned Judge held that this case did not come within the provisions of section 70 of the Contract Act and dismissed the suit. The terms of that section are as follows:—“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.” There is no doubt that the plaintiff paid the money on behalf of the widow defendant. In my judgment, there is also no doubt that the defendant enjoyed the benefit of that payment, and, the sole question which arises in this case is whether the plaintiff can be said to be a person who lawfully made the payment; and, to confine the question even to narrower limits, the point really turns upon the meaning of the word “lawfully.” It has been held in this Court in the case of *Panchcowri Ghose v. Hari Das Joti and Others* (1), which was decided by my learned brother Mr. Justice Mookerjee and myself, that the word “lawfully” in section 70 cannot be regarded as mere surplusage, and that the meaning is that a person must have a lawful interest in making the payment and that it must be considered in each individual case whether the person making the payment had any lawful interest in making it. The passage to which I wish to draw attention is at page

(1) (1916) 25 C. L. J. 325.

330. There I find I said as follows: "The test as regards the meaning of the word 'lawfully' was laid down by my learned brother Mr. Justice Mookerjee in the case of *Raja Baikunto Dey Bahadur v. Uday Chand Maiti* (1). The word 'lawfully' in section 70 of the Contract Act is not merely a surplusage. It must be considered in each individual case, whether the person, who made the payment, had any interest in making it; if not, the payment cannot be said to have been made 'lawfully'." Then I proceeded to say "I expect my learned brother would agree with me, when I say he meant 'had any lawful interest in making it'." My learned brother did not deliver a separate judgment in that case but he said that he entirely agreed. It is interesting to note that in the Commentary on the Indian Contract Act by the learned commentator, Sir Frederick Pollock, at page 388 (4th edition), he refers to the matter as follows:—

"The word 'lawfully' in this section is not mere surplusage. It must be considered in each individual case whether the person who made the payment had any lawful interest in making it, if not, the payment cannot be said to have been made 'lawfully.'"

The whole question in this case is whether the reversioner can be said to be a person who had a lawful interest in making this payment. The words of the section are very wide. Our attention was drawn to what was said by the late learned Chief Justice Sir Lawrence Jenkins, in the case of *Suchand Ghosal v. Balaram Mardana* (2), where he said: "The terms of section 70 are unquestionably wide, but applied with discretion they enable the Courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations actually

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(1) (1905) 2 C. L. J. 311.

(2) (1910) I. L. R. 38 Calc. 1, 7.

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“created by contract. It is, however, especially incumbent on final Courts of fact to be guarded and circumspect in their conclusions and not to countenance acts or payments that are really officious.” The learned Judge sitting with the learned Chief Justice said, that in interpreting this section it is very necessary to remember the almost elementary rule of law that “it is not in every case in which a man has benefited by the money of another that an obligation to repay the money arises.” The terms of this section, as I have said, are very wide, but in my judgment the Court ought to be careful that it does not extend the meaning of the section and apply it to cases which were not intended to be covered thereby. In my opinion, the plaintiff in this case does not come within the terms of this section. The interest which he has is merely that of a reversioner, the interest being expectant upon the death of the widow defendant. It is an interest which the plaintiff may never be able to realize because he may die before the defendant herself.

The learned vakil, who showed cause against this Rule, pointed out that it was within the power of the widow to sell her widow's estate under certain circumstances and that the reversioner could not interfere with it. That was an argument which to my mind was relevant to the point which he was urging, namely, what was the real nature of the plaintiff's interest in this property. The only way, in which I can see, it could be said that the plaintiff had a lawful interest within the meaning of the section is as follows:—It might be said that if the plaintiff had not paid the money, the property would have been put up to sale, a stranger might have bought the property and got possession of it: the plaintiff might survive the widow, and when he came into

his property he might find the stranger in possession and he might have difficulty in getting the stranger out of possession: and, consequently, having regard to those contingencies, it might be said that the plaintiff had a present lawful interest in paying the money on behalf of the defendant. It seems to me that what I have stated is the most favourable way in which the case could be put for the plaintiff. That, however, in my judgment, is too problematical and hypothetical for us to hold that the plaintiff at the time he made this payment had a lawful interest within the meaning of the section. Consequently, in my judgment, the decision of the learned Small Cause Court Judge was correct and this Rule should be discharged.

I think it is right to notice that in this case the learned Judge set out fully and completely what was the issue between the parties, what was the decision arrived at, and reasons for arriving at that decision. The judgment compares in that respect very favourably with some of the judgments which have come before us from other learned Judges when exercising the jurisdiction of the Small Cause Courts.

The Rule is discharged with costs.

CHOTZNER J. I am in full accord with the judgment just delivered by my Lord the learned Chief Justice. There seems to be only one point which has to be decided in this case and that is whether a Hindu reversioner is a person lawfully interested in making a payment to save a property from sale under the Public Demands Recovery Act. The interest of a Hindu reversioner is a contingent and expectant interest. His direct interest only accrues upon the widow's death: and, therefore, it seems difficult to hold that he is a person lawfully interested at the moment of making the deposit so as to bring him

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within the purview of section 70 of the Indian Contract Act. It was said in the case of *Suchand Ghosal v. Balaram Mardana* (1) "The terms of this section are unquestionably wide, but applied with discretion they enable the Courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations actually created by contract." In my view, the section does not give the reversioner in this case the right he claims. The question as to the position of a Hindu reversioner has never been decided directly by this Court. The learned vakil for the petitioner referred us to the case of *Sambasiva Aiyar v. Seethalakshmi Ammal* (2). I may point out in passing that the decision was given by a single Judge. The headnote to that case is in these terms: "A Hindu reversioner is interested in the payment of Government revenue in respect of the estate held by the widow (the life holder) within the meaning of section 69, Contract Act, and he is consequently entitled to recover the same from the widow." With great respect to the learned Judge, I should say that he has given a Hindu reversioner an interest to which he is not entitled under the law. In the present case the reversioner's interest is not directly affected by the sale and, in my judgment, he was not competent to make the payment which he did make. I agree, therefore, with my Lord that the Rule must be discharged with costs.

N. G.

Rule discharged.

(1) (1910) I. L. R. 38 Calc. 1.

(2) (1908) 19 M. L. J. 331.