

to execute the decree was made before the Munsiff, and the Munsiff took steps to execute it. Thereupon a rule was obtained in this Court to show cause why execution should not be stayed pending the hearing of this appeal. We have, therefore, now to dispose of that rule. As we see no reason for interfering with the decree passed by the lower Appellate Court, it follows that there can be no reason for staying execution in the terms of the rule.

The appeal is dismissed with costs, and the rule discharged.

We make no order as to the costs in the rule.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Macpherson.*  
SMITH (PLAINTIFF) v. DINONATH MOOKERJEE AND OTHERS  
(DEFENDANTS.)\*

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September 2.

*Voluntary payment—Landlord and Tenant—Government revenue, Payment of, by putnidar—Defaulting proprietor, Liability of, to recoup putnidar who pays Government revenue for him, when a separate account has been opened—Revenue sale law (Act XI of 1859), ss. 9, 10, 11, 13, 14 and 54—Contract Act (Act IX of 1872), ss. 69, 70.*

A putnidar who had made certain payments on account of Government revenue due by his superior landlords who had defaulted, although a separate account had been opened for the payment of such Government revenue, brought a suit to recover the amount so paid. In such suit it was contended that the payments were merely voluntary, and that the plaintiff could not recover them.

*Held*, that the plaintiff was "interested" in making the payments, and was therefore entitled to recover under s. 69 of the Contract Act.

*Held*, further, that s. 70 of the Contract Act applied to the case, inasmuch as the word "does" in that section includes payments of money, and also that the plaintiff was entitled to recover under s. 9 of the revenue sale law as he believed in good faith that his interest would be endangered by a sale taking place.

The liability of a landlord under s. 9 of the revenue sale law to recoup a person paying Government revenue for him does not depend upon the question of whether the money was originally deposited or not, but accrues upon its being credited in payment of the arrears.

IN this case the plaintiff sought to recover the sum of

\* Appeal from Appellate Decree No. 1722 of 1884, against the decree of C. A. Kelly, Esq., Judge of Nuddea, dated the 7th of August 1884, affirming the decree of Baboo Amrita Lal Chatterji, Subordinate Judge of that district, dated the 28th of August 1882.

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Rs. 1,035-4-3 on account of principal and interest, which he alleged to be due to him from the defendants for monies paid by him on account of the Government revenue of Taruff Shyampur. The plaintiff was the putnidar of certain mouzahs in the said taruff, of which the defendants were the owners. He alleged in his plaint that the defendants had for several years omitted to pay the Government revenue due by them, and that in order to save his putni right he had paid it for them, and thus saved their property. In respect of some portion of the payments made by him he stated that he had set off the amount against the rent due from him to the defendants, and he claimed to be entitled to recover the balance of Rs. 851-15-1, together with interest, Rs. 188-5-2 thereon.

The defendants stated that there was a separate account for the payment of the Government revenue in respect of the taruff, and that the revenue was collected separately, and that in consequence thereof, even if a sale had taken place, the plaintiff's putni would not have been cancelled, and that the payment made by the plaintiff must, therefore, be considered purely voluntary, and that he was not entitled to recover the amount from them. They also pleaded that some of the payments made by the plaintiff were barred by limitation, and that he was not entitled to set them off in the manner he alleged he had done, and they took other objections in the written statement immaterial to the points at issue in the present appeal.

The first Court held that the plea raised by the defendants that the payments were voluntary was a good one; that the plaintiff was not interested in the payment of the revenue due from the defendants; and that if a sale of the share had taken place the plaintiff's putni was not likely to have been affected. It further held that the case did not fall within s. 70 of the Contract Act, and that there was nothing to show that the defendants had been benefited by the payments. The Court therefore without going into the other issues, dismissed the suit with costs.

The lower Appellate Court took the same view, and held that the payments could not be considered other than voluntary, and that the plaintiff could not be considered as "interested"

in making them within the meaning of s. 69 of the Contract Act. It also held that the plaintiff's interest were not jeopardised at the time the payments were made so as to enable him to claim under the provisions of s. 9, Act XI of 1859. It accordingly confirmed the decision of the lower Court and dismissed the appeal.

The plaintiff now preferred a special appeal to the High Court.

Mr. *Pugh*, and Baboo *Lall Mohun Dass*, for the appellant.

Baboo *Rash Behary Ghose*, and Baboo *Sharoda Prosunno Roy*, for the respondents.

The nature of the arguments upon the hearing of the appeal appear sufficiently from the judgment of the High Court (MITTHER and MACPHERSON, JJ.) which was as follows:—

The (plaintiff) appellant seeks to recover from the (defendants) respondents the sum of Rs. 1,035-4-3 under the following circumstances.

The appellant is the putnidar of certain mouzahs appertaining to a share of Taruff Shyampur, in respect of which the respondents, the owners thereof, have caused a separate account to be opened for the payment of the Government revenue either under s. 10 or s. 11 of Act XI of 1859. The whole of this revenue or a portion thereof not having been paid for several years past by the respondents, and the appellant having paid the same, the present suit was brought for the recovery of the amount so paid with interest.

The lower Courts have held that the appellants are not entitled to recover, taking the facts set forth above to be correct.

The Subordinate Judge who has decided this case in the original Court was of opinion that the appellant was not interested in the payments which he made, because, if the share of the respondents' zemindari had been sold in consequence of their default, his *putni* right would not have been affected under the provisions of s. 54 of the Sale Law. Neither was the appellant entitled to recover, because in the opinion of the Subordinate Judge the appellant "did nothing for the defendants" who are not shown to "have been benefited by these payments." He accordingly dis-

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1885 missed the suit, being of opinion that the present case did not  
SMITH fall under either s. 69 or s. 70 of the Indian Contract Act.

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DINONATH On appeal the District Judge has taken the same view as the  
MOOKERJEE. Subordinate Judge regarding the applicability of ss. 69 and 70  
of the Indian Contract Act to the present case, and has further  
held that the claim did not fall within the purview of s. 9  
of the Sale Law, upon which it seems the appellant also relied  
before him.

We are of opinion that the decision of the lower Courts is  
erroneous. It is clear that the respondents were bound to pay  
the revenue which the appellant has paid. It seems to us that  
he was interested in its payment. It is true that if the "separated"  
share had been sold under s. 13 of the Sale Law for the  
arrears of revenue due upon it, the appellant's putni rights would  
not have been affected by that sale. But if the entire estate  
had been put up to sale under s. 14, the appellant's putni  
would have been avoided by such sale. Therefore, although, in  
consequence of the respondents' non-payment of the revenue the  
risk to the appellant's putni was somewhat remote, still it cannot  
be denied that he had some interest in paying it. It has been  
said that if payments made under the circumstances of the present  
case are recoverable under s. 69, mischievous consequences  
would follow; because, as soon as a tenant committed a default  
in the payment of his rent, any under-tenant of his would  
be competent to drag him into Court by making the payment  
himself. But s. 69 only applies to payments made *bonâ fide* for  
the protection of one's own interest. A person may be interested  
in the payment, but in making the payment if he is not actuated  
by the motive of protecting his own interest, he cannot recover  
under section 69. [See *Desai Himatsingji Joravarsingji v. Bhavabhai Kayabhai* (1).]

If this construction of s. 69 be correct, the mischievous  
result apprehended would not arise. Men do not readily pay  
another's debts, and if an under-tenant under the circumstances  
mentioned above, believing that it is his interest to liquidate the  
arrears of the rent of his superior tenant, does make the payment,  
we do not see any real hardship to the latter in being called upon by

(1) I. L. R., 4 Bom, 643, (cf.) p. 652.

the former to reimburse him. The present case, therefore, in our opinion falls under s. 69 of the Indian Contract Act.

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We are also of opinion that the lower Courts are in error in coming to the conclusion that the provisions of s. 70 of the Indian Contract Act and s. 9 of the Sale Law are not applicable to the facts of the present case. It has been contended before us on behalf of the respondents that the word "does" in s. 70 of the Indian Contract Act does not include payment of money. This contention is negatived by the decision of the Bombay High Court already cited, and is contrary to the view expressed by the Allahabad High Court in *Nath Prasad v. Baij Nath* (1) and by a Division Bench of this Court in *Nobin Krishna Bose v. Mon Mohun Bose* (2).

This contention is chiefly based upon the argument that if the word "does" in s. 70 did include payment of money, s. 69 would be wholly unnecessary. But this would not be so, because there may be cases in which a person who is bound to pay a certain sum of money would not be necessarily benefited by its payment by another. Such a case would not fall under s. 70 but under s. 69. The Subordinate Judge says that it has not been shown that the respondents have been benefited by the payments made by the appellant. But a person who enjoys the profits of a property burdened with the payment of certain taxes is surely benefited by one who pays those taxes for him.

The present claim is equally sustainable under the provisions of s. 9 of the Sale Law. Under this section if the appellant "believed in good faith" that his interest would be endangered by the sale of this zemindari, he would be entitled to recover.

But it has been said that this case does not come under the section in question, because the money was not paid as a deposit, but in liquidation of the arrears of revenue, and was at once credited in payment thereof. But this circumstance, in our opinion, does not render the provisions of this section inapplicable. The liability of the landlord under this section does not depend upon this, *viz.*, whether the money was originally deposited or not, but accrues upon its being credited in payment of the arrear. This is quite clear, because the person making the deposit is not

(1) I. L. R., 3 All., 66.

(2) I. L. R., 7 Calc., 573.

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entitled to recover until the money deposited has been credited in payment of the arrear. The provision relating to the deposit has been made for the convenience of the depositor in order to enable him to obtain refund of the money easily if before the "sunset" day the arrears are paid by the zemindar, and has no bearing upon the question of his liability to reimburse the person making the payment for his benefit. This liability arises, as already remarked, upon the money being credited in payment of the arrear. This was done in the present case, and we are therefore of opinion that the appellant's contention, based upon  $\S$  9 of the Sale Law, is equally sound.

We set aside the decision of the lower Courts and remand the case to the Subordinate Judge to decide it upon the other issue arising in it. The costs to follow the result.

*Appeal allowed and case remanded.*

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