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MUHAMMAD
UBAIDULLAH
KHAN
v.
RAMJI LAL

and that there is a deficiency of Rs.675. We allow the plaintiff respondent three months to make good the deficiency. If the plaintiff respondent neglects to make good the deficiency then he will not be heard as a respondent in this Court.

*Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath*

1939
October, 27

PHEKU RAM (DEFENDANT) v. GANGA PRASAD (PLAINTIFF)*

Benefit derived from payment by another—Equitable right to repayment, conditions of—Obligation, express or implied, to repay—Privity of contract—Contract Act (IX of 1872), section 70.

It is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. To support a suit for repayment there must exist an obligation, express or implied, to repay.

G obtained a licence for a liquor shop in the name of another person H and deposited some money as security with the Government. Later on, G severed his connection with the shop but at the request of H allowed the money to remain in deposit as before. Subsequently H took P as a partner in the shop. Thereafter the licensing fee for a particular year fell into arrears and the Government forfeited a part of the security deposit. G sued both H and P for recovery of this sum: *Held*, that G had no cause of action against P, as there was no privity of contract between them and no equity in favour of G against P, the money having been left by G for the benefit of H and not for the benefit of P.

Mr. *Shiva Prasad Sinha*, for the appellant.

Mr. *B. Malik*, for the respondent.

THOM, C. J., and GANGA NATH, J.:—This is an appeal by defendant No. 2 against the decision of a learned single Judge of this Court. It arises out of a suit brought against him and Hathi Prasad, defendant respondent No. 2, by Ganga Prasad, plaintiff respondent, for declaration that the money in deposit with the Government belonged to him and for recovery of Rs.1,333, which the Government had realised out of it on account of certain dues payable by defendant

*Appeal No. 21 of 1938, under section 10 of the Letters Patent.

No. 1. Defendant No. 2 contended that the plaintiff had no cause of action against him and he was not liable for any money. Both the lower courts have decreed the suit against both the defendants. The decree of the lower courts was confirmed by the learned single Judge.

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A licence for a liquor shop was obtained by the plaintiff benami in the name of defendant No. 1. The plaintiff deposited Rs.1,636 as security with the Government. The plaintiff severed his connection with the shop in 1928. The money was, however, allowed to remain in deposit with the Government at the request of defendant No. 1, in whose name the licence continued. Some time after 1928 defendant No. 1 took defendant No. 2 as a partner in the shop. The licensing fee due on account of the year 1933 fell into arrear and the Government forfeited a sum of Rs.1,333 out of the security money deposited by the plaintiff. The present suit is for the recovery of this sum from both the defendants.

It is conceded that the licence had been obtained by defendant No. 1 in his own name and it continued in his name. As already stated, the security money in deposit with the Government belonged to the plaintiff, and it was allowed to remain in deposit with the Government at the request of defendant No. 1 before defendant No. 2 was taken as a partner by defendant No. 1 in the liquor shop. Evidently there was no privity of contract between the plaintiff and defendant No. 2. Defendant No. 1 incurred a liability to repay this money to the plaintiff when the latter allowed it to remain in deposit with the Government as security on behalf of defendant No. 1 at his (defendant No. 1's) request. It is contended for the respondents that as defendant No. 2 has been benefited by this money he is liable to pay it. Defendant No. 2 has not been benefited; but even if he had been, he would be under no obligation to repay it. As is observed in the judgment of the Privy Council in *Ram Tuhul Singh v.*

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Biseswar Lall Sahoo (1), "it is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit there must be an obligation, express or implied, to repay."

It was further contended by learned counsel for the respondents that it was not a case of voluntary payment, but the plaintiff was forced to pay and therefore he is entitled to recover the money from defendant No. 2. But that is not so. No payment has been made by the plaintiff. The money was in deposit as defendant No. 1's security for his licence. The Government forfeited a portion of it on account of arrears due from him. The defendant No. 2 had nothing to do with the Government, which could not recover anything from him. The plaintiff left this money for the benefit of defendant No. 1 and as his security money. The money was forfeited as such.

It was further contended for the respondents that this sum should be treated as a partnership debt and both the defendants, who were partners in the shop, should be held liable. This contention is without force, because the liability for this money had been incurred by defendant No. 1 before the partnership between him and defendant No. 2 came into existence and it was never made a partnership debt.

There being no privity of contract between the plaintiff and defendant No. 2 and no equity in favour of the plaintiff against defendant No. 2, the plaintiff has no right to recover any money from defendant No. 2.

In the result the appeal is allowed, the decrees of the learned single Judge and the lower courts against defendant No. 2 are set aside and the suit against defendant No. 2 is dismissed. The appellant will get his costs from the plaintiff throughout.