

1883
 SIDH GOPAL
 v.
 AJUDHIA
 PRASAD.

plain terms to indicate that the consideration, upon the strength of which the executants-appellants hypothecated their three houses, was an actual or supposed promise of all the creditors mentioned in the instrument to forbear from enforcing payment of their debts for a period of three months from the date thereof. The value of an executory consideration of this kind could only be its value as a whole, and according as that was or was not forthcoming, would the contract stand or fall. The condition precedent to liability attaching to the defendants under the deed of the 22nd June, 1875, was broken when the suits of Debi Charan and Sidhari Lal were instituted within the three months. Hence there was, in our opinion, such a failure of consideration as discharged the appellants from their liability. In this view of the case it becomes unnecessary to determine the other points raised, to which we have adverted. We think, therefore, that the four appeals before us must be decreed with costs, and that the three suits instituted by the plaintiffs-respondents should stand dismissed. We may add, that had there not been the failure of consideration to which we have referred above, and the contract had remained in full force and effect against the appellants, it would not have been competent for individual creditors to come into Court to enforce the lien created by the deed of June, 1875, in respect of their separate debts, and upon this ground also the suits of the plaintiffs-respondents must have failed.

Appeals allowed.

1883
 March 17.

CIVIL REVISIONAL.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

AJUDHIA PRASAD (PLAINTIFF) v. BAKAR SAJJAD AND OTHERS
 (DEFENDANTS).*

*Contract, relation resembling—Money paid—Voluntary payment—Act IX.
 of 1872 (Contract Act), ss. 69, 79.*

B sold certain immoveable property to *A*, one of the terms of the agreement of sale being that *A* should retain a portion of the purchase-money, and therewith pay the amount of a simple decree for money against *B* held by *C*. *A* failed to pay the amount of *C*'s decree, and *B* therefore sued him for the balance of the purchase-money, and obtained a decree. In the meantime *C* had the property attached in execution of his decree against *B*. *A* there-

* Application No. 274 of 1882, for revision under s. 622 of the Civil Procedure Code of a decree of H. A. Harrison, Esq., Judge of Farukhabad, dated the 5th July, 1882, affirming a decree of Munshi Man Mohan Lal, Munsif of Kanauj, dated the 24th April, 1882.

upon paid the amount of *C*'s decree. *B* subsequently took out execution of his decree against *A* for the balance of the purchase-money, and *A* paid the amount of the decree. *A* then sued *B* to recover the amount which he had paid in satisfaction of *C*'s decree against *B*.

Held that *A* was entitled under s. 70 of the Contract Act, 1872, to recover such amount, *B* having enjoyed the benefit of the payment, and the same not having been intended to be gratuitous.

Semble that the case came within the provisions of s. 69 of the Contract Act and of the principle laid down in *Dulichand v. Ramkishen Singh* (1).

On the 18th January, 1879, Bakar Sajjad, defendant No. 1 in this case, sold certain immoveable property to the plaintiff. He left in the hands of the plaintiff Rs. 245, part of the purchase-money, in order that the plaintiff might satisfy a decree for money held against him by defendants Nos. 2 and 3, Chunni Lal and Lalman. The plaintiff neglected to satisfy the decree. Defendant No. 1 therefore sued him for the money, and obtained a decree on the 14th April, 1879. Previous to this decree, but subsequent to the sale of the property to the plaintiff, defendants Nos. 2 and 3 caused the property to be attached in execution of their decree against defendant No. 1. The plaintiff thereupon satisfied that decree. Defendant No. 1 subsequently applied for execution of the decree which he had obtained against the plaintiff on the 14th April, 1879. The plaintiff objected to the execution of the decree on the ground that he had satisfied it, by satisfying the decree of defendants Nos. 2 and 3. This objection was disallowed, and the plaintiff was compelled to satisfy defendant No. 1's decree. He thereupon brought the present suit against defendants Nos. 1, 2 and 3, in which he claimed to recover from them the money which he had paid in satisfaction of the decree of defendants Nos. 2 and 3. The plaintiff based his claim on the provisions of the Contract Act, 1872, s. 69. The Court of first instance dismissed the suit, holding that the plaintiff was not entitled to recover the money either under the provisions of that section or of s. 70. On appeal by the plaintiff the lower appellate Court affirmed the decision of the first Court. The material part of its decision was as follows:—

“The strongest contention in appeal is that the payment was made under compulsion and that in equity the plaintiff is entitled to recover from Bakar Sajjad.

(1) L. L. R., 7 Calc. 648; S. C., L. R., 8 Ind. App., 93.

1883

AJUDHIA
PRASAD

v.

BAKAR
SAJJAD.

1883

AJUDHIA
PRASAD
v.
BAKAR
SAJJAD.

“Broom’s Legal Maxims are referred to by the appellant, that no man should by law be deprived of his money which he has parted with under mistake, and when it is against justice and conscience that the receiver should retain it; that when money is paid to another under the influence of mistake, that is, upon the supposition that a specific fact is true, but which is untrue, and the money would not have been paid had it been known to the payer that the fact was untrue, an action will lie to recover it back; that the compulsion of law which entitles a person paying the debt of another to recover against that other as for money paid is not such a compulsion of law as would avoid a contract like imprisonment: restraint of goods, by the reason of non-payment of a debt due by one to another, is sufficient compulsion of the law, to entitle a person, who has paid the debt in order to relieve his goods from such restraint, to sustain a claim for money paid.

“The Court cannot find that the plaintiff did pay the money under mistake. In the suit of Bakar Sajjad against him it had been definitely decided that the property was not hypothecated for the debt due to Chunni Lal and Lalman, and that Bakar Sajjad, now that he had obtained a decree against the plaintiff, was liable to Chunni Lal and Lalman. When the facts had been decided the plaintiff cannot contend that he paid the money under mistake. The only excuse the plaintiff could have for paying the money was that, unless he paid the money, his property would be sold in execution of a decree; he could have only thought this if the property was hypothecated for the debt, but this he knew was not the case, as it had been decided that neither he or the property was liable. The Court cannot hold that there was even constructive compulsion. Precedents of English law are referred to, but those apply to cases in connection with moveable property. The case of *Nobin Krishna Bose v. Mon Mohan Bose* (1) is referred to by appellant. In that case the lower Court decreed the plaintiffs’ claim on the ground that in making payments they believe themselves interested in doing so. The High Court doubted whether the judgment could be supported on that ground, but that the conclusion arrived at by the lower Court could be supported upon

(1) I. L. R., 7 Calc. 573; S. C., 9 Calc. L. R., 182.

the principle that, when a payment is made by one person for the benefit of another, and that other afterwards adopts that payment and avails himself of it, the sum becomes money paid for his use. Now this Court doubts whether the payment made by the plaintiff in this case can be held to have been made for the benefit of Bakar Sajjad, nor can it be held that Bakar Sajjad adopted the payment.

1883

AJUDHIA
FRASAD
"BAKAR
SAJJAD.

“The real facts no doubt are that, as the plaintiff had to pay Bakar Sajjad under his decree, he thought he might satisfy the decree by paying the debt due to Chuni Lal and Lalman from Bakar Sajjad, and he pleaded satisfaction of the decree when Bakar Sajjad took out execution against him, but as the plaintiffs liability to pay Chuni Lal and Lalman had ceased on Bakar Sajjad obtaining his decree, his contention was not allowed.

“The Privy Council decision in *Dulichand v. Rankishen Singh* (1) is quoted by appellant. It was there held that, where the purchaser of a mauza paid money into Court to prevent the sale thereof in execution of a decree which had already been satisfied, the payment was involuntary. Their Lordships held that there was no pretence for saying that the payment was voluntary. It was made to prevent the sale which would otherwise inevitably have taken place of the mauza, and was made therefore under compulsion of law, *i.e.*, under the force of execution proceedings.

“The Court does not see that the present case is at all similar. There had, it appears, been no proclamation of sale, and the plaintiff knew that his property was not liable for the debt. The liability of the property of plaintiff had been made the subject of issue in the suit of Bakar Sajjad against him and decided in plaintiff's favour before the payment was made.

“The suit too is pressed against Bakar Sajjad and not against those to whom the money was paid, and it is admitted that the payment was made without the consent of Bakar Sajjad.

“For respondent the case of *Mool Chand v. Ajoodhya Pershad* (2) was referred to, in which it was held that a person paying another's creditor, without that other's authority, cannot recover back from

(1) I. L. R., 7 Cal. 648 ; S. C., L. R., 8 Ind. App., 93.

(2) N.-W. P. H. C. Rep., 1871, p. 162.

1883

AJUDHIA
 PRASAD
 v.
 BAKAR
 SAJJAD.

the creditor the amount so paid. The case of *Kam Buksh Chut-langea v. Hriday Monee Debia* (1) is also referred to. In that case the plaintiff purchased a *jote jamma* at a sale in execution of decree against the defendant : after it came into his possession, the former tenant was sued for arrears of rent due before the sale : the property was attached with a view to selling it : the plaintiff paid the arrears, and his payment was held to be a voluntary one, made without legal necessity, and was not recoverable by suit against the tenant. In the present case the debt the plaintiff paid was due before the sale to him, the property was attached but the attachment was illegal, and the plaintiff knew this ; his payment therefore was a voluntary payment and made without legal necessity.

“Reliance is placed on s. 69 of the Contract Act, but the Court holds that the plaintiff was not interested in the payment of the money, and further that he knew he was not so, as he knew that his property was not liable for the money. The Court does not think that, if the payment was made to render it unnecessary for the plaintiff to contest the attachment in Court, that that was sufficient reason to hold the plaintiff interested in the payment. The contention that the money was paid in good faith is met by the fact that the plaintiff knew his property was not liable. If it was contended that plaintiff paid the money under the supposition that by doing so he satisfied the decree against him, the contention would no doubt be true ; but the fact that the payment was a voluntary one, and made without legal necessity, would remain. The Court is of opinion that the lower Court is right and dismisses the appeal.”

The plaintiff applied to the High Court for revision of the decrees of the lower Courts on the ground that he was entitled to recover from defendant No. 1 money which the latter was legally bound to pay, and which the plaintiff had been compelled to pay for him.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Munshi Hanuman Prasad*, for the plaintiff.

Babu Ram Das Chakarbaty and *Lala Jokhu Lal*, for the defendants.

The judgment of the Court (OLDFIELD and BRODHURST, JJ.), after stating the facts, continued as follows :—

1883

 AJUDHIA
 PRASAD
 v.
 BAKAR
 SAJJAD.

OLDFIELD, J.—We are of opinion that the decrees of the Courts below cannot stand. Although the plaintiff had originally agreed to satisfy Chunni Lal and Lalman's decree out of the consideration-money for the sale due by him to Bakar Sajjad, his obligation to do so ceased when Bakar Sajjad sued him for that sum of money. He therefore did not pay the amount as a debt which he had taken upon himself to satisfy; and we incline to hold that the payment of it, under the circumstances, made to release the property he had bought from attachment and sale under Chunni Lal's decree, cannot be called a voluntary payment, and it was immaterial that the property was not liable to be attached and sold, or that the plaintiff knew that fact. It might be contended that the payment was voluntary, since the plaintiff might have, but did not take proceedings to object to the attachment, which might have led to the release of the property. It is, however, doubtful whether he was bound to go to the cost and trouble of legal proceedings, and we are disposed to consider that the case comes within the provisions of s. 69 of the Contract Act, and of the principle laid down in the Privy Council decision in *Dulichand v. Ramkishan Singh* (1).

We do not, however, rest our decision on this ground, as we hold that, under the circumstances of this case, the plaintiff is entitled to recover the sum he claims under the provisions of s. 70 of the Contract Act, Bakar Sajjad having clearly enjoyed the benefit of the payment which was made for him, and which was not intended to be a gratuitous payment, by which the decree against him held by Chunni Lal and Lalman was satisfied. We, therefore, modify the decree of the Courts below, and decree the claim with costs against Bakar Sajjad, and dismiss it with costs against the other defendants.

(1) I. L. R., 7 Calc. 648; S. C., L. R., 8 Ind. App., 93.
