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MA SAW
v.
MAUNG BA.

PRATT, J.

If it should transpire that a formal deed was drawn up and executed by signing, then secondary evidence will be inadmissible for lack of stamping.

I set aside the finding of the lower Courts on the preliminary issue of law and remand the suit for disposal on its merits in view of these considerations.

Costs to follow final disposal.

Appellant is entitled to a refund of the court-fees in this and the lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Brown.

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July 4.

AH CHOON
v.
T.S. FIRM.*

Contract Act (IX of 1872), ss. 15, 72—"Coercion"—Suit to recover moneys paid to remove wrongful attachment.

The Chettyar firm obtained a money decree against two persons personally though they were described in the plaint as partners of a firm. In execution of the decree the Chettyar firm attached the goods of the appellant as partnership property of its judgment-debtors and alleged that appellant was also a partner, but the procedure laid down in Civil Procedure Code, Order 21, Rule 50 (2) was not observed. Appellant paid the decretal amount to prevent his goods being seized and, on failing to remove the attachment, filed a suit for the recovery of his money against the Chettyar firm to whom it had been paid.

Held, that the word "Coercion" in section 72 of the Contract Act is used in its general sense and that if a third party was coerced into paying the money in satisfaction of a decree against a judgment-debtor and was not himself liable for the money, the money was paid by him under coercion within the meaning of section 72 of the Act, and a suit did lie to recover that money.

Seth Kanhaya Lall v. *The National Bank of India, Ltd.*, (1913) 40 I.A. 56 P.C.—*followed.*

Janab Ali—for Appellant.

Ekambaram—for Respondents.

BROWN, J.—The respondent T.S. Firm in Civil Regular No. 122 of 1924 of the Township Court,

* Special Civil Second Appeal No. 657 of 1926.

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Pyapon, filed a suit against two persons, Maung Sit Pin and Ah Kwin, whom they called in the plaint managing partners of the firm of Ho Ho Company, Pyapon, for money due on a promissory-note. The defendants admitted the execution of the promissory-note and a decree was passed against them. Nothing was said in the decree as to their being partners of the Ho Ho firm. The decree was passed on the 20th May 1924. On the 4th June the Chettyar firm applied for warrant of attachment of property in execution of the decree and the property attached was the property in the possession of the present appellant, Ah Choon, who was carrying on the business in the shop. The Deputy Bailiff claimed to effect the warrant of attachment. Ah Choon, in order to prevent all the goods in his shop being seized, paid the decretal amount Rs. 894 to the Deputy Bailiff. The next day he made an application in the Court to the effect that the goods were his and were not liable to attachment and asked for the removal of the attachment. But this application was unsuccessful and the money was paid to the decree-holder. Ah Choon then brought a suit out of which this appeal has arisen for recovery of the money which he alleges was paid by him under coercion to the Deputy Bailiff. The trial Court held that the money was paid under coercion and gave Ah Choon a decree. The District Court in appeal set aside this decree on the ground that whatever the motive of the payment it was clear that the Deputy Bailiff had no power to accept security for the decretal amount ; that the money must have been held to have been paid in satisfaction of the decree and that Ah Choon's remedy, if any, was against the judgment-debtors. It is against this decree of the District Court that the present appeal has been

filed, and I think that the view of the law taken by the learned Judge of the District Court was wrong.

It was held by their Lordships of the Privy Council in the case of *Seth Kanhaya Lall* v. *The National Bank of India, Limited* (1), that the word "coercion" in section 72 of the Indian Contract Act is used in its general sense and that, if a third party was coerced into paying the money in satisfaction of a decree against a judgment-debtor and was not himself liable for the money, the money was paid by him under coercion within the meaning of section 72 or the Contract Act, and a suit did lie to recover that money.

The question then for consideration is whether the appellant was acting under coercion when he paid the money and whether he was liable to pay. It is quite clear that when the Deputy Bailiff went to execute the warrant of attachment there was no decree at all against the appellant under which he could be held liable. It is contended that this is simply due to a mistake which was rectified later. But, even if this were so, it seems to me clear that the attachment was illegal.

The Chettyar's case is that Ah Choon, Sit Pin and Ah Kwin were the three partners in the firm of Ho Ho & Co. ; that it was the firm of Ho Ho & Co. who borrowed the money and that it was against that firm that they got the decree. Admittedly no personal decree has been passed against Ah Choon. The property of the partnership, therefore, can only be attached under the provisions of Rule 50 of Order XXI if the decree were against the partner ship ; and if the property in the hopwere the partnership property, then the attachment was

(1) (1913) 40 I.A. 56.

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perfectly legal. But it is clear that the property said to be attached was not the property of the partnership of these three men, as it has been abundantly proved that this partnership was dissolved long before the decree was executed ; and if the decree-holder wished to proceed against Ah Choon personally it was incumbent on him to take action under sub-rule 2 of Rule 50. This he clearly did not do. The attachment was therefore an illegal attachment. The respondent Chettyar alleges however that even if the attachment were illegal Ah Choon paid up the money perfectly willingly.

Karapaya Pillay in his evidence says that when the Deputy Bailiff was going to attach the property Ah Choon said he was liable and paid the money. He is supported in this by Muthu Raman Servai. But I think that the trial Judge was perfectly correct in holding that these witnesses were not speaking the truth.

Ah Choon's witnesses state that it was only after considerable persuasion and in order to prevent his business being closed that he consented to pay the money. And the Deputy Bailiff who was called as a witness by the Chettyar says that plaintiff, that is, Ah Choon, said that he did not know the decretal amount and that he was never sued before, and then he (the Bailiff) directed the plaintiff to go to Court. He further says that he was first of all asked to take security and finally that it was only after about an hour of speaking that the money was paid. His evidence alone makes it fairly clear that the payment was not freely and willingly made ; and Ah Choon's action in going to the Court the very next day and complaining about the matter confirms his story that he paid only under compulsion and in order to prevent a very serious

interference with his business. In such a case he can justly claim that he was induced by coercion to pay the money, and, on the authority of *Seth Kanhaya Lall's* case, he is entitled to recover that money unless he himself is liable for the debt. I do not consider that the Chettyar has satisfactorily proved his liability. The Chettyar claims that the money was advanced to the partership. That is entirely denied by Ah Choon himself and also by one of the executants of the note, Sit Pin. Sit Pin says that the money was borrowed by him and Ah Kwin personally and that the money was used by Ah Kwin on his own personal account. The note itself reads "We, Maung Sit Pin and Ah Kwin, of Ho Ho & Co., 1st Street, Pyapon, promise to repay the Rs. 650." It does mention Ho Ho & Co. but the persons who promised to pay are Maung Sit Pin and Ah Kwin, and I do not think it is possible, on the face of the note, to say definitely that the money was borrowed on behalf o the partnership or that the promise was made to repay on behalf of the partnership. It is true that there is the seal of the partnership on the document, but, Sit Pin denies that this was put on at the time and denies that the seal was the one ordinarily used on such promissory-notes taken out for the partnership. And Suit No 122 was not really filed against the partnership at all. It was filed against Maung Sit Pin and Ah Kwin as managing partners of the firm. It was not filed against the firm by their managing partners and there is no mention at all in the proceedings of Ah Choon.

At the time this suit was filed it would appear that the partnership had been dissolved and that the assets and liabilities of the partnership had been made over to Ah Choon. In these circumstances it

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is very curious that Ah Choon's name should have been left entirely out of the plaint if the plaintiff did really mean to sue the partnership. Ah Choon has shown that at the time of the dissolution a number of debts owed by the partnership were shown including a debt to the T.S. Firm, but the debt now in dispute was not included. Of course an agreement of this kind between the partners would not be binding on the Chettyar, but it does lend corroboration to the story of Maung Sit Pin and Ah Kwin that this money was never borrowed for or on behalf of the firm at all.

In these circumstances I am not satisfied that it has been shown that Ah Choon was liable for this debt and as in my opinion the attachment was clearly illegal he is entitled to recover the sum paid by him.

I accordingly set aside the decree of the District Court and restore that of the trial Court for payment by the T.S. Firm of the sum of Rs. 894 to the plaintiff Ah Choon. The Chettyar respondent will pay the costs of the appellant throughout.