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We think that the Court below has come to a right conclusion in holding that the money covered by the decree cannot be realized from the surety in execution of the decree, and accordingly the appeal will be dismissed. We make no order as to costs in this appeal.

J. V. W.

Appeal dismissed.

Before Mr. Justice Ghose and Mr. Justice Gordon.

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July 24.

BAMA SUNDARI DASÍ (PLAINTIFF) v. ADILAR CHUNDER SARKAR
AND ANOTHER (DEFENDANTS).*

Voluntary Payment—Contract Act (IX of 1872), sections 69, 70—Money paid for benefit of another—Money paid to protect property from sale in execution of decree for arrears of rent.

Certain immoveable property was inherited by S., the mother of the plaintiff, from her husband, and during her tenure of it she alienated it by deed of sale to the defendants. S. died in April 1890, and the estate devolved upon the plaintiff, an only daughter (there being no male issue). In 1890 the property in possession of the defendants was, at the suit of a person who was the landlord, ordered to be sold together with other properties of the defendants for arrears of rent, due in the lifetime of S. and to prevent the sale the plaintiff paid the amount of the decree. In a suit for possession of the property and for a refund of the sum paid by the plaintiff to stop the sale, the defendants claimed an absolute interest in the property, but the Courts below found that the alienations by S. to the defendants were not made for legal necessity and were therefore invalid. *Held*, that the payment made by the plaintiff was not a voluntary payment, but was one which she was entitled to recover from the defendants. It being a question at the time whether the property belonged to the plaintiff or to the defendants, the payment to stop the sale was one in which the plaintiff was interested sufficiently to bring the case within section 69 of the Contract Act. Section 70 was also applicable as the payment relieved the defendants from liability to their landlord, and was made for the defendants, and not gratuitously, and the defendants enjoyed the benefit of such payment. The principles laid down in the cases of *Duli Chand v. Rankishen Singh* (1), *Smith v. Dinonath Mookerjee* (2) and *Jugdeo Narain Singh v. Raja Singh* (3) were held to govern this case.

*Appeal from Appellate Decree No. 1248 of 1893, against the decree of H. Peterson, Esq., District Judge of Burdwan, dated the 3rd of June 1893, affirming the decree of Babu Janoki Nath Dutta, Munsif of Burdwan, dated the 27th of June 1893.

(1) I. L. R., 7 Cal., 648; L. R., 8 I. A., 93. ● (2) I. L. R., 12 Cal., 213.

(3) I. L. R., 15 Cal., 656.

THIS was a suit for possession of certain land, which belonged to the plaintiff's father Nanda Kishore Mitter, who died in 1835. He left a widow and three daughters but no male issue, and on his death his widow Sudhamoyi Dasi, the plaintiff's mother, inherited his property. She died on 12th Baisakh 1297 (24th April 1890), and the plaintiff's two sisters having predeceased their mother, the plaintiff became sole heir to her father's property. During Sudhamoyi's tenure of the property she had alienated portions of it to the defendants under *kobalas*, and they had become purchasers of some of it at a sale in execution of a decree against her. As to this, however, the plaintiff submitted that the alienations had not been made for legal necessity according to Hindu law, and the sale was only of Sudhamoyi's interest in the property, and in either case the alienations were only valid for her lifetime.

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The plaintiff also sued for a sum of Rs. 78-3 which she had deposited in a rent suit brought against the defendants, in which the property she now claimed was threatened with sale. It appeared that a suit had been brought in 1890 by one Kailash Chunder Shamanta, under whom the defendants were tenants, against the defendants for arrears of rent, and in execution of a decree obtained in that suit the property which the plaintiff now claimed, together with other property of the defendants, was ordered to be sold, and this coming to the notice of the plaintiff, she had paid the above sum to save the property from sale, and now claimed a refund of it.

The defendants claimed the property in suit as their own; and as to the sum of which a refund was claimed, they submitted it was a voluntary payment, for which the plaintiff had no right of suit against them.

Both the lower Courts found that the alienations made by Sudhamoyi were made without legal necessity, and held good at best only for her lifetime. The only point material to the report was whether the payment by the plaintiff was a voluntary payment or not, and this formed the only ground of appeal to the High Court, the lower Courts both holding that it was a voluntary payment.

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On the appeal to the High Court, appeared—

Babu *Kishori Lall Gossami* for the appellant.

Babu *Jaggat Chunder Banerjee* for the respondents.

The judgment of the High Court (GHOSE and GORDON, JJ.) was as follows:—

The sole question that arises in this appeal is whether a certain payment made by the plaintiff in satisfaction of a decree obtained by the landlord against the defendants was a voluntary payment.

The facts out of which this question arises are shortly these : A certain property, among others, belonged to one Nanda Kishore Mitter. He died leaving his widow Sudhamoyi Dasi and a daughter, the present plaintiff. Sudhamoyi Dasi, upon the death of Nanda Kishore, succeeded to the estate, and while she was in possession thereof, she sold the said property to the defendants. In Baisakh 1297 (B. S.) Sudhamoyi Dasi died, and the plaintiff inherited the estate as heiress of her father. In the year 1890, that is to say, in the same year that the plaintiff's mother died, a decree was obtained by the landlord against the defendants for the rent of the said property (it being a tenure held under him) and another property. The rent that was claimed, and the decree obtained by the landlord, were on account of a period antecedent to the time when the estate, upon the death of Sudhamoyi Dasi, devolved on the plaintiff. The landlord took out execution of this decree and attached the property in question and lotted it up for sale for satisfaction of his demand, which demand, as already mentioned, related, not only to the property in question, but also to the other property that was held by the defendants under the landlord. The plaintiff, apparently, in order to save this property from sale, paid up the decree, and she subsequently brought the present suit to recover from the defendants the amount so paid by her. The plaintiff claimed for other reliefs, one of them being the recovery of the property claimed by the defendant under his purchase from the plaintiff's mother; but the only point with which we are here concerned in this appeal relates to the payment which the plaintiff made in satisfaction of the decree obtained by the landlord.

The defendants, so far as the claim to the property itself was concerned, contended that they had acquired under their purchase from the plaintiff's mother an absolute interest. This contention, however, has been negatived by the Courts below, and we take it that, upon Sudhamoyi's death, the right to the property devolved on the plaintiff under the law of inheritance, and that the defendants, at the time when the payment was made by the plaintiff, had really no interest in the said property. It would, however, appear that at the time when the decree was obtained by the landlord, and at the time when the plaintiff made the payment, the defendants claimed the property as theirs; and the question that we have to decide in this appeal is whether, under these circumstances, the said payment was a voluntary one or not.

There can be no doubt that if the plaintiff had not paid up the decree of the landlord, this property would have been sold up. What might have been the estate which the purchaser would have acquired under the sale is no doubt another question. It is quite possible that he would have acquired only the right, title and interest, whatever that might have been, of the defendants. But still the property was liable to be sold in execution of the decree obtained by the landlord, and there was at that time a question between the parties as to whether the property really belonged to the plaintiff or to the defendants. Under these circumstances the plaintiff paid up the decree and saved the property from sale. She was, as it seems to us, interested in the payment of the money, and as such she paid it in order to save the property from being sold.

In this view of the matter the case falls under section 69 of the Contract Act. But it seems to us that the case might also fall under section 70 of the said Act which runs 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." Now the decree, as we have already mentioned, was a decree that was obtained against the defendants, and, so far as the payment in question was concerned, it relieved the defendants from their liability to the landlord, and therefore it is clear that when the plaintiff made the payment in question

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she did it for the defendants, and apparently not gratuitously. There can also be no question that the defendants enjoyed the benefit of this payment, because, as we have already said, it relieved them from their liability to the zemindar.

The principle which underlies section 70 of the Contract Act seems to have been considered in two or three important cases, and we may as well here refer to them. The first is the case of *Smith v. Dinonath Mookerjee* (1), in which a question somewhat similar to that which arises in this case was considered, and the learned Judges there held that the payment was not a voluntary one, but was a payment which fell either under section 69 or under section 70 of the Contract Act. In the case of *Judgeo Narain Singh v. Raja Singh* (2) where in execution of a decree the plaintiff had purchased certain property, and the defendant, in execution of another decree against the former owner of the property, proceeded to execute his decree against the same property, and the plaintiff, in order to prevent the sale, paid the amount of the defendant's decree into Court, and subsequently brought a suit against the defendant to recover the amount so paid to prevent the sale, it was held that the payment was not voluntary, and that the plaintiff was entitled to recover the amount paid. The learned Judges there considered, among a variety of cases, the case of *Duli Chand v. Ramkishan Singh* (3) decided by the Privy Council. The facts of the case before the Privy Council were no doubt different from those with which we are concerned in the present case, but we think that the principle which underlies that case is equally applicable to the present case.

We think that upon the authorities to which we have referred, and upon the reason of the thing, the payment made by the plaintiff could not be regarded as a voluntary payment, and therefore she is entitled to recover the amount paid whether the case falls under section 69 or under section 70 of the Contract Act.

The result is that this appeal will be allowed, and the plaintiff will recover judgment for the amount claimed, with costs in all the Courts.

J. V. W.

Appeal allowed.

(1) I. L. R., 12 Calc., 213.

(2) I. L. R., 15 Calc., 656.

(3) I. L. R., 7 Calc., 648 ; L. R., 8 I. A., 93.