

**PATNA HIGH COURT**

Gobind Ram Sanchaiti

Vs

Ram Kishore Choudhari

A.F.A.D. No. 1616 of 1947

(Reuben and Narayan, JJ.)

26.07.1949

**JUDGMENT**

**Narayan, J.**

1. This is a defendants' second appeal arising out of a suit in which the plaintiffs have sought declaration of title and confirmation of possession with regard to 3.42 acres of land recorded in khata No.52 and situate in village Pothia, Pargana Sultanpur, and, in the alternative, have claimed reimbursement. The plaintiffs, claim to have purchased the lands in question under two sale deeds, one of which had been executed on 7-2-1940 and the other on 28-7-1943. As a purchaser under the sale deed dated 7-2-1940, the plaintiffs had to redeem a sudbharna bond dated 7-2-1929, and, as a purchaser under the sale deed dated 28-7-1943, they had to redeem a sudbharna bond dated 21-3-1930. The sudbharna bond dated 7-2-1929 was redeemed on 4th of Chart, 1945, corresponding to 18-3-1938, and the sudbharna bond dated 21-3-1940 was redeemed on 13th of Asarh 1351, corresponding to 27-6-1944.

The plaintiffs filed the suit on 7-12-1944, and their allegation was that the defendants first party, who are the appellants before us had threatened to dispossess them as purchasers of the lands in execution of a money decree. These appellants had purchased the lands in suit along with certain other lands in execution of a money decree against the defendants second party on 10-8-1935, and, after the auction-purchase, possession had been delivered to them by an order of the Court. The defendants second party later on executed the sale deeds on the basis of which the plaintiffs are now claiming this property. After the plaint had been filed the plaintiffs, by a petition of amendment, made an alternative claim for the recovery of the amount which had been paid by them towards the satisfaction of the two sudbharna bonds.

2. The defendants first party contested the suit, and their contention was that the plaintiffs were not entitled to recover possession of the property in suit inasmuch as the kebalas in their favour had been executed subsequent to the auction sale. They also resisted the plaintiffs' claim for money on the ground that the payment, if any was a voluntary and a gratuitous payment.

3. Both the courts below dismissed the plaintiffs' claim for recovery of possession of the lands in

suit, and the court of first instance was further of the opinion that the plaintiffs were not entitled to recover the amount which they had paid towards the satisfaction of the sudbharna bonds. The lower appellate court, however, held that as the defendants first party had enjoyed the benefit of the payment made by the plaintiffs, they were liable to reimburse the plaintiffs.

4. The appellants before us are the defendants first party and their contention is that the lower appellate court has taken an erroneous view of Section 70, Contract Act, and that no decree for money should have been passed in this suit in favour of the plaintiffs.

5. In our opinion, the plaintiffs cannot recover back the amount paid by them for the satisfaction of the two sudbharna bonds either under Section 69 or Section 70, Contract Act and, if the case does not come within any of these sections of the Contract Act, then no decree can be passed in their favour. So far as the claim for money on account of the redemption of the sudbharna bond dated 7-2-1929, is concerned, it is apparently time-barred because the payment was made on 18-3-1938. It further appears that this sudbharna bond was redeemed by the plaintiffs before they purchased the property. The other sudbharna bond was no doubt redeemed on 29-6-1944, that is, after the plaintiffs had purchased through the kebal dated 28-7-1943.

Mr. L.K. Jha for the respondents, however, contended that the point of limitation or the point that the plaintiffs had redeemed the sudbharna bond dated the 7th of February, 1929, before their purchase should not be allowed to be raised before us because these points were never raised before the courts below. It is true that in the judgment of the lower appellate court there is no discussion on these points, but I have to say with regret that the facts of this case have not been clearly stated in the judgment of the lower appellate court. In view of the contention of Mr. Jha, I have examined the plaint in the suit, which is to be found at page 2 of the paper-book, and the plaint itself shows that the lands in suit were sold to the plaintiffs for the redemption of the above-mentioned sudbharna bonds, and that as purchasers under the two sale deeds, the plaintiff No.1 made payment to the sudbharnadars. The plaint does not say that the plaintiffs redeemed the sudbharnas under any other circumstance. I have, therefore, no hesitation in holding that the claim as based on the redemption of the first sudbharna bond is time-barred. It is also obvious that, when the first sudbharna was redeemed, the plaintiffs had acquired no title to this property. But even these questions would not be material if we hold that the plaintiffs are not entitled to recover the amounts paid towards the satisfaction of the two sudbharna bonds either under Section 69 or under Section 70, or according to the rules of justice, equity and good conscience. Section 69 has no application in the present case because the plaintiffs who have acquired no title to the property by their purchase cannot contend that, at the time when they made the payment, they had an interest in paying the moneys claimed by them. This section only applies to payments made *bona fide* for the protection of one's own interest, but these plaintiffs, according to the findings of the courts below, have not acquired any title to the property in suit and, hence, had no interest of their own to protect.

Mr. Jha conceded that this section had no application to this case, but his view was that Section 70 was fully applicable to this case and ultimately he contended that, even if Section 70 was held to be inapplicable to this case, the plaintiffs should be awarded a decree for the amounts paid according to rules of justice, equity and good conscience. The point before us is, therefore, whether under Section 70, Contract Act, or according to justice, equity and good conscience the plaintiffs can recover the amounts paid by them towards the satisfaction of two sudbharna bonds.

The respondents' learned counsel, having realised the difficulty in the way of the plaintiffs, submitted that, if the plaintiffs cannot recover the amounts from the defendants first party, a decree in their favour should be passed as against the defendants second party. But the lower appellate court, before whom the plaintiffs were the only appellants, held that the plaintiffs were entitled to recover the amount only from the defendants first party and passed a decree only against these defendants as would appear from the direction given by that court in the following terms:

"The defendant first party has got the benefit. He should either forego the benefits or return the money. As he does not want to forego the benefit, he will have to return the money."

Evidently, there was no decree passed against the defendants second party, and the plaintiffs having preferred no appeal to this Court against the decree of the lower appellate court in so far as it directs that the amounts would be payable only by the defendants first party, we cannot be asked now to alter the decree and pass a decree for the recovery of the amounts against the defendants second party. The defendants second party were not interested in this appeal, because the appeal is only by the defendants first party and because no decree was passed against them and, hence, they did not think it necessary to appear in this appeal. We cannot now in their absence and without hearing them pass any decree against them and substitute another decree in place of the one passed by the lower appellate court. The only question before us therefore is whether the defendants first party, who are the appellants before us, are liable in law for the amount which has been decreed against them. I have no doubt that Section 70, Contract Act, has no application in this case. Section 70 is in these terms:

"Where a person lawfully does any thing 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."

This section makes provision for realising compensation from a person who has enjoyed the benefit of a non-gratuitous act and, for the operation of this section, the following three conditions are prescribed: (1) The thing must be done lawfully; (2) It must be done by a person not intending to act gratuitously, and (3) The person for whom the act is done must enjoy the benefit of it. The word "lawfully" in this section is not merely a surplusage and, as observed by the Calcutta High Court in - *'Panchkore Ghose v. Hari Das Jati'*<sup>1</sup>, the use of the word "lawfully" indicates that the man making the payment must have lawful interest in making it. The word "lawful" has no doubt a wider meaning than the term "legal," and the Bombay High Court In - *'Punjabi v. Bhagvandas'*<sup>2</sup>, following the decision of the Allahabad High Court in - *'Chedi Lal v. Bhagwan Das'*<sup>3</sup>, observed that in ascertaining whether an act is "lawfully" done for another the test to be applied should be whether the person so acting held such a position to the other as either directly to create or by implication reasonably to justify the inference that by the act done for the other person He was entitled to look for compensation for it to the person for whom it was done. The Calcutta High Court as well as the Bombay High Court were of the opinion that any other view of the law would amount to saying that the effect of Section 70, Contract Act, is to enable a total stranger, without any express or implied request on behalf of a debtor, to put

himself into the shoes of the creditor by the simple fact of paying the debts due by such debtor, and that the section could not have been intended to involve such a result. I would say with the greatest respect that this is the law which we are inclined to take.

The Judicial Committee in - *'Ram Tuhul Singh v. Biseswar Lall Sahoo'*<sup>4</sup>, observed as follows:

"But even if this were true, 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 is well settled that there is no such obligation in the case of a voluntary payment by A of B's debt. Still less will the action lie when the money has been paid, as here, against the will of the party for whose use it is supposed to have been paid: - *'Stokes v. Lewis'*<sup>5</sup>, (E). Nor can the case of A be better because he made the payment not 'ex mero motu', but in the course of a transaction which in one event would have turned out highly profitable to himself, and extremely detrimental to the person whose debts the money went to pay."

This Privy Council case appears to me to be a settler of the point raised in this case. In this present case as well it is obvious that the plaintiffs and the defendants first party were in the position of competitors for this land and it was, therefore, that the only prayer that was originally made in the plaint of this suit was for confirmation of possession over the land in suit. The claim for money, as already pointed out, was added by a subsequent petition and the suit was keenly contested by the defendants first party, whose contention was that the plaintiffs had acquired no title whatsoever to the property in suit. This is, therefore, certainly a case where the money has been paid against the will of the party for whose use it is supposed to have been paid. Certainly there was no obligation on these plaintiffs, express or implied to repay the sudbharna bonds. The plaintiffs had purchased nothing by virtue of the two kebalas, and, if they redeemed the sudbharna bonds, they did so not only gratuitously but also for creating an evidence of title in their favour as against the defendants first party.

The case of - *'Gopeswar Banerjee v. Brojo Sundari Devi'*<sup>6</sup>, is a case where a payment had been made by a Hindu reversioner to stop a sale under the Public Demands Recovery Act of a property which was in possession of a Hindu widow, and it was held that the payment was not a payment "lawfully" made under Section 70, Contract Act. These plaintiffs, who had acquired no title whatsoever by virtue of the two sale deeds cannot claim to be in a better position than one who has a reversionary interest in a property and if a reversioner does not come within the purview of Section 70 of the Contract Act, these plaintiffs, who have no right, title of interest in the property, cannot come within the purview of this section. A Division Bench of this Court observed in - *'Ramdas v. Ram Babu'*<sup>7</sup>, as follows:

"Section 70 ..... contemplates a case in which a certain benefit is done to another and is not intended to be done gratuitously, and the man to whom benefit is done enjoys the benefit voluntarily, that is to say, he should have an option of refusing to enjoy the benefit, it does not mean that the benefit should be thrust upon him without his having the option of refusing it. Nobody has a right to force a benefit upon another."

If we apply this standard, these plaintiffs can have no case whatsoever. But while we were investigating this point, we came across a decision of the Calcutta High Court reported in - '*Nobin Krishna v. Mon Mohun*<sup>8</sup>', and, when we brought this case to the notice of the learned counsel for the respondents, he was of the opinion that this ruling was fully applicable to this case and that the principle laid down in this ruling should be adopted by us. He further pointed out that this authority had been followed by the Calcutta High Court in a subsequent case, namely, the case of - '*Bindubashini Dassi v. Harendra Lal Roy*<sup>9</sup>', But, after a careful consideration of these rulings, we are of opinion that they cannot be cited as authorities in this present case in support of the view which the lower appellate court has taken.

In the case of 7 Cal 573, the plaintiffs *bona fide* believing that they were the owners of a four anna share in a Patni taluk, the revenue of which was in arrears, had paid to the Zamindar a portion of the arrears corresponding to the share in the patni to which they considered themselves entitled. Afterwards, in a suit between the parties, it was decided that the plaintiffs were not entitled to any share in the patni, and that the defendants were entitled to the whole sixteen annas thereof. The most important fact which we gather from the judgment is that the defendants, in paying up the arrears of revenue due on the patni, had taken the benefit of the payment made by the plaintiffs and had paid in only so much as, together with the previous payment, made up the whole arrear. With the greatest respect for their Lordships who decided this case, I am to point out that there is no discussion of Section 69 or Section 70 in the whole of the judgment.

In 25 Cal 305, the payment had been made by the plaintiff while he was contending for his right and before a final decision had been arrived at, and he had made the payment "to preserve his security", as we get it from the judgment of Maclean C. J. I think the following passage from the judgment of Maclean C. J. would make it clear that the facts of that case bear little resemblance to the facts of this present case:

"But the litigation was going on, the plaintiff was contending that he was entitled to the larger sum owing to the default of the defendants, and until the point which was then 'sub judice' was decided, it can scarcely be said that he was not interested in the payment of this money. The point at issue was whether the plaintiff was entitled to the larger or to the smaller sum. If entitled only to the smaller sum, it is not contested that he had been paid off in June 1891. I am not prepared to hold that because after he had paid the money the judgment of the Court was against him he was not interested in the payment at the time he made it. I think he was interested in the payment of this money within the meaning of Section 69, Contract Act. If the decision had been, as yet possibly it may be, in his favour, the effect of the payment was to preserve his security."

Mr. Jha also relied on another decision of the Calcutta High Court in - '*Radha Madhub Samonta v. Sasti Ram Sen*<sup>10</sup>', This was a case in which it was held that the plaintiff was a person interested in the payment of money within the meaning of Section 69, Contract Act. The plaintiff in that case made a payment of rent as a purchaser of a putni taluk, after the decision of the first court in a suit brought by the defaulting putnidars for the setting aside of the putni sale, by which it was held that the sale was invalid, and during the pendency of an appeal preferred not by the plaintiff, who was the auction purchaser, but by the Zamindar. It was held that the payment was not a voluntary payment. Evidently, when the purchaser made the payment, he had an interest to

protect.

A decision of the Lahore High Court reported in - '*Secy. of State v. G.T. Sarin and Co.*<sup>11</sup>', was also cited by Mr. Jha, but certainly the facts of that case were entirely different inasmuch as that was a case where the plaintiff, who had entered into a contract with the Officer Commanding the Depot of a Cavalry Regiment, had sued the Secretary of State for the balance due to him under the contract. The Officer Commanding the Depot was not one of the officers authorised by the Governor-General in Council to enter into contracts on behalf of the Secretary of State and, therefore, it was held that the contract was ultra vires. It was, however, held that the plaintiff, having supplied the food for the horses belonging to the Secretary of State was entitled to compensation. The Officer Commanding the Depot might not have the authority of entering into the contract on behalf of the Secretary of State, but the Secretary of State had enjoyed the benefit of the contract entered into for him by one of his subordinate officers. This ruling, I may say with respect, cannot be followed by us in this present case.

Lastly, the learned counsel relied on the following observation of the Judicial Committee in - '*Mahomed Shumsool Hooda v. Shewukram*<sup>12</sup>', (L):

"The only question that remains then is whether the plaintiff is entitled to the decree of the High Court as it stands, or whether he is entitled to it without the burden of paying off the Rs.14,000. On the whole, their Lordships are of opinion that the judgment of the High Court was right that this mortgage of Rs.14,000 subsisting upon the estate at the time of the sale, and having been paid by the purchaser, it is equitable that, when the plaintiff reclaims the estate, credit should be given to the purchaser for the payment of the mortgage, which otherwise the plaintiff himself would have to meet."

This was a suit brought for a declaration that the sale by a Hindu widow was not valid. The purchaser had satisfied a mortgage on the property sold and their Lordships were of the opinion that it was equitable that, when the plaintiff reclaimed the estate, credit should be given to the purchaser for the payment of the mortgage which otherwise the plaintiff, as a reversioner, would himself have to meet. I should mention that in - '*Dakhina Mohan v. Saroda Mohan*<sup>13</sup>', the Judicial Committee had made the following observation:

"Now it seems to their Lordships to be common justice that when a proprietor in good faith pending litigation makes the necessary payments for the preservation of the estate in dispute, and the estate is afterwards adjudged to his opponent, he should be recouped what he has so paid by the person who ultimately benefits by the payment ..... The claim is in the nature of salvage."

This is an observation which may be said to be of some help to the respondents, but, as was pointed out by this Court in - '*Nand Kishore Jha v. Parao Mian*<sup>14</sup>', this decision must be read in the light of the fact that the plaintiff was at the time of making the payment a 'de facto' proprietor and in the light of the judgment of the Judicial Committee, consisting of Lords Hob-house, Macnaghten and Morris and Sir R. Cough, in - '*Abdul Wahid Khan v. Shaluka Bibi*<sup>15</sup>', in which case their Lordships observed as follows:

"The proceedings were taken by the defendant for his own benefit, and without any authority express or implied from the plaintiffs; and the fact that the result was also a benefit to the plaintiffs does not create any implied contract or give the defendant any equity to be paid a share of the costs by the plaintiffs."

This ruling is also an authority for the proposition that, under Section 70, reimbursement cannot be claimed by a stranger who had no authority, either express or implied, from the person for whom he is said to have made the payment. Mr. Jha's further argument was that, even if Section 69 or Section 70 has no application to this case, a decree should be passed in favour of the plaintiffs under the rules of equity. In my opinion, the principles of equity cannot be invoked by a trespasser or a stranger who chooses to make a voluntary or gratuitous payment. If we apply the principle which can be gathered from the authoritative decisions referred to above, it would seem that the act of the respondents would not come under the description of being "lawfully" done for the appellants. The payment made by the respondents cannot, under the circumstances of this present case be considered to have been made lawfully and it cannot be placed on a higher footing than an officious or a voluntary payment. I, therefore, hold that the plaintiffs are entitled to no relief in this suit and that the suit was rightly dismissed by the court of first instance.

6. The appeal is allowed, the judgment and the decree of the lower appellate court are set aside and the suit is dismissed with costs to the appellants throughout.

**Reuben, J.**

7. I agree with my learned brother, but in view of the importance of the points involved would like to add a few words.

8. The learned Advocate-General at the commencement of his address based his clients' claim on Section 70, Contract Act. This section prescribes the following conditions which are necessary before the person making a payment or doing any other thing is entitled to compensation: firstly, he must have done that thing lawfully, secondly, he must have done that thing for another person, thirdly, he must not have intended to do so gratuitously, and, fourthly, that other person must have enjoyed the benefit thereof.

9. Here, the fourth element is present. Let us ask ourselves whether the other elements are also present.

10. As regards the first element, I need only refer to the case of 'AIR 1922 Calcutta 353', in which a payment had been made by a Hindu reversioner during the lifetime of the limited owner in order to stop a sale under the Public Demands Recovery Act. Sanderson, J., with whom Chotzner, J., agreed, observed that the word "lawfully" in Section 70 cannot be regarded as surplusage, and that it meant that the person concerned must have a lawful interest in making the payment, and that in each case it must be considered whether the person doing the act in question had any lawful interest in doing it. In the circumstances of that case, their Lordships held that the plaintiff had no such interest. There, as I have said, he was the next reversioner to the estate. Here, the plaintiff was an entire stranger because, as shown by my learned brother, he acquired nothing by the two sale deeds by which he made his purchase.

11. The second and the third elements are closely inter-connected. They show, to my mind, that the words "for another person" are not surplusage. The action must be an action done for another person and not intended to be gratuitous. Here, the plaintiffs appear to have been acting for themselves. In - '*Tangya Fala v. Trimbak Daga*', AIR 1916 Bombay 302(Supra), the defendant no. 1 was the owner of certain property which defendant no.2 purchased in execution of a money decree against defendant no. 1. After this sale, the property was put up to sale in execution of a mortgage decree, and the plaintiff, who was holding the property as a tenant under defendant no. 1, lent money to defendant no. 1 for stopping the mortgage sale, which was accordingly done. Subsequently, defendant no.2, by a suit, ousted the plaintiff from the land and the plaintiff sued to recover the lands. Rejecting his claim as against defendant no.2, Batchelor, J., with whom Shah, J., agreed, observed at page 303:

"On the evidence on the record I am of opinion that the object of the payment was to benefit the plaintiff himself. Moreover, while it does not appear that the second defendant would not have paid off the mortgage himself if the matter had been brought to his attention, it does appear that the plaintiff, in making the payment behind the back of the second defendant, was depriving the second defendant of an option which the law allowed him to exercise. For, to the second defendant it was open either to pay off the mortgage or to stand by and let the property be sold. When, therefore, the plaintiff, without reference to the second defendant, intruded himself in order to make the payment without the second defendant's knowledge, I am of opinion that it cannot be said that such payment was made for the second defendant."

These observations are entirely applicable to the case before us.

12. Another relevant case is that of '*21 Cal 496 (PC)*', where the plaintiff and the defendant were co-sharers in certain property, and the question arose whether one could recover from the other a proportionate share of cost incurred by him in litigating to protect the property. This observation I have in mind has already been cited by my learned brother. A case of our own Court is that of '*AIR 1917 Patna 159*', where a person, who had sued for specific performance of a contract for the sale of certain property, during the pendency of that suit deposited money to set aside a sale of the property in execution of a mortgage decree. The question was whether, on the failure of his suit for specific performance, he could recover the money deposited by him for avoiding the sale. Their Lordships observed that he could not because he did not lawfully do anything for the defendant but paid the money as he thought for himself.

13. The decisions to which I have just referred are authorities that the second of the elements required by Section 70 is not superfluous. The third element is dependent upon the second element, for the question whether a person intends to act gratuitously or not can only arise when the act is done on behalf of another. In the absence of these necessary elements, it must be held that Section 70 has no application, and that the decree of the District Judge must be set aside.

14. The learned Advocate-General subsequently attempted to base his case on '*7 Cal 573*', which was followed in two later decisions of the same Court. In that case, the plaintiffs, believing that they had a four-anna share in a Patni, the revenue of which was in arrears, paid the zamindar a portion of the arrears corresponding to that share. It was afterwards decided in a suit between

them and the defendants that they were not entitled to any share and the defendants were entitled to the whole sixteen annas. Subsequently, the defendants, in paying up the arrears of revenue due on the patni, took the benefit of the payment made by the plaintiffs and paid only the balance due on account of the twelve annas share. Garth, C.J., and McDonell, J., held that the plaintiffs were entitled to recover from the defendants the amount of revenue paid by them. In coming to this conclusion, their Lordships proceeded entirely on considerations of equity and did not refer to the provisions of Section 89 or Section 70, Contract Act. They observed:

"The plaintiffs, *bona fide* believing themselves to be the owners of the four annas share, paid the revenue of it to the zemindar. The defendants then paid the revenue on the remaining twelve annas; when they did so, they must have found that the revenue on the four annas had been paid by the plaintiffs; and they availed themselves of that payment by the plaintiffs, only paying or offering to pay, to the zemindar the revenue on the remaining twelve annas. We think that, under these circumstances, the Rs.225 so paid by the plaintiffs became money paid to the use of the defendants; and that the judgment of the Court below can be supported upon that ground."

I shall give later my reasons for thinking that this is a matter which can be disposed of on considerations of equity.

15. This decision was followed by Maclean, C.J., and Banerjee, J., in '25 Cal 305', in which the plaintiff, who had purchased the property in question in execution of a consent decree on a mortgage bond, paid a certain sum of money during the pendency of the litigation in order to protect the patni taluk from sale for arrears of rent due to the landlord. Subsequently, it was held that the plaintiff had been guilty of misconduct and that his decree had already been fully satisfied. Their Lordships held that he could recover the amount paid by him for protecting the property. They expressly based their decision on Section 69, Contract Act, that is to say, they held that the deposit was made by a person who was interested in the payment of the money. It was not necessary for them to come to finding that the payment made was on behalf of another person. In support of this conclusion, they referred to '7 Cal 573', thus showing that they regarded that decision as a decision under Section 69. They relied also upon '21 Cal 142 (PC)'. There, a claimant, having obtained possession of an estate under a decree in good faith, had paid the revenue and cesses, in default of which payment the estate would have been sold. The decree was afterwards reversed and he was deprived of possession. He was held to be entitled to be repaid the amount by his opponent, who had been benefited by the payment. Their Lordships of the Privy Council pointed out that, at the time when he made that payment, he was in rightful possession, being so under the authority of the highest Court in India. Although, therefore, there is no express reference to any section, the case would seem to be one under Section 69 of the Contract Act. It was referred to before Sharfuddin and Roe, JJ., in 'AIR 1917 Patna 159', and they explained the effect of that decision as follows:

"This decision must be read in the light of the fact that the plaintiff was at the time of making the payment *de facto* proprietor and in the light of the judgment of the Judicial Committee, consisting of Lords Hobhouse, Macnaghten and Morris and Sir R. Cough, in '21 Cal 496 (PC)'."

16. The other Calcutta case referred to by the learned Advocate General ('26 Cal 826') is also a case under Section 69, Contract Act and has no relevance to the present case.

17. In '2 Ind App 7 (PC) (L) there is again no specific reference to any section, but the provisions of Section 69 would seem to be applicable. The payment in that case was made by a purchaser of an estate from a limited owner during the existence of his interests in order to redeem a subsisting mortgage on the property. 'AIR 1930 Lahore 364', cited by the learned Advocate General is distinguishable. It falls under the second portion of Section 70, which relates to a person who lawfully delivers anything to another person not intending to do so gratuitously, such other person enjoying the benefit thereof. It is true that the Officer Commanding the Depot of a Cavalry Regiment had no authority to bind the Secretary of State by entering into a contract on his behalf. It is clear, however, that delivery was made to the Secretary of State, that it was not intended to be done gratuitously, and that the Secretary of State enjoyed the benefit.

18. The learned Advocate-General has contended that the provisions of Section 70 are not exhaustive, and that, if the present suit is not covered by that section, his clients ought to get a decree under the Court's powers to grant relief in accordance with justice equity and good conscience. On the provisions of Chapter V, Contract Act, I do not think it is open to us to grant relief under this power. This chapter deals with the question of reimbursement when one person gets the benefit of a thing delivered, or act done, or money paid, by another, which delivery, act, or payment does not result in a binding contract between the parties. Section 68 is concerned with a case where the person benefited is under a disability and cannot enter into a contract. Section 69 relates to a case where the person who makes the payment is interested in such payment, although another is by law bound to pay it. Section 70 provides for the case where a person does something for another, or delivers something to him, not intending to do so gratuitously and such other person enjoys the benefit. Had the Legislature intended that the Court might grant relief on considerations of justice, equity and good conscience, specific provision of this kind would not have been necessary. These three sections by implication, Therefore inhibit the power of this Court to grant such relief.

Appeal allowed.

Cases Referred.

1'21 Cal WN 394  
2AIR 1929 Bom 89  
311 All 234  
42 Ind App 131 (PC)  
5(1785) 1 Term Rep 20  
6AIR 1922 Cal353  
7AIR 1936 Pat194  
87 Cal 573  
925 Cal 305  
1026 Cal 826  
11AIR 1930 Lah 364  
122 Ind App 7 (PC)  
1321 Cal 142  
14AIR 1917 Pat 159  
1521 Cal 496 (PC)

