K.S. SATYANARAYANA

*v.*

V.R. NARAYANA RAO

JULY 27, 1999

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

*Contract Act, 1872: Sections 70 and 72.*

*Undue enrichment—Privity of contract—Lack of —Plaintiff entered into an agreement to sell, with defendant No. 2, on being so authorised in writing and signed by defendant 1(owner)—Plaintiff paid Rs.1 lakh each to defendants Nos. 1 and 2—Agreement to sell fell through—Plaintiff demanded money back and filed suit for recovery against both defendants—Suit decreed against defendant No. 2, but dismissed against defendant 1 for lack privity of contract—Held: Lack of privity of contract is a specious plea when defendant No. 1 received the money and payment was not gratuitously made—High Court and Trial Court not attentive to procedural laws and their duty to do substantial justice—Courts below erred in going into the question of privity of contract and in dismissing plaintiff's suit against defendant No. 1.*

*Code of Civil Procedure, 1908: Order 10, Rule 2.*

*Substantial justice—Defendant did not deny receiving money but denied his signatures on the written authorisation, written statement and vakalatnama—Held: Falsehood is writ large on the face of such denial—Trial Court should have probed into the matter and also recorded the statement of defendant's counsel—Instead of going into a protracted trial, Trial Court could have decreed the suit for recovery at the stage Order X C.P.C. (Examination of Parties by the Court) itself—Practice and Procedure.*

*Evidence Act, 1872: Section 73.*

*Signature—Comparison of—Defendant denied his signatures on various documents, vakalatnama and written statement—Held: Trial Court should have compared the signatures with the admitted signature of the defendant.*

*Words and Phrases:*

*"Specious plea" and "quasi contract"—Meaning of.*

A *Doctrines:*

*Doctrine of undue enrichment—Doctrine of restitution.*

**The respondent-defendant No. 1 entered into an agreement with defendant No. 2 to sell his property. Defendant No.1 further in a signed**
B **written letter authorised defendant No. 2 to enter into any sale agreement of the said property with anyone. On the strength of this written authorisation, defendant No. 2 entered into an agreement with the appellant-plaintiff to sell the ground floor of the said property for a certain consideration. The appellant-plaintiff also made payments by cheque of Rs. 1. lakh each to defendant Nos.**
C **1 and 2. The agreement to sell with defendant No. 2, however, fell through and the appellant demanded his money back. Defendant No. 2 repaid Rs. 50,000, but defendant No.1 refused to return the money.**

**The appellant filed a suit for recovery against defendant No.1 for Rs. 1 lakh and for the balance amount against defendant No. 2. At the trial**
D **respondent-defendant No.1 did not unequivocally deny the receipt of Rs. 1 lakh form the appellant-plaintiff but stated that defendant No. 2 had handed over the cheque to him. Defendant No.1 also denied his signatures on the written authorisation, the agreement to sell entered into between the appellant and defendant No. 2 the written statement and the vakalatnama in favour of his counsel. The suit was decreed against defendant No. 2 but dismissed**
E **against defendant No.1 on the ground that there was no privity of contract between the appellant and defendant No.1. The appellant's appeal to the High Court met with the same fate. Hence this appeal.**

**Allowing the appeal, this appeal.**

F **HELD : 1. After the Ist defendant admitted having received rupees one lakh from the plaintiff he could not retain that money having received on the specious plea that there was no privity of contract between him and the plaintiff. The plaintiff had given the amount of rupees one lakh to him, as he wanted to purchase the ground floor of his property. The agreement to**
G **sell for this purpose was entered into through the 2nd defendant whom the Ist defendant had authorised to enter into any such agreement on his behalf. The plaintiff could not have paid to the Ist defendant rupees one lakh but for the agreement to sell in respect of the ground floor of his property. It is only on the basis of this agreement which is entered into by the 2nd defendant on the strength of the written authorisation, that the plaintiff paid rupees one**
H **lakh each to the Ist and 2nd defendants. If the pleadings of the Ist defendant**

**are accepted, then it would have to be said that the plaintiff under some mistake had given the amount of rupees one lakh. In any case, it was not a payment gratuitously made. Doctrine of undue enrichment would squarely apply in the present case and the plaintiff would be entitled to restitution as provided under Sections 70 and 72 of the Contract Act, 1872. [1218-E-G]**

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*Mulamchand* **v.** *State of M.P.*, **AIR (1968) SC 1218, relied on.**

B

*Bibrosa* **v.** *Fairbairn,* (1943) AC 32 and *Nelson* **v.** *Larholt,* **(1948) 1KB 339, cited.**

**2.1. When the Ist defendant denied his signatures on the written authorisation, written statement and vakalatnama in favour of his counsel, falsehood is writ large on the face of such denial. The Trial Court should have immediately probed into the matter and recorded the statement of the counsel for the Ist defendant. The Trial Court could have also compared the signatures of the 1st defendant with his admitted signature as provided in Section 73 of the Evidence Act, 1872. Instead of going into a protracted trial, the Trial Court could have decreed the suit of the plaintiff against the Ist defendant as well at the stage of Order X (Examination of Parties by the Court) of the Code of Civil Procedure, 1908 itself. [1217-G; 1218-E]**

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D

**2.2. It is unfortunate that the courts below were not attentive to the procedural laws and their duty to do substantial justice in the case. Had that been so, the plaintiff would have been spared the tribulations of knocking at the doors of the highest court of the land. The Courts below fell into error in going into the question of privity of contract and lost sight of the basic issue involved in the case. [1220-G]**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4048 of 1999.

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From the Judgment and Order dated 3.3.98 of the Karnataka High Court in R.F.A. No. 460 of 1996.

S.K. Kulkarni for Ms. Sangeeta Kumar for the Appellant.

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E.C. Vidya Sagar for the Respondent.

The Judgment of the Court was delivered by

**D.P. WADHWA, J.** Leave granted.

H

A This is plaintiff's appeal against the judgment dated March 3, 1998 of the Karnataka High Court dismissing his appeal. Earlier plaintiff's suit had been dismissed by the Trial Court against respondent, who was arraigned as 1st defendant. The suit had been partly decreed against the 2nd defendant.

Respondent - the 1st defendant - is the owner of the property in B Malleswaram, Bangalore, which consisted of ground floor and two upper floors. 1st defendant entered into an agreement to sell dated December 26, 1991 respecting his said property with the 2nd defendant. Name of the 2nd defendant is R. Sridhar. 1st defendant further authorised in writing (Exh.P-1) R. Sridhar to enter into any sale agreement of this property with anyone. This C writing is as under:-

> "Mr. R. Sridhar, s/o Sri Rama Raju, residing at No. 17/2, 7th Temple Road, Malleswarama, Bangalore, has got every right to enter into any Sale Agreement on my property bearing No. 25, 4th Temple Road, Malleswarama, Bangalore, consisting of Ground Floor, First Floor and D Second Floor of my side measuring 30'x40'."

On the strength of this writing 2nd defendant entered into agreement with the plaintiff to sell ground floor of the said property for a consideration of Rs. 5,55,000. The agreement to sell with R. Sridhar of the whole of the house envisaged consideration of Rs.12,85,000. Towards sale consideration E plaintiff gave an amount of Rs. 2 lakhs by means of cheques, one lakh was given to each of the defendants. Cheques when presented for payment were encashed by the respective payees. Sale agreement with the plaintiff, which was entered into by the 2nd defendant, is dated February 22, 1992. This sale agreement fell through. Plaintiff did not go for specific performance of agreement to sell against both the defendants. Rather he demanded his F money back. While the 2nd defendant repaid him Rs. 50,000 1st defendant refused to return the money alleging breach of the agreement of sale between him and the 2nd defendant. In the suit filed by the plaintiff for recovery of Rs.2,12,637 against both the defendants, he claimed Rs.1,36,167 from the 1st defendant and Rs.76,470 from the 2nd defendant. Both these amounts included G interest at the rate of 14% per annum. The suit of the plaintiff was decreed against the 2nd defendant for Rs.76,470 with proportionate costs and future interest at the rate of 10% per annum on the principal amount of Rs. 50,000 from the date of decree till realization. Suit against the 1st defendant was, however, dismissed on the ground that there was no privity of contract between the 1st defendant and the plaintiff. Plaintiff's appeal to the High H Court met the same fate. High Court was also of the view that the suit of the

plaintiff against the 1st defendant was bad as there was no privity of contract between them. A

Facts of the case which we have set out above are not in dispute. The issue on the basis of which the 1st defendant succeeded was: Whether the 1st defendants proves that he is not liable to pay the amount. There was some dispute if the writing (Exh.P-1) was signed by the 1st defendant. High Court noticed that the 1st defendant did not unequivocally deny the receipt of rupees one lakh from the plaintiff. But then the High Court proceeded even on the assumption that 1st defendant authorised the 2nd defendant to enter into a sale agreement in respect of his property with any one but said that would not advance the case of the plaintiff any further. B C

Writing (Exh.P-1) was put to the 1st defendant when he appeared as witness in the court. He denied the writing and his signatures on it. He also denied his signatures on the agreement to sell, which was entered into between the plaintiff and the 2nd defendant (Exh. P-2). In fact he denied knowledge of any such agreement. His only plea was that he was not liable to pay any amount to the plaintiff since there was no privity of contract between him and the plaintiff. He said that the cheque of the plaintiff was handed over to him by the 2nd defendant and the same was encashed by him. He was cross-examined. He was asked if the Vakalatnama given by him in favour of his counsel was signed by him. He denied his signatures on the Vakalatnama (Exh. P-6). Then he was asked if the written statement filed by him was signed by him at two places. He denied his signatures on the written statement as well (Exh.P-7). He admitted that the plaintiff had come to him in 1991 but that he said was at the instance of the 2nd defendant. Now this very written statement (Exh.P-7) has been filed by the 1st defendant as an annexure to his counter affidavit filed in this Court on notice being issued to him in the Special Leave Petition. D E F

A piquant situation had developed before the Trial Court when the 1st defendant denied his signatures on the written statement and Vakalatnama in favour of his counsel. Trial Court should have immediately probed into the matter. It should have recorded statement of the counsel for the 1st defendant to find out if Vakalatnama in his favour and written statement were not signed by the 1st defendant whom he represented. It was apparent that the 1st defendant was trying to get out of the situation when confronted with his signatures on the Vakalatnama and the written statement and his having earlier denied his signatures on Exh.P-1 and Exh.P-2 in order to defeat the G H

A claim of the plaintiff. Falsehood of the claim of the 1st defendant was writ large on the face of it. Trial Court could have also compared the signatures of the 1st defendant as provided in Section 73 of the Indian Evidence Act. Section 73 is reproduced as under:-

> "Comparison of signature, writing or seal with other admitted or proved.
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> B
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> 73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, C or seal has not been produced or proved for any other purpose.
>
> The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. D
>
> This section applies also, with any necessary modifications, to finger impressions."

It was a case where instead of going into a protracted trial, Trial Court could have decreed the suit of the plaintiff against the 1st defendant as well E at the stage of Order X (Examination of Parties by the Court) of the Code of Civil Procedure. After the 1st defendant admitted having received rupees one lakh from the plaintiff he could not retain that money on the spacious plea that there was no privity of contract between him and the plaintiff. Amount of rupees one lakh had been given to him by the plaintiff as he wanted to F purchase ground floor of his property. The agreement to sell for the purpose was entered into through the 2nd defendant whom the 1st defendant had authorised to enter into any such agreement on his behalf. The plaintiff could not have paid to the 1st defendant rupees one lakh but for the agreement to sell in respect of ground floor of his property. It is only on the basis of this G agreement (Exh.P-2) which is entered into by the 2nd defendant on the strength of Exh.P-1 that the plaintiff paid rupees one lakh each to the 1st and 2nd defendants. If we accept the pleadings of the 1st defendant then the amount of rupees one lakh had been given by the plaintiff under some mistake. In any case, it was not a payment gratuitously made. Doctrine of undue enrichment would squarely apply in the present case and the plaintiff H would be entitled to restitution. In this connection Sections 70 and 72 of the

Indian Contract Act, 1872 may be referred to, which are as under:- A

> "70. *Obligation of person enjoying benefit of non-gratuitous act.*— 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 B done or delivered.
>
> 72. *Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.*—A person to whom money has been paid, or any thing delivered, by mistake or under coercion, must repay C or return it."

In *Mulamchand* v. *State of Madhya Pradesh,* AIR (1968) SC 1218, the contract between the appellant and the State Government was held to be void as it was entered into in contravention of the provisions of the Government of India Act, 1935. Appellant, however, sued for return of his deposit and for D the goods supplied and services rendered. This Court said: -

> "In other words if the conditions imposed by Section 70 of the Indian Contract Act are satisfied then the provisions of that section can be invoked by the aggrieved party to the void contract. The first condition E is that a person should lawfully do something for another person or deliver something to him; the second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, Section 70 F imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered. The important point to notice is that in a case falling under Section 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor G ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So where a claim for compensation is made by one person against another under Section 70 it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of H

A the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution."

This Court quoted with approval two decisions of the English Courts, which are quite illuminating and which we reproduce as under:-

B 1. *"In Bibrosa* v. *Fairbairn*, (1943) AC 32 Lord Wright has stated the legal position as follows:

> "....any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some
C benefit derived from, another which it is against conscience that he should keep. Such remedies in English Law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."

D 2. In Nelson v. Larholt, (1948) 1 KB 339 Lord Denning has observed as follows:

> "It is no longer appropriate to draw distinction between law and equity. Principles have now to be stated in the light of their
E combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so
F requires."

It is unfortunate that the courts below were not attentive to the procedural laws and their duty to do substantial justice in the case. Had that been so the plaintiff would have been spared the tribulations of knocking at the doors
G of the highest court of the land. Courts below fell into error in going into the question of privity of contract and lost sight of the basic issue involved in the case.

It was a case where perhaps action could have been taken against the 1st defendant as he was apparently guilty of perjury in not only denying his
H signatures on Exh.P-1 and Exh.P-2 but also on written statement and the

Vakalatnama filed by him. A

We allow the appeal, set aside the judgments of the Trial Court as well as of the High Court and decree the suit of the plaintiff for Rs.1,36,167 against the 1st defendant with costs throughout. Plaintiff shall also be entitled to interest at the rate of 10% per annum on the principal amount of rupees one lakh from the date of institution of the suit till realisation. B

V.S.S. Appeal allowed.