



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Stranger to consideration in a contract can sue or recover the subsequent amount?

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Received 04 December 2021; *Accepted* 27 December 2021; *Published* 30 December 2021

Consideration in simple language means benefit given in return for something. Consideration in a legal sense is also termed as Quid-Pro-Quo which means two parties form any agreement, in which both parties are exchanging something with each other to form a valid contract between themselves. We all are familiar that for the formation of a valid contract, lawful consideration must be there as it is the most important ingredient. Where there is no consideration, there is no contract formed between the parties and if no contract is formed then no one can file a case against any person in lieu of contract. This article deals with the issue that a party who is a stranger to consideration in a contract can file a case and recover the subsequent amount? This paper explains the application and pertinence of the concept of privity of consideration as per the provisions laid down in the Indian Contract law.

Keywords: *contract, promisor, promisee, consideration, beneficiary.*

INTRODUCTION

Analysing the above definition of consideration, we are familiar that for forming a contract with the other party, consideration needs to be there. Let's take an instance, Rahul promises Shayna that he is ready to sell his car to her and thereof; Shayna also agrees to give 2 Lakh

rupees to Rahul. In this particular contract, the consideration for Rahul is Rs 2 Lakhs and for Shayna, the consideration is Car. This whole process is termed Consideration. Now, we know that a person stranger to a contract cannot sue but a stranger to consideration can sue the other party? We will understand this taking a landmark judgement which was passed in the case of *Chinnaya v Ramayya* (1882)¹. A divisional bench of Madras High Court presided by Hon'ble Justice Innes and Justice Kindersley was there to hear this matter. In this case, the plaintiff was Venkata Chinnaya and the defendant, on the other side was Venkata Ramayya. This case became a landmark for those cases in which consideration was given by the promisee or any other persons.

BRIEF FACTS

In this particular case, the facts are stated as under:

- The defendant's mother was an old lady & her condition was very critical in those days. She was recommended to take bed rest. Considering her severe condition, one day she called her daughter (defendant) and told her that she doesn't have much time to live.
- The mother told her daughter (defendant) that she wants to transfer the property before her death to her but she had to promise one thing.
- She said to her daughter that if she agrees on a condition, then only she will transfer the whole property to her. That promise was to provide a fixed amount to the plaintiff (mother's sister) annually.
- The defendant i.e. Ramayya agreed upon this condition and her mother transferred the property in the name of the defendant (her daughter), by a gest of gift and that deed of gift was certified by the corresponding legal authorities.
- One condition which was clearly stated in that contract was that Ramayya i.e., the defendant, in this case, was bound to pay the annuity amount of Rs. 653/- to her mother's sister, i.e., the plaintiff.
- The defendant i.e. Ramayya signed on that agreement and agreed to give the annuity to her aunt.

¹ *Chinnaya v Ramayya* ILR 1876 Mad 137

- Later on, the defendant's mother got died. For a period of some years, the defendant provided that annuity to the plaintiff. But several years passed, she stopped paying that amount which she had promised to give the plaintiff annually. Now, the plaintiff i.e., Chinnaya filed a case against Ramayya in order to recover the promised annuity.

THE ISSUE FOR CONSIDERATION

Before the Hon'ble Court, the issue was raised that whether the third party who is stranger to consideration can file a suit against the defendant for recovering the promised annuity in a contract but the consideration for that promise has been formerly given by the promisee who is a party to the contract i.e. by the mother of the defendant instead of the plaintiff?

CONTENTIONS MADE BY BOTH THE PARTIES

Plaintiff's Contentions:

- The plaintiff contended that when the defendant's mother transferred her property to the defendant, the consideration for her mother was that the defendant's promise; she will pay the subsequent amount annually to the plaintiff (mother's sister).
- The plaintiff also contended that she has given the right under the Indian Contract Law to file a case against the defendant and can also recover the fixed amount which was signed & promised by the defendant itself.

Defendant's Contentions:

- The defendant, in short, pleaded that there is no direct contract was formed between me and the plaintiff. If there is no direct contract formed between us, how she can file a suit against me?
- The defendant contended that no consideration was given by the plaintiff. If there is no consideration, there is no contract formed between us. Furthermore, the plaintiff contended that she is providing her the annuity amount but in return, she is exchanging nothing. This clearly shows that no consideration is there to sue me. She can't claim this amount from the defendant as she is not a party to the contract.

- The defendant also pleaded that there is no privity of contract. In simple words, there is no contractual relationship was formed between me and the plaintiff. Thus, she has no legal right to file a case against the defendant and hence she can't recover that promised amount from the defendant.

RATIO DECIDENDI

According to Hon'ble Justice Innes:

Consideration might move from that person who is not a party to the contract. Justice Innes took a reference of a case which was the landmark judgment of the year 1677, i.e., *Dutton v Poole*², in which the Honourable Court passed the judgement that if a contract is formed for the benefit of someone and the party can't get that benefit, then that party can file a suit against it. What was happened in this particular case was that one person who is a father wanted to get marry her daughter and at the time of marriage, he desires to give some money to her daughter to express his love and care towards her. The father of the daughter thought that he is not financially good and thus, have not enough money to give her. So, he decided to cut off a tree from his house. But the son of the father told him not to cut off the tree, in spite of which he (son) will provide money to his sister. Here, the son promised to provide her with the money at the time of marriage and the father gives the consideration for it. The son was failed to pay the amount to his sister and in order to claim that promised amount, the sister filed a suit against her brother. Hence, the Court held that she is entitled to get that benefit and declared that her brother is liable to pay that amount. If a contract is formed and there the consideration exists. It is immaterial that who has given that consideration. It is held in this case that if the third person can enforce the promise if that contract is made for the benefit of that third person.

In the present case, the reason behind transferring the property to the defendant was that if she promises to pay the annuity to the plaintiff, only then this contract of transferring the property can be formed. So, the consideration for the defendant was her mother's property

² *Dutton v Poole* [1868] 2 Lev. 210 , [S.C.] 83 [E.R.] 523

and for her mother, it was the annuity that she had promised to give the plaintiff. So, the consideration may be given at the wish of the promisee or any other individual. It was held that when the defendant didn't pay the annuity to her that loss will be counted as the consideration for that promise.

According to Hon'ble Justice Kindersley:

Kindersley J. also reached the same opinion but his ratiocination was a bit different from Justice Innes. The transferred property and the defendant's promise to pay the annuity to the plaintiff can be treated as the elements of the equitable agreement. Hence, the promise made by the defendant to pay the annuity to the plaintiff is fulfilled as the consideration for the defendant's mother who has transferred the property to the defendant. For that reason, it is considered to be a breach of contract if the defendant refused to pay the annuity to the plaintiff and this will entitle her to file a case against the defendant and to sue the defendant in order to recover the promised sum.

DECISION BY THE COURT

The Hon'ble Madras High Court had observed that if we analyse thoroughly the definition of Section 2(d) of the Indian Contract Act, 1872 which talks about the definition of consideration, it clearly indicates that consideration is not only limited to the promisee in case of a valid contract. Any other individual can also give consideration for the same as it is immaterial from whom it is given. The Court observed that yes, it is true that there is no direct contract formed between the plaintiff and defendant but at that time when the defendant's mother transferred her property to the defendant, she in return promised that she will pay the annuity to the plaintiff. It was clear that if the defendant pays the annuity to the plaintiff only then this property can be transferred. So, the consideration may be given at the desire of the promisee or any other person. In the present scenario, 'any other person is the defendant i.e. Chinnaya. In simple language, the defendant here is the promisor, the defendant's mother is the promisee and the defendant's aunt i.e., the plaintiff is the beneficiary of that contract which was formed. The plaintiff is the one who is getting benefit from this contract formed between the defendant

and the defendant's mother. And if the beneficiary is not availing that benefit, that aggrieved beneficiary can file a suit and can recover the subsequent amount, in spite of the fact that she is a stranger to the consideration.

TWO RULES WERE TAKEN INTO VIEW BY THE COURT

- Stranger to a contract cannot file/ sue upon it;
- But stranger to consideration may file a suit if he/she is a beneficiary of any contract.

Held: It was held by the Honourable High Court of Madras³ that Chinnaya i.e., the plaintiff being a stranger to consideration and beneficiary of the contract, can sue and recover her annuity. Hence, the court issued a decree directing the defendant to pay the annuity to the plaintiff.

CONCLUSION

This benchmark case fully and clearly explained the admissibility and importance of the concept of privity of consideration as per the provisions enshrined under the Indian Contract Act. As per Indian Contract Law, we can see that it is immaterial that who has provided the consideration for the promise in a contract. It means that the doctrine of privity of consideration has not its applicability in India because it is given under the Section 2(d) of the Indian Contract Act, 1872 that a promise always moves at the wish of the promisee or by the other person (whom we can consider to be a stranger to consideration). It may flow from the promise to the third person who is not at all a party to the contract. This case clearly stated that the concept of privity of consideration has no relevance and applicability in our Indian context. But as per English law, this concept is totally reciprocal if compared to Indian Law. Because under English Law, a stranger to consideration cannot enforce it, consideration can only be furnished by the promisee. And hence, this doctrine of privity of consideration is applicable under English Law. In order to conclude, we can say that strangers to consideration can sue as per the Indian Contract Law, and here we can see also the progressive and non-conventional

³ *Ibid*

approach of Indian law to deal with the matters related to the notion of Stanger to consideration.