
(1962) 04 AHC CK 0005
In the Allahabad High Court
Case No : First Appeal No. 8 of 1951

Dominion of India

APPELLANT

Vs

Central Aerating Gas Company

RESPONDENT

Date of Decision : 16-04-1962

Acts Referred:

Limitation Act, 1908 — Article 36, 49

Citation : AIR 1964 All 243

Hon'ble Judges : S.N. Dwivedi, J

Bench : Single Bench

Advocate : K.C. Agarwal, K.C. Saxena, A. Banerji and S.K. Dhaon, for the Respondent

Final Decision : Allowed

Judgement

S.N. Dwivedi, J.—In this appeal against a decree awarding Rs. 3,300/- to the plaintiff as damages for causing wrongful destruction of the plaintiffs truck three questions have been raised by Sri Seth, learned counsel for the appellant: firstly, the suit is barred by limitation; secondly, the plaintiff is entitled, if at all, to get only Rs. 2,100/-; and thirdly, the plaintiff, being guilty of contributory negligence, is not entitled to any damages.

2. I propose to take up the question of limitation first. On that question the material facts, which cannot now be disputed, are that on July 19, 1946, at 3 a.m. the plaintiffs truck, laden with gas cylinders, reached the level Crossing No. 87, G. T. Road, Saharanpur; the gate of the level crossing was then closed for letting 3 U. P Frontier Mail pass from Saharanpur to Ambala; then the said train passed but the gate remained still closed; a few minutes thereafter a petrol driven lorry arrived at the scene and stood behind the plaintiff's truck; a person got flown from that lorry and went to the gate; the gateman then opened the gate and allowed the lorry to pass through, the plaintiffs truck, which was gas-driven, followed suit, but no sooner the truck could cross the upline, its engine collided against the incoming 6 Down Calcutta Mail from Ambala; the truck was

completely smashed and became a total wreck. It has been found by the learned Civil Judge that the loss caused to the plaintiffs truck was due to the gross and wilful negligence of the gate-keeper employed by the appellant at the level crossing.

The suit was filed on July 15, 1949, that is to say, long after the expiry of two years but just within three years from the date of the accident. The suit would be just within time if the limitation be three years; it would be beyond time if the limitation be two years. The learned Civil Judge is of the view that Article 49 of the Limitation Act applies to the case and that the limitation is accordingly three years.

Sri Seth argues that Article 36, and not Article 49, applies to the case and that the limitation is only two years from the date of the accident. The parties do not rely on any other Article of the Limitation Act. The straight question, therefore, is: Whether Article 36 or Article 49 is applicable to the facts of the case.

Article 36 reads:

"For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for

Two years.

When the malfeasance, misfeasance or non-feasance takes place."

Article 49 reads;

"For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.

Three years.

When the property is wrongfully taken or injured, or when the detained's possession becomes unlawful."

3. Article 36 is comprehensively worded and would prima facie govern the present case unless Article 49 is applicable. Thus far there is no difficulty. But, says learned counsel for the plaintiff, that the words "wrongfully injuring" in Article 49 are wide enough to embrace the present case. Sri Seth, on the other hand, submits that those words, when construed in their context, as they ought to be, would not cover a case such as the present one. It is a trite saying that the words in a statute are to be interpreted according to their context. The words "wrong fully injuring" are sandwiched between the two expressions "wrongfully taking" and "wrongfully detaining." In wrongful taking and wrongful detention the moveable property or a person passes or has passed to a third person. This context would suggest that the words "wrongfully injuring envisage a case where the wrongfully injured moveable property is in the hands of the third person and not in the hands of the owner thereof at the time of receiving in jury. That those words contemplate possession of moveable property by a third person at the

time of causing in jury is also suggested by the immediate collocation of Article 49. It is directly associated with Article 48 which provides a limitation of three years for suits for specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same. In the cases contemplated by Article 48 moveable property has passed from the hands of the rightful owner to the hands of a third person having no title to the property. The context of the words "wrongfully injuring" in Article 49 thus inclines me to take the view that those words apply to a case of wrongful injury to moveable property where it is injured in the hands of a third person but not in the hands of the rightful owner. In the present case the truck undoubtedly was in the hands of the plaintiffs servant; it was not in the hands of the appellant or the appellant's servant when it met with the accident. Article 49 would not, therefore, apply to the case, inevitably Article 36 would be applicable.

4. The leading case is *Essoo Bhayaji v. Steamship Savitri* ILR 11 Bom 133. In that case the plaintiff sued the defendant for damages for the loss to his boat on account of the defendant's ship wrongfully colliding against her. The collision took place on January 5, 1883 and the suit was filed on January 7, 1886. Farran, J. held that Article 36 and not Article 49 applied to the case and that the suit was barred by time. After examining the context of Article 49 he was of opinion that the words "wrongfully injuring" would apply to a case where injury to moveable property was caused when it was in the hands of a third person. He said at page 137:

"Injury to property will thus be limited to injury to the property of another in the possession of the person in whose custody it is injured. . . ."

5. *Kripa Ram v. Kunwar Bahadur* ILR 54 All 467: (AIR 1932 All 255) though distinguishable on facts, also suggests that Article 49 would apply when the property is injured in possession of a third person and not of the rightful owner.

6. *Essoo Bhayaji* case ILR 11 Bom 133 was followed in similar circumstances by *Corporation of Madras v. Commissioner Vs. B.D. Kothandapani Chetty*, .

7. Learned counsel for the plaintiff has referred me to a string of cases in support of his arguments but they are all distinguishable on facts from the present case.

8. In *Surat Lall Mondal v. Umar Haji* ILR 22 Cal 8, certain persons committed trespass on the land of another person, cut the standing crop on the land and carried away the harvested crop. In those circumstances it was held that the suit was governed by Article 49. That was a clear case of wrongful taking of another man's property and, if I may say so respectfully, Article 49 did apply in those circumstances.

9. The case of *Mangun Jha v. Dolhin Golab Koer* ILR 25 Cal 692 (FB) is also a case in which a third person committed trespass on the land of another person,

cut the crop and carried it away. As already stated. Article 49 applied to that case.

10. In *Madras Steam Navigation Co. Ltd. Vs. Shalimar Works, Ltd.*, ship was seized under the orders of the Court, though wrongfully. It was held that a suit for damages for wrongful seizure would be governed by Article 29. In similar circumstances, it was held in *P. Veeramma v. M. Subba Rao* 35 Ind Cas 98 : AIR 1917 Mad 500 that a suit for damages for wrongful seizure of property would be governed by Article 29 and not by Article 36, which was a residuary article.

11. In *British India Steam Navigation Co. Ltd. Vs. Sandana Adaikalam and Another*, *British India Steam Navigation Co. Ltd. Vs. Sandana Adaikalam and Another*, a boat of a boatman was detained by the master of a ship against his will. During the time of detention it was sunk by a strong gate and the boatman claimed damages. It was held that the suit was governed by Article 49. I respectfully agree with the decision, because Article 49 applied to the wrongful detention of moveable property.

12. Learned counsel for the plaintiff has also relied on three more cases; *T. A. Sithambaram Chetty v. C Kha Gyi* 17 Ind Cas 906 (LB); *Patta Kumari Bibi Vs. Nirmal Kumar Sinha*, ; and *Ratanlal Bhannalal Mahajan Vs. Baboolal Hajarilal Jain and Others*, .

13. *Sithambaram's* case, 17 Ind Cas 906 (LB) no doubt directly helps. In circumstances similar to the present case it was held that Article 49 and not Article 36 was applicable. But for the reasons already discussed, I am unable to share the view.

14. In *Patta Kumari Bibi Vs. Nirmal Kumar Sinha*, a woman was in possession of costly jewellery. She had only a life interest in the ornaments and the plaintiff had a reversionary interest. The woman had a daughter and it appeared that she had clandestinely transferred the ornaments to the daughter and made a false report that the ornaments had been stolen away. The reversioner then filed a suit *inter alia* for compelling the woman to deposit the ornaments in safe custody in a bank so that no prejudice might be caused to his reversionary interest, a question arose whether the suit was governed by Article 36 or Article 49. On behalf of the woman it was urged that Article 49 applied to a case where the plaintiff was entitled to get Back immediate possession of the moveable properties in the hands of another person. The learned Judges did not accept this argument and dissented from *Kripa Ram Vs. Kunwar Bahadur*, which is a Division Bench decision and binding on me. It may, however, be noticed that in a way the ornaments were not in possession of the plaintiff at the time of the causing of injury to them; they were then in possession of the woman. In a sense Article 49 would therefore apply to the case.

15. In *Ratanlal Bhannalal Mahajan Vs. Baboolal Hajarilal Jain and Others*, the plaintiff who was a sub-tenant of the defendants had brought a suit for recovery of damages for loss caused to his salt bags by wrongful act of trespass on his premises by the defendants. While committing the trespass for taking back

forcible possession the defendants threw away the salt bags on the road thereby exposing them to rains and causing loss to the plaintiff. It was held that the suit was governed by Article 39. In the alternative it was also held that the suit was governed by Article 49. While applying Article 49 the learned judge said,

"Even on the view taken in ILR 11 Bom 133, the property when it was injured was not in actual custody of the plaintiff. It was in the custody of wrong doer namely defendants 1, 3 and 4 although I fail to see how on the wording of the Article the question of possession can be imported. However it is not necessary for the purpose of the present case to examine the matter further. The injury resulting in damage to plaintiffs goods, in this case, became possible only when the defendants wrongfully obtained control over the goods while taking vacant possession of the premises in occupation of the defendants".

It would thus appear that the learned Judge, far from expressly dissenting from Essoo Bhayaji's case, ILR 11 Bom 133 applied the ratio of that case to the case before him.

16. On a review of the context of Article 49 and the cases cited at the bar I am inclined to take the view that Article 49 should not apply to the facts of the present case. It is Article 36 which is applicable, and the limitation would be two years. The suit, as already stated, was filed long after the expiry of two years and is, therefore, barred by time.

17. For the view that I am taking on the question of limitation it is not necessary to decide the other two questions raised by Sri Seth.

18. I allow the appeal, set aside the judgment and decree of the learned Civil Judge and dismiss the suit of the plaintiff. The appellant shall get costs here and in the court below.