

(1956) 03 MP CK 0003

In the Madhya Pradesh High Court

Case No : Second Appeal No. 8 of 1954

Ghansiram

APPELLANT

Vs

Municipal Board, Bhopal

RESPONDENT

Date of Decision : 09-03-1956

Acts Referred:

Citation : (1956) 03 MP CK 0003

Hon'ble Judges : Mathur, J.C.

Bench : Single Bench

Advocate : Abdul Khabir Vakil I Class, for the Appellant; R. Panjwani, for the Respondent

Judgement

Mathur, J.C.

1. This is an appeal by Seth Ghansiram, plaintiff against the order of the Additional District Judge, Bhopal dismissing his cross-objection with regard to the award of damages for the loss suffered by him (plaintiff) due to the non-return of the Ghumti which according to him, had been removed illegally by the employees of the Municipal Board, defendant.

2. The plaintiff's case in brief is that his Ghumti shop was originally placed in Mohalla Jumerati but on 1-8-1950 was removed by the employees of the defendant, Municipal Board of Bhopal, and at his instance was kept near his own fuel-wood stall; that on 11-8-1950 he applied to the Municipal Board Bhopal for permission to keep his ghumti on the place where it had been kept on 1-8-1950 but no orders were passed on the application and instead on 15-8-1950 the employees of the Municipal Board removed the Ghumti in their lorry in spite of the plaintiff's protest and his offer to remove the Ghumti to his own land; and that the Ghumti was let out on a monthly rent at Rs. 12/-.

The plaintiff thus claimed for the return of the Ghumti and in the alternative, for its price of Rs. 300/-. He also claimed damages" at the rate of Rs. 12/- per month till the date of the return of the Ghumti.

3. The suit was contested by the Municipal Board whose defence is that they were acting in accordance with the law and were not entitled to pay any kind of damages.

4. The trial court decreed the suit for damages amounting to Rs. 300/- towards the price of Ghumti removed, but dismissed the claim for damages to compensate the recurring loss alleged to be suffered by the plaintiff. The Municipal Board went up in appeal and the plaintiff filed a cross-objection. All the points raised in the suit were re-agitated before the first appellate Court.

The appellate Court dismissed the appeal, and partly dismissed and partly allowed the cross-objection; and the only modification made in the decree of the trial court was that the Municipal Board were directed either to return the Ghumti in its original condition or in the alternative to pay a sum of Rs. 300/- to the plaintiff.

Seth Ghansiram, plaintiff, preferred a Second Appeal to this Court against that part of the order which disallowed him recurring damages. The Second Appeal was allowed, and full damages to the extent of Rs, 12/- per month were allowed to him. The Municipal Board applied for review of the judgment on the ground of the existence of certain errors apparent on the face of the record. The review application was allowed, and the Second Appeal has again been put up for re-hearing according to law.

5. The plaintiff had claimed damages at the rate of Rs. 12/- per month on the presumption that he was entitled to recover an amount equivalent to the rent that he was getting while the Ghumti was placed in Jumarati Mohalla or near his stall, irrespective of where he might have kept the Ghumti if no permission was granted by the Municipal Board to place it on a public road or land. This is an incorrect approach to the question.

Two important principles governing the grant of damages are that the claimant should not himself be guilty of any negligence and should have taken all the reasonable steps to minimise the loss to be suffered by him; and that the amount of damages to be awarded can never exceed the loss actually suffered by him or, which he is likely to suffer, provided that his acts are lawful and not contrary to the law, rules or bye-laws duly enacted.

6. These principles can be easily explained by considering instances where a person can have a legal right to sue for damages. For example, if a party A had made a contract with another person "B" for the supply of fuel-wood for running a brick-kiln and that person B fails to carry out the contract, it will not be open to A to close the brick-kiln and to claim damages to the extent of the profits which he could derive from the business if the fuel-wood had been supplied. He must carry on the business by purchasing fuel-wood, or a similar fuel from the market at a reasonable rate the market price and claim the difference between the market price and contractual price as damages from the person B.

But if no such fuel was available, he will of course have to close the business and in these exceptional circumstances can claim damages to the extent of all kinds of losses suffered by him. Supposing that the bricks were a controlled commodity and their sale-price was fixed under order of a competent authority, but In the black market they could be sold for a much higher price, the controlled price and not the black market price would be the basis of determining the damages payable to. the party "A".

7. Coming to the present case the plaintiff could have no legal right to place the Ghumti on a public road or public land without the permission or the Municipal Board and in contravention of the Municipal law and the bye-laws, But if he were to act unlawfully and to give on hire the Ghumti after placing it on public road or land without the permission of the Municipal Board, the income derived by the plaintiff would be unlawful and he cannot claim this amount by way of damages if the Board were to remove or to misappropriate the Ghumti.

However, if the Ghumti could be leased on rent when placed on the land of the plaintiff or a land to which he was entitled to remain in possession, the rent, so fetched or likely to fetch can be a basis for the recovery of damages. Even then, the plaintiff cannot claim damages at the rate for ever. The Ghumti is a temporary wooden structure which can easily be built within say one month.

It was, therefore, obligatory for the plaintiff to give a reasonable notice, say of two months, to the Board for the return of the Ghumti failing which he would have another Ghumti made to replace the one removed.

Thus in all fairness to the Board the plaintiff could recover damages, if the Ghumti was placed on his own land to the extent of the rent which he could realise for a period of three months and for the succeeding period, reasonable damages to the extent of the interest payable by him if he had taken a loan of the sum of Rs. 300/- for preparation of the Ghumti.

8. The plaintiff has not adduced any evidence on the rent which he could realise by placing the Ghumti on his own land or on a land which he could lawfully obtain from others. He simply confined himself to prove the rent realised while it was placed in Mohalla Jumerati and the rent which it could fetch if placed near the wood stall. Admittedly the land on which the Ghumti was placed in Jumerati Bazar was a public road and the plaintiff had no right to act in such a manner. The income derived there from was unlawful.

Similarly, the rent fetched, if any. while the Ghumti was placed outside the wood stall of the plaintiff was unlawful. The plaintiff case on this point, as mentioned before me, is that the Ghumti was not placed over any part of the public road but was on the plaintiff's land and partly over the drain. In case the Ghumti was not on the public road but was on his land there was no reason for him to apply to the Municipal Board for permission to place the Ghumti there.

This assertion is also not supported by the evidence on record. Ghansiram has

deposed that he kept the Ghumti near his own fuel-wood stall where one more Ghumti stood, that the Ghumti had been so placed with the permission of the employees of the Municipal Board and that it had been placed over the drain.

To place the Ghumti over the drain without keeping the legs on the public road is almost impossible. Consequently, this statement of the plaintiff would show that the Ghumti had been placed on a part of the public road.

In this connection a reference may also be made to the statement of Illahi Bux (P. W. 4), who states in cross-examination that the public road exists where the Ghumti was kept and the road is well frequented. This witness does not speak of a drain. Consequently his deposition also suggests that the Ghumti was placed on the public road. Thus the rent fetched at either of the above occasions can be no criterion for assessing the damages suffered by the plaintiff.

As already indicated above, the plaintiff did not lead any evidence to prove on what land he would have placed the Ghumti if the Municipal Board had not granted the permission and what rent the "Ghumti" could fetch. Nor was any site plan of the land including the wood stall filed. It must, therefore, be held that the plaintiff did not possess any land on which the "Ghumti" if placed could "fetch" any income. In other words, he has failed to prove the recurring loss suffered by him, if any, and no such damages can be awarded to him.

9. In the end it was urged on behalf of the plaintiff that he was missed by the pleadings of the defendant and also by the view of the lower Court which appears to be to the contrary and consequently did not lead any evidence to prove where he would have kept the "Ghumti" if he was not permitted to place it on the public road near the wood-stall and also on the rent which the "Ghumti" would then have fetched.

It was also said that the trial Court did not frame any issue in this point with the result that the plaintiff was prejudiced and he should now be permitted to lead additional evidence on this point. The request made for additional evidence at a late stage cannot be accepted.

It is not the duty of the defendant nor of the, Court to suggest to the plaintiff what evidence he should lead. In fact the parties are expected to take such legal advice as they may like and then to adduce full and complete evidence in the case. If any party is negligent in not leading proper evidence he has to blame himself and cannot shift the responsibility on the other party or on the Court. Further the issue No. 2 framed on the question of damages is general and would cover all the points necessary for the determination of damages, if suffered by the plaintiff. Issue No. 2 runs as below:

Is the "Ghumti" damaged by careless act of defendant's employees, and defendants are responsible for the damages and rent claimed by the plaintiff?

The trial Court had used both the words "damages" and "rent" and consequently the plaintiff could know that mere proof of rent realised in the past could not be

sufficient.

In any case, the present is not a case where any leniency may be shown to the plaintiff. He has in the beginning acted highhandedly and placed the "Ghumti" in Mohalla Jumerati and later on allowed it to remain on the public road near the wood stall without the permission of the Municipal Board. He has already derived an unlawful income from the "Ghumti" and this income should be sufficient to compensate him for any inconvenience to which he might have been put to. In the interest of justice also, it is not necessary to afford an additional opportunity to the plaintiff to adduce further evidence on the quantum of damages.

10. The Second Appeal has thus no force and is hereby dismissed. Considering that the Municipal Board had not returned the "Ghumti" nor did they pay its price promptly, it is further ordered that the costs of the Second Appeal shall be on the parties.