

(1937) 08 MAD CK 0028
In the Madras High Court

Kaliaperumal Pillai

APPELLANT

Vs

Visalakshmi Achi

RESPONDENT

Date of Decision : 13-08-1937

Acts Referred:

Citation : AIR 1938 Mad 32

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—Much as I sympathise with the plaintiff, I am unable to hold that the circumstances disclosed by the evidence warrant the decree which the lower Court has passed against the defendant. The question is whether the defendant can be charged as a bailee and made liable for the loss of some gold belonging to the plaintiff. The evidence shows that the plaintiff arranged that certain jewels which she desired to be made should be got made by certain goldsmiths working in the defendant's house, apparently because there was more convenient accommodation there. The plaintiff admits that she used to attend every day in the defendant's house during the time that the goldsmiths were at work. It is true that even according to the defendant's written statement he received at the outset two old jewels from the plaintiff for the purpose of being melted into gold and being utilized for the making of the new jewels; but any bailment that could be gathered from that admission must be taken to have come to an end as soon as the plaintiff was put in possession of the melted gold. There is nothing in the evidence to suggest that the gold that thus came into the plaintiff's possession was ever thereafter "delivered" to the defendant by the plaintiff. All that the evidence discloses is that every evening, as soon as the goldsmiths' work for the day was over, the plaintiff used to receive the half made jewels from the goldsmiths, put them into a box which the defendant had given her for her use and put the box in a room in the defendant's house. One of the plaintiff's witnesses adds that even the key of that room was kept in the plaintiff's possession. On these facts, I do not see my way to hold that the defendant can be regarded as a bailee in respect of the gold or the half finished

jewels.

2. Under the provisions of Sections 148 and 149, Contract Act, delivery is necessary to constitute the bailment. It is true that the delivery may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee; but the mere leaving of the box in a room in the defendant's house, when the plaintiff herself took away the key of that room, cannot certainly amount to delivery within the meaning of the provision in Section 149. If on those facts the plaintiff wanted to fasten a liability upon the defendant for the loss of the goods, she must make out an affirmative ground of liability, and cannot ask the Court to treat the defendant as a bailee and throw upon him the onus of accounting for the loss of the jewels. The evidence shows that one morning, when the plaintiff went into the room to take out the jewels for further work, the jewels were found missing. It is not the plaintiff's case that on the previous day she handed over the unfinished jewels to the defendant. I cannot agree with the contention of the learned Counsel for the respondent that because in the first instance the old jewels were handed over to the defendant the bailment there. by constituted continued for all time. Every day when the unfinished jewels were handed back by the goldsmith to the plaintiff, the jewels came back to her possession and if at the later stages she desires to throw upon the defendant the onus of exonerating himself from the obligations of a bailee, she must prove some acts whereby the articles could be held to have gone into the defendant's possession. I find no such proof in the present case.

3. In these circumstances I do not think it necessary to consider whether, even if the defendant could be regarded as a bailee, the circumstances are such as to protect him under Sections 151 and 152, Contract Act. I must however observe that I see nothing whatever in the evidence and in the circumstances of the case to warrant the learned Judge's suggestion that "it is not unlikely that the defendant appropriated the property and made a show of theft in his house". Though the plaintiff denies any knowledge of the defendant having complained of theft in his house, her second witness admits that the defendant did complain of a theft and that the plaintiff was also aware of such complaint. But in the view that I have taken that no bailment has been proved, it is unnecessary to consider this question further. The revision petition must be allowed and the decree of the lower Court set aside. The petitioner will be entitled to his costs in this Court; but I direct that In the lower Court each party will bear his costs.