

(1951) 11 KAR CK 0008
In the Karnataka High Court
Case No : Regular Appeal No. 115 of 1948-49

K.M. Abdul Subhan

APPELLANT

Vs

S. Ramaiah

RESPONDENT

Date of Decision : 05-11-1951

Acts Referred:

Citation : AIR 1952 Kar 90

Hon'ble Judges : Medapa, C.J; Vasudevamurthy, J

Bench : Division Bench

Advocate : A.R. Somanatha Iyer and M.K. Sreenivasa Iyengar, for the Appellant;
M. Ramachandra Rao, for the Respondent

Judgement

Vasudevamurthy, J.—The plaintiff brought a suit in the Court of the Additional Subordinate Judge, Chikmagalur, for the recovery of Rs. 10,000/- as damages or compensation in respect of an attachment before judgment obtained by the defendant on certain timber. The Subordinate Judge has decreed the suit for Rs. 5930/- and the defendant has appealed.

2. The plaintiff's case is that on 18-9-1946 the defendant, with the intention of causing trouble and loss to the plaintiff and in order to lower him in the estimation of others, had got wrongfully attached before judgment certain timber of the plaintiff worth about Rs. 23,800/- and that he had obtained that order on the strength of an affidavit containing a false allegation that the timber belonged to one Savandappa against whom he had filed a suit in the same Court for damages. The plaintiff had entered into an agreement with one Puttappa to deliver to him 3000 C. ft. out of those logs before the end of September 1946, that he could not fulfil that contract and had to pay some agreed liquidated damages to him in consequence, that the timber had also fallen in value and that he had suffered by way of loss on his investment.

The defendant pleaded that he had filed a suit for the recovery of Rs. 5500/- against Savandappa and had got the timber in question, which really belonged to

Savandappa, attached before judgment on proper and sufficient grounds and that the plaintiff was merely a writer of Savandappa and was not the owner of the logs. He further pleaded that the damages claimed were remote and that the plaintiff was not either in fact or in law entitled to any damages. The plaintiff filed a reply wherein he specifically pleaded that he had purchased the timber from one Dr. Ammanna of Tarikere on 25-2-1946 as evidenced by a bill given by Dr. Ammanna and that the plaintiff, knowing the circumstances, had still got it attached as belonging to Savandappa.

3. The learned Subordinate Judge has held that the timber belonged to the plaintiff and that he had purchased it from Dr. Ammanna. Before us Mr. Somanath Iyer, learned Counsel for the Appellant, had argued that that finding of the learned Judge is not correct. He contends that the evidence in the case is altogether too meagre for establishing the plaintiff's ownership of the logs. He urges that neither the plaintiff nor Savandappa, who has been examined as P. W. 8, have produced their accounts and that Ammanna, who is alleged to have sold the logs to the plaintiff, has not been examined. He further urges that the omission to examine Am manna with reference to the accounts is fatal to the plaintiff's case: and in support of that contention he has strongly relied on a case reported in "BAJRANG LAL v. SITA RAM" AIR 1949 Cal 457.

He has pointed out that there is some discrepancy as regards who actually cut and removed the logs from the estate and deposited them in the Electric Colony grounds at Tarikere and that the plaintiff has not got P. T. marks affixed to those logs which he ought to have done if he was their owner. He has relied strongly on the evidence of D. W. 2, a Municipal Clerk, to show that the plaintiff, who is admittedly known as writer Ramiah, was merely a servant of Savandappa.

There is no doubt that the plaintiff has not placed before the Court either the best or all the evidence that he could have done to prove his ownership of the logs. But in the circumstances of the case, however, it must be remembered that the defendant came forward with a specific case that the timber belonged to Savandappa and not to the plaintiff and he had also attached them on that basis. Savandappa came before the Court and repeated what he had already stated on previous occasions and in connection with the claim petition which the plaintiff had filed in Miscellaneous Case No. 9 of 46-47 that he did not claim the timber as his own and that it really belonged to the plaintiff. The burden on the plaintiff of proving that the timber did not belong to Savandappa was thereby substantially reduced.

(His Lordship discussed the evidence and proceeded :)

4-5. The case in "BAJRANG LAL v. SITA-RAM, AIR 1949 Cal 457 can be easily distinguished. In that case, the person who was said to be the owner and as (sic. on?) whose goods the attachment had been effected was not examined. But, in the present case, Savandappa has been examined and he has supported the plaintiff. Mr. Somanath Iyer urges that that decision lays down that the onus of

proving that the attached property belongs to a plaintiff who is claiming damages for wrongful attachment lies on him. There is no doubt it is so, but the amount of evidence which a Court would consider sufficient to discharge that burden would obviously depend upon the circumstances of each case. In this case, the defendant has let in absolutely no evidence to prove that the timber belonged to Savandappa.

(His Lordship discussed further evidence and held that the attached timber belonged to the plaintiff. His Lordship then proceeded:)

6-7. The next question that arises for consideration is the one relating to damages. The plaintiff has claimed Rs. 4800/- as damages at Rs. 3/- per C. ft. on 1600 C. ft. of teakwood logs which he had contracted to supply to Puttappa, P. W. 5; Rs. 2000/- as being the fall in price of the timber at Rs. 1-8-0 per C. ft; and Rs. 2856/- being interest at 1 per cent per mensem on the value of the attached timber from 18-9-1946, the date of attachment, upto the date of suit on 19-9-47. The learned Subordinate Judge has awarded in respect of the first part of the claim damages of Rs. 3900/- on a quantity of 1300 C. ft. of timber which he has held the plaintiff had to purchase in the market to make up the quantity to be supplied to that witness.

(His Lordship after discussing the evidence came to the conclusion that the plaintiff was not entitled to damages claimed by him. His Lordship then proceeded :)

8-9. The third item of claim for interest by way of damages upto the date of suit is similarly difficult to grant. Interest by way of damages or compensation could only be awarded when the principal or corpus is withheld and usually follows a decree for the latter. It will have to be calculated upto the date when such principal or "corpus" is delivered. Even on the analogy of mesne profits, which! is the nearest parallel, it can only be granted! at the time when the claim for the principal" sum or "corpus" is adjudicated upon.

10. It is, however, contended by Mr. Ramachandra Rao, learned Counsel for the Respondent, that though the plaintiff may not be able to recover damages as claimed he can and must still be awarded some damages for the attachment of his timber before judgment. He urges that the defendant has been reckless and shown a total lack of "bona fides" in securing the attachment of the plaintiff's goods as belonging to Savandappa. He has referred us to his evidence, where he has admitted that he had not seen the estate and does not know personally who its owner is. He has let in no evidence in this case to prove affirmatively that the timber belonged to Savandappa. The timber was attached in the absence of the plaintiff and apparently in spite of the information given by P. W. 5, the Patel of Tarikere that the timber really belonged, not to Savandappa, but to the plaintiff.

The worth of timber has been clearly undervalued in Ex. U, the attachment list. The plaintiff has valued it at about Rs. 23,800/- and the Court has found, on a full discussion of the evidence, that it is worth at least Rs. 16,932/-. Judged by

the quantities and the rates current at the time, the finding of the learned Judge is apparently very much nearer the truth than the one in Ex. U. The attached timber was delivered over to two sureties under Ex. BB dated 18-9-46, the sureties being no others than Jainulabuddin, a son of the defendant, and one Syed Dastagir Husseni, a plaintiff in another suit against Savandappa and others. The plaintiff has gone to the extent of saying that his son was not a surety though he admits that Ex. BB reads as if his son was also a co-surety and that Dastagir was not his agent but used to see that his timber was carted and hire received from a long time.

He says he was not present from the beginning to the end when the timber was attached though he has apparently signed the attachment list and now chooses to depose that as far as he remembers he has not done so. He has conceded that one Mr. Philips told him that the logs belonged to Savandappa though he did not give any details, but that he did not enquire either of Savandappa or from the timber merchants at Tarikere how Savandappa got the timber nor has he summoned Mr. Philips. In these circumstances, it must be held that the attachment was thoroughly improper and not "bona fide" in the sense that it was not made with any care or caution though it may be that there is no proof of malice on the part of the defendant in so doing.

11. Mr. Somanath Iyer has argued that in the circumstances the attachment affords no ground for any damages unless special damage is proved. Whatever may be the right of the plaintiff to recover damages or compensation for the detention of the timber which may be available to him against either the defendant or the sureties or both, we think that in law the plaintiff is entitled to recover damages for the wrongful attachment. Such attachment clearly falls within the meaning of trespass which has been defined as a wrongful act done in disturbance of possession of property of another or against the person of another against his will. To constitute a trespass, the act must in general be unlawful at the time when it is committed, and, an act may be a trespass although it is committed by mistake or without malice.

The commission of a negligent act may amount to a trespass though a person who has not been negligent cannot be a trespasser in respect of any involuntary or inevitable accident; see Halsbury's Laws of England, 2nd Edition, Vol. 33, para 1. Trespass is an actionable wrong and a mere trespass is as a rule actionable only and not criminally though even bare trespass may be a criminal offence under certain special Acts. In an action of trespass, the plaintiff, if he proves the trespass is entitled to recover damages even though he has not suffered actual loss; see para 25 *ibid*, though, if the trespass is accompanied by aggravating circumstances, the plaintiff is entitled to recover exemplary damages; *ibid* para 25.

Trespass on goods has been described as an unlawful disturbance of the possession of the goods by seizure or removal by a direct act causing damage to goods, and the remedies available to a plaintiff against whom such trespass is

committed is independent of his claims for other wrongs in respect of the property which are described as conversion or detention; see para 81, Vol. 33. Detinue is the form of action which lies when one person wrongfully detains the goods of another. The gist of the action is the unlawful failure to deliver them up when demanded.

12. In a very early case reported in "MUDHUN MOHAN v. GOKUL DOSS" 10 Moo Ind App 563, the Privy Council had to consider a case where some indigo belonging to the plaintiffs was wrongfully attached under a decree in a suit brought against third parties. The plaintiffs claimed special damages. It was found that no damages had been actually sustained by the plaintiffs by reason of the attachment. It was contended for the plaintiffs that the attachment and seizure were illegal and had been on that ground withdrawn by a Court of competent authority and that the amount claimed as damages or at least some damages ought to have been awarded by the Court independently of any proof of special damages thereby sustained.

Their Lordships of the Privy Council observed that the attachment was wrongful. They pointed out that they were not prepared to allow that even if there was no evidence in the action on which the Court below might have awarded some damages on account of the loss sustained, the plaintiff could have recovered nothing. They observed that the plaint in the case might have been more accurately drawn but substantially it sought the damages generally as consequent on the wrongful attachment of the factory. "The principle ordinarily applied to action of "tort" is," they went on to say

"that the plaintiff is never precluded from recovering ordinary damages, by reason of his failing to prove the special damage he has laid, unless special damage is the gist of the action. Thus in an action of slander for words actionable "per se", when the plaintiff lays special damages, and fails to prove it, he is nevertheless entitled to such damages as the jury think right to give him. It would be otherwise, if the words were not actionable "per se"."

In the case before them, the gist of the action was not the special damage, but the unlawful attachment; and the plaintiff was not precluded from recovering ordinary damages for that actionable wrong, even if he had wholly failed to prove special damage laid. They ultimately granted a decree for Rs. 500/- as damages in plaintiff's favour.

13. In "MAUNG AUNG KIN v. MAUNG LU SAUNG". AIR 1930 Rang 273, where a person moved the insolvency Court to appoint an "ad interim" Receiver to seize certain paddy crops as the property of his debtor knowing that they belonged to the plaintiff, it was held that the act was in the nature of trespass to property because there was an unlawful interference with the exercise of the property rights of the plaintiff and that he could claim damages.

In "JAWAHAR MAL V. PUNJAB NATIONAL BANK LTD." AIR 1936 Lah 524, it has been held that a person whose goods have been attached and who has

succeeded in getting a declaration for the release of the goods from attachment is entitled to claim indemnity for the wrongful attachment even without proof that the defendant had resisted his claim maliciously or without probable cause. If the goods have been sold away under the Court's order the difference in the market value of the goods at the time of their attachment and the price when they were sold, the selling price having fallen intermediately, must be added to the damages; and it is sufficient in such case if the plaintiff merely proves that such property was in his custody because possession is always good as against a wrong-doer. In "MUHAMMAD DIN v. SANT RAM" AIR 1938 Lah. 334 which was also a case of wrongful attachment of property, the plaintiff was held entitled to nominal damages if no actual damages were proved. For this, reliance was placed on the principle stated by Holt. C. J. in. "ASHBY v. WHITE" 92 E. R. 126 as follows: --"A damage is- not merely pecuniary but an injury imports a damage when a man is thereby hindered of his right.....

So a man shall have action against another for riding over his ground though it may do no damage in the invasion to his property and the other has no right to go there." (14) Mr. Somanatha Iyer, learned Counsel for the Appellant. has relied on "NANJAPPA CHETTIAR v. GANPATILI GOUNDAN". 35 Mad 598. This was a suit for damages for attachment before judgment by a defendant whose property had been attached, and. it was held that in such a case he was bound to prove want of reasonable and probable cause for applying for the attachment as well as malice in fact. Malice was, however, described as an improper or indirect motive and that no hatred or enmity was required. There is, however, no doubt that if the plaintiff was not such defendant those considerations do not apply.

15. The next case on which reliance is placed for the Appellant is "SAIN DAS v. UJAGAR SINGH" AIR 1940 Lah 21 where it was observed that though in the case .of "injuria sine damnum", nominal damages are usually awarded and this principle is applicable to cases of trespass of Immovable property, when there has been unjustifiable intrusion on property in possession of another, the rule cannot be extended to every case of attachment of property irrespective of the circumstances.

In that case, the attachment was of some Immovable properties and it was held, on the evidence, that the attachment had been made "bona fide" and on sufficient grounds and was withdrawn at the creditor's own request at a very early stage of the proceedings without any interference with the possession of the person aggrieved by the attachment, and in those circumstances the principle of "injuria sine damnum" did not apply. The facts of that case are, therefore, clearly distinguishable from those of the present, though it must be observed that it is difficult to accept the rather broad proposition that it has laid down in that case that in cases where once injury in law has been established the Court can refuse to award at least nominal damages.

Even in "BAJRANG LAL v. SITARAM" AIR 1949 Cal 457, which has been relied on for the Appellant for another purpose, it has been pointed out that in such cases

where goods not belonging to the judgment-debtor but somebody else is attached, there is a difference between the law in England and in India as regards the legal consequence and that in India if the seizure of the goods by the bailiff in attachment turns out to be not of the goods" of the judgment-debtor the responsibility is of the execution creditor and he is answerable to the true owner of the goods seized for damages for wrongful attachment.

In AIR 1948 118 (Nagpur) it has been held that a party to a suit is liable in damages for trespass to property though he acts innocently or mistakenly or inadvertently, if by his or by his agent's or attorney's order the officer of the Court takes goods of the wrong person, a stranger in execution. In such a case proof of malice is not necessary when the property of a stranger, and not of a party to a suit, is taken in execution. In the present case, there is no doubt that the goods were wrongfully attached and formally made over to the custody of the sureties under the surety bond Ex. BB; and as already observed the defendant has not even made out that the attachment was effected "bona fide."

16. Mr. Somanath Iyer contends that the plaintiff having claimed damages under certain heads cannot now claim damages in a general, way. In *Rajendra Narayan Ray Vs. Bhairabendra Narayan Ray and Others*, , where interest on mesne profits was reduced by the appellate Court, the respondent was held entitled to urge that the profits may be assessed at a higher figure if the evidence supported it, provided the total did not exceed the amount decreed by the lower Court and "vice versa" as interest was an integral part of mesne profits. Such a course involved no challenge to a different right or a different cause of action adjudicated against him by the lower Court; see also "*SRIRANGA THATHACHARIAR v. SRINIVASA THATHACHARIAR*" 50 Mad 866 which is to a similar effect. In the plaint the plaintiff has alleged that the defendant with the evil intention of causing trouble, loss, mental worry, loss of money, damage etc., to himself and in order to lower him in the estimation of others had got the timber attached before judgment. No doubt he has relied in the plaint on his contract with Puttappa and calculated his damages by reference to the three circumstances as already set out. It cannot be said that by so doing he has waived or lost the right to be awarded some damages even if he fails to make out the special damages he has sought to recover. In fact the need for granting nominal damages arises only where the party has failed to make out any grounds for the award of special damages: "*MUHAMMAD DIN v. SANT RAM*", AIR 1938 Lah 334 and "*MUDHUN MOHAN v. GOKUL DOSS*" 10 Moo Ind App 563 (P C). Taking into account, that in this case the defendant has got some very valuable timber of the plaintiff who is a trader attached in spite of the Patel's warning that it belonged to the latter and the other circumstances in the case which we have enumerated we think we may properly award Rs. 500/- as damages against him.

17. In the result, the judgment and decree of the Court below are modified and there will be a decree in plaintiff's favour for Rs. 500/-with proportionate costs and current interest from the date of suit. As neither party has succeeded in full

in this appeal, they- will bear their own costs in this Court.

18. Decree modified.