

(1926) 02 AHC CK 0014
In the Allahabad High Court

Mulchand Nemi Chand

APPELLANT

Vs

Basdeo Ram Sarup

RESPONDENT

Date of Decision : 22-02-1926

Acts Referred:

Citation : AIR 1926 All 695 : (1926) ILR (All) 404 : 94 Ind. Cas. 425

Hon'ble Judges : Mears, C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mears, C.J.—This is an appeal from the judgment of the Additional Sessions Judge of Agra who on the 25th of April 1922 gave the plaintiffs a decree for Rs. 12,800 damages on account of the destruction by fire of the major portion of a house owned by them on the ground that such fire originated through the negligence of the defendants.

2. The defendants are bankers at Ajmere. They also carry on the business of cotton commission agents at Agra and elsewhere and are a firm of high financial repute.

3. On the 25th of March 1920 they had occasion to require premises at Agra to store some 388 bales of cotton of which 363 were the property of a firm Sukar Nand Shyam Lal. They hired on monthly rent a big room on the ground floor of the plaintiff's house at Belanganj, Agra. There they deposited the cotton. This cotton, was of the 1919 season and remained in that room throughout the hot weather of April, May and June 1920.

4. There were three doors to the room, but no ventilation; and when the doors were shut, the whole room was a sealed chamber. The rainy season in 1920 commenced in this Province on or about July and for some days or parts of days prior to the 28th July, rain had been falling at Agra. At about 4 p.m. on that day smoke was seen issuing from the room. The alarm was raised, the doors were eventually opened or broken open and the cotton was found to be on fire. The

fire was not got under until great damage had been done to the upper portion of the house.

5. The plaintiffs launched a claim against the defendants, basing it, unfortunately upon a very unwise ground and one which they would have ascertained to have no reasonable foundation, had they taken the least trouble to consider the position of the defendants and the circumstances of the case. They alleged and principally relied upon incendiarism. They alleged that the defendants in consequence of a fall in the price of cotton deliberately set fire to the bales.

6. They further sought to prove, and alleged it as a circumstance supporting incendiarism that the defendants, when they were informed of the fire refrained from taking proper measures to extinguish it. The evidence to support incendiarism was given by Bhagwat Prasad who was undoubtedly untrustworthy. We can have no doubt that in respect of one important matter namely an allegation that he received compensation from the defendants (see pages 67 and 68), he was telling falsehoods. Mr. Prag Narain's evidence, supporting the suggestion of incendiarism was in our opinion ill considered. Mr. Prag Narain was engaged at one time in this very case as a vakil, he gave evidence as a witness to the fire and in speaking of the firm of Sham Lal Sukar Nand said:

I believe they have lost heavily and have failed, My belief is based on bazar reports, The rumour, if there was one, as to their failure was entirely untrue.

7. We regret that a vakil should have aspersed the financial solvency of a firm in this way in support of a theory of incendiarism or of any other theory and that the Judge should have permitted it. He even adopted it in his judgment saying that there was nothing on record to show that the vakil was in any way interested in giving a false deposition or that the rumour was not afloat. He evidently, therefore attached weight to the rumour.

8. It is impossible to understand from the judgment whether Mr. Harihar Prasad really thought it a case of incendiarism or that the cotton was ignited by fire brought negligently into contact with it by the servants of defendants, or whether liability should fall on the defendants upon the ground that admittedly a fire broke out on premises occupied by them and under their control under circumstances which put the burden of proving that they had acted in all respects with reasonable care.

9. In the result he gave the plaintiffs a decree for Rs. 12,800 based not upon a calculation of the amount which it would cost to make good the damage done but on the capital value of the destroyed portion of the house, regarded from the letting point of view. The plaintiff called only one witness on the question of the cost of making good and we agree with the Judge in regarding his evidence as unreliable and his figures extravagant and exorbitant. The plaintiff, who could have given the Court enlightenment on the proper amount of damages, deliberately refrained from furnishing figures of alleged enlargements, repairs and rebuilding to the original house and all that is known is that he spent Rs.

6,400 in the purchase of the house in 1917 and made additions to it. He produced no books and gave no details. He is apparently aggrieved at the amount of damages awarded to him but he should have produced evidence of his actual expenditure and reliable witnesses with fair figures to prove the cost of rebuilding.

10. On the question as to liability we have already indicated our view as to incendiarism. We do not believe for one moment the evidence of Bhagwat Prasad who says he saw men of the defendants on the premises at 3 in the afternoon with a lamp or candle.

11. The defendants set up a story that they had complained that the students who lived on the upper floor used to throw cigarettes and fire on the balcony and that Chaturbhuj had asked them not to do so "lest sparks enter by the sky-lights." The defendants alleged that ventilation was given to the room by 3 square sky lights placed over the doors. It is obvious from the photographs and plans that no such sky lights ever existed. From the evidence of Nathu Lal (p. 84) it is clear that the cotton once it was stored in the room was left to itself and all that happened was that a servant on the 2nd or 4th day would go and see it. By going to see it the witness explained that he went to the locked doors without the key and looked through to see if it was all right. It was only when a customer wanted to see bales that the room was opened and there was evidence showing that cotton had slumped so badly that there were no buyers. No evidence was given to show that the room was ever opened during the tremendous heat of April May and June, or the rains of July. At page 130 of his judgment the learned Subordinate Judge assumed, because it had been raining, that therefore it could not be a case of spontaneous combustion. A great deal of argument in this Court was addressed to us on the negligence in leaving cotton on the ground floor of a residential house unwatched for months and in an unventilated room. The cotton must have become bone-dry by the end of June and in a condition in which it would eagerly absorb moisture during the rains and the pressure of one damp bale upon another is exactly the very circumstance which gives rise to spontaneous combustion and which has to be guarded against by adequate ventilation, the moving to and fro of the bales, temperature tests and daily watchfulness.

12. The plaintiffs were so set upon running the case of incendiarism that they overlooked the importance of getting expert evidence on the liability of cotton to self-ignition, but we are at liberty to, and do disagree with the Judge that the fact of wet weather precludes the theory of spontaneous combustion. On the other hand, it indicates the likelihood of it.

13. We think that the judgment unsatisfactory as it is, on the issues propounded, may yet be supported by his finding at page 132, lines 30 to 40.

14. We confirm his decision on the ground that the fire which undoubtedly occurred would not have happened had the defendants exercised proper

watchfulness and control over the cotton. They had the exclusive control and custody of the cotton and must be presumed to know the degree of care required by persons who store cotton in India in bulk in unventilated rooms during the months of April May, June and July.

15. The principle of liability is set out in the case of Scott v. London Dock Co. (1864) 34 LJEx. 220; Byrne v. Bodaël (1863) 33 LJ 13 and River Steam Navigation Co. v. Choutmull Doogar (1903) 26 Cal 398.

16. Now as regards the damages. The learned Subordinate Judge was, as we have said unable to accept the evidence of Janki Prasad-the plaintiff gave the Court no help. Mr. Prag Narain, who expounded theories on the way-cotton burns when an incendiary has been at work-also gave expert evidence as to the price houses fetch in the locality based upon a rental calculation. We are of opinion that if the plaintiff had disclosed his books and given the Court a straightforward calculation of the total cost of the house at the date of the fire and also produced two or three reliable quantity surveyors and builders, he might have shown a greater loss than Rs. 12,800. However, he failed to do so, and we propose to leave the damages at the amount awarded by the learned Subordinate Judge.

17. In view of the manner in which this case was conducted in the lower Court we deprive the plaintiff of his costs in that Court and whilst dismissing this appeal do so without awarding any costs to the plaintiff-respondent.