

(1914) 08 MAD CK 0042
In the Madras High Court

Nagalinga Chettiar

APPELLANT

Vs

Kayarohana Chettiar and Another

RESPONDENT

Date of Decision : 27-08-1914

Acts Referred:

Contract Act, 1872 — Section 151

Citation : AIR 1915 Mad 80(2) : 25 Ind. Cas. 939

Hon'ble Judges : Seshagiri Aiyar, J

Bench : Single Bench

Judgement

Seshagiri Aiyar, J.—This is a very hard case. Mr. Jayarama Aiyar's contention is that his client has taken as much care of the goods entrusted to him as is required by Section 151 of the Indian Contract Act. The facts are these: The plaintiff entrusted the 1st defendant with a sum of Rs. 43. The money was tied up in a bundle: it was placed by the 1st defendant in a box of his own with money belonging to himself; it is admitted. that he did not lock the box. After this the plaintiff and the 1st defendant went out for making some other purchase. On return the money was found lost. On these facts the Subordinate Judge holds that the defendant is not liable. It is argued on his behalf that, as the 1st defendant placed his own moneys in the box without locking it, he must be deemed to have taken as much care of the plaintiff's money as he did of his own. But that leaves the question open whether he exercised ordinary prudence. The fact that the place was a shop to which everybody had access and that there were shops on either side, was an additional circumstance why extra precaution should be taken by the person to whom the money had been entrusted. By not locking the box the defendant rendered it possible for some thief to easily appropriate the money. The direction given to the Jury by Lord Denman, C.J., in *Doorman v. Jenkins* 2 Ad. & E. 256 : 4 N.M. 170 : 4 L.J.K.B. 29 : 111 Eng. Rep. 99 : 41 R.R. 429 is in point. I must hold that it has not been proved that the 1st defendant has taken that care which an ordinary prudent man - would have taken of money of his own. !Mr. Jayarama Aiyar argues that it is a question of fact and I should not interfere. But the inference that ordinary prudence has

been exercised has been drawn from the facts found, and that is a question of law. I am not questioning the findings of fact: I am differing from the inference which the lower Court drew from those facts. I am satisfied that upon the facts found the requirements of Section 151 have not been complied with. I reverse the decree of the Subordinate Judge and give a decree for the plaintiff for the amount, Rs. 430-7-0. There will be no costs and no interest up to this date. The plaintiff will have interest at 6 per cent upon the amount decreed from this day.