

(1962) 02 MP CK 0016
In the Madhya Pradesh High Court
Case No : First Appeal No. 205 of 1959

Onkar Bahadur Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 14-02-1962

Acts Referred:

Constitution of India, 1950 — Article 300
Land Revenue Act — Section 202

Citation : AIR 1963 MP 174 : (1963) JLJ 311 : (1963) MPLJ 136

Hon'ble Judges : S.P. Bhargava, J; N.M. Golvalkar, J

Bench : Division Bench

Advocate : B.P. Argal, for the Appellant; K.K. Dube, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Golvalkar, J.

This is an appeal by the plaintiff whose suit for return of certain logs of wood or its value has been dismissed on two preliminary grounds; firstly that the suit was premature and secondly because the defendant-State was not liable to the plaintiff.

It is the case of plaintiff that he had cut the logs from a village forest and action against him for breach of rules framed u/s 202 of the Land Revenue Act in the matter of that cutting was taken, and he was fined in addition to the confiscation of the timber. However, the Board of Revenue set aside both the orders, imposing fine and confiscation of the timber, and the revenue officer was directed to return the wood to the person from whose possession it was seized. The plaintiff averred that nothing was done to return the timber to him and ultimately he had to serve a notice u/s 80, Civil Procedure Code, proposing to file a suit either to obtain the timber or its price from the defendant.

The defendant-State raised several pleas repudiating the claim of the plaintiff.

The suit was claimed to be premature and bad for non-joinder of the supratdars, who were entrusted with the-timber.

The lower Court framed as many as 7 issues but disposed of the suit on the first four issues as preliminary issues. It recorded the following findings: -

that the supratdars to whom the timber was entrusted by the revenue officer were not necessary parties;

that the dismissal of the pauper proceedings-did not operate as res judicata;

that the plaintiff ought to have pursued his remedies in the matter further before the Naib Tahsildar, and ought not to have filed this suit before there being any refusal as such by the Naib Tahsildar to return the timber; and

that the State was not liable inasmuch as the act of the revenue officer was in the exercise of his statutory powers and hence there could be no liability of the State for non-return of the timber.

On these last two findings the lower Court dismissed the suit. Hence this appeal.

So far as the question whether the suit is premature or not, we find the lower Court to be manifestly wrong in view it has taken. The order of the Board of Revenue (Ex. P-2) had expressly directed the revenue authorities to return the timber to the person from whose possession it was seized. There could be in fact no inquiry as to from whom the timber was seized since it was indisputable that it was seized from the plaintiff. It made no difference that the title to the wood vested in some other person. The matter should have been left for decision between the plaintiff and that person. So far as the revenue authorities were concerned, they had to return the timber to the plaintiff.

Further, we find on record an order of the Additional Deputy Commissioner (Ex. P-6) in which the subordinate revenue authorities, dealing with-the subject-matter of return of timber, were criticised for their indolence even after the specific order of the Board of Revenue. Not only that but he had expressly ordered for the return of the timber to the plaintiff. Although he passed the order on 17-11-1954 nothing was done to satisfy the claim of the plaintiff with the result that he had to serve a notice of the suit on 15-12-1955 (Ex. P-1). In these circumstances we are, therefore, unable to see what further steps plaintiff could have taken before the revenue authorities concerned. Even after service of the notice also we find that the revenue authorities made no move to comply with the notice. The suit was, therefore, the only course left open for the plaintiff in order to seek redress for the wrong done to him. We are, therefore, of the opinion that the suit could not be found premature. Accordingly we set aside that finding.

That brings to us for consideration the next question whether the State was liable or not. So far as the seizure was concerned it was perfectly in pursuance of the statutory provisions. But the moment the order finding the plaintiff and

confiscating the timber was set aside by the Board of Revenue with express direction to re-turn the timber there was hardly anything left to be performed by the revenue authorities under any statutory provisions. It cannot be urged that the refusal to return or the inaction on the part of the revenue authorities in the matter of returning the timber was under any statutory powers. It is thus a simple case where the State would be deemed to have held the property through its officers for the benefit of the plaintiff and the suit to claim the same being in the nature of an action in detinue based upon its wrongful detention. It is certainly not an action for wrongful conversion. How these two actions, one in trover and the other in detinue, have to be viewed has been duly considered by the Supreme Court in the case of *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, . We may usefully quote here-under the relevant observations made by their Lordships of the Supreme Court: --

"It would be relevant to consider what is the exact scope of the two forms of action, viz., action for wrongful conversion and action for wrongful detention, otherwise known as action in trover and action in detinue. A conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. If a carrier or other bailee wrongfully and mistakenly delivers the chattel to the wrong person or refuses to deliver it to the right person, he can be sued as for a conversion. Every person is guilty of a conversion, who without lawful justification deprives a person of his goods by delivering them to some one else so as to change the possession. (Salmond on Torts, nth Edition, pages 323, 324, 330).

The action of detinue is based upon a wrongful detention of the plaintiff's chattel by the defendant, evidenced by a refusal to deliver it upon demand and the redress claimed is not damages for the wrong but the return of the chattel or its value. If a bailee unlawfully or negligently loses or parts with possession he cannot get rid of his contractual liability to restore the bailor's property on the termination of the bailment and if he fails to do, he may be sued in detinue. (Clerk and Lindsell on torts, nth Edition, pages 441 and 442; paras 720 and 721).

Detinue at the present day has two main uses. In the first place, the plaintiff may desire the specific restitution of his chattels and not damages for their conversion. He will then sue in detinue, not in trover. In the second place, he will have to sue in detinue if the defendant sets up no claim of ownership and has not been guilty of trespass; but the original acquisition "in detinue sur bailment" was lawful. Detinue lies against him who once had but has improperly parted with possession. At common law the natural remedy for the recovery of chattels was the action in detinue. In that action the judgment was in the alternative that the plaintiff do recover the possession of the chattels or their assessed value in case possession cannot be had together in any case with damages for their detention. (Salmond on Torts, nth Edition, pages 351, 352 and 353).

Judgment for the petitioner in trover is for recovery of damages for the

conversion; Judgment for the petitioner in detinue is for delivery of the chattel or payment of its value and damages for detention. (Halsbury's Laws of England, Hail-sham Edition, Vol. 33, P. 78, para 135)."

In this state of law, therefore, we do not see how the State can escape its liability for the claim in suit provided of course its extent is duly established. Accordingly we set aside the finding of the lower Court whereby it held that the State was not liable for the claim in suit.

The result, therefore, is that we allow this appeal with costs and set aside the dismissal of the suit. The lower Court shall now try the suit afresh and dispose it of according to law.