
(1961) 07 CAL CK 0005
In the Calcutta High Court

Prem Chand Kar and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 04-07-1961

Acts Referred:

Evidence Act, 1872 — Section 110
Penal Code, 1860 (IPC) — Section 395, 412

Citation : (1963) CriLJ 117 : 66 CWN 470

Hon'ble Judges : K.C. Sen, J

Bench : Single Bench

Judgement

K.C. Sen, J.

1. The plaintiffs are the appellants. The appeal arises out of the judgment and decree passed by the learned Subordinate Judge of Midnapore whereby he set aside the Judgment and decree of the learned Munsif, 1st Court, Tamluk. The latter passed a decree against the defendant No. 1, the State of West Bengal and the defendant, No. 2, Nagendra Nath Sen Gupta, the officer incharge of Tamluk police station for recovery of certain movables or their value thereof.

2. The plaintiffs case was as follows:-

On 21st July, 1949, a dacoity was committed in the house of one Bepin Bhowmlk husband of defendant No. 7. In connexion of the dacoity case, one Sk. Khadem was arrested and on his confession before the Sub-Divisional Officer, it was found that he had sold the disputed articles, viz., a necklace, a bicycle syringe and a money-bag to the plaintiff No. 1. On his confession, the house of the plaintiff No. 1 was searched and the articles as stated by Khadem were recovered from the plaintiff No. 1. This plaintiff No. -1 was sent up for standing his trial u/s 412 I.P.C. but was subsequently acquitted of that charge by the Additional Sessions Judge of Midnapore. Sk. Khadem, however, was duly convicted Under/Section 395 I.P.C. and sentenced to suffer rigorous imprisonment for two years by the learned first Assistant Sessions Judge of Midnapore on 26-4-51. This learned Judge referred the matter to the S.D.O. of Tamluk for disposal of the seized

articles u/s 518 of the Code of Criminal Procedure. The learned Magistrate after holding some enquiry returned the necklace to the defendant No. 7 and the other articles on two different dates, viz., 4-1-52 and 25-3-52. The plaintiff No. 1 who was acquitted on 4-12-50 of the charge u/s 412 of the Indian Penal Code applied to the Magistrate for return of the necklace and other articles on 14-8-52. On his application, the learned Magistrate referred him to the Civil Court on 4-1-52 and 25-3-52 as on a date previous to these dates the articles were already returned to the defendant No. 7. Accordingly the present suit for recovery of the specific movables or their value thereof was Instituted.

3. The State of West Bengal and the defendant No. 2 contended in their written statements that they Were not liable in this suit as what they did, in the matter of the articles, was entirely in good faith in the discharge of their official duties. The learned Munsif upon consideration of the evidence In record came to his conclusion that the disputed articles belonged to the plaintiffs and they were entitled to those articles or the price thereof as claimed in this suit against the State of West Bengal and the Police Officer, defendant No. 2. In support of the appeal, Mr. S.N. Ghorai the learned Counsel, has urged three points which run as follows: (1) His contention is that when the articles were seized from the plaintiff No. 1, he ought to have been deemed to be in possession thereof and u/s 110 of the Evidence Act, the presumption of title was in his favour. As the other side, viz., defendants have not discharged their onus to rebut the presumption, the lower appellate court ought to have decreed the suit in favour of the plaintiff. (2) The second contention is that it has been found as a fact by both the courts that the weight of the necklace was 3 tolas and odd and this being in conformity with the evidence and proof adduced by the plaintiff No. 1 ought to have been treated as a very cogent piece of evidence in awarding a decree in favour of the plaintiffs. (3) His third point is that the learned lower appellate court reversed the finding of the learned Munsif against the weight of evidence and that he has not considered the evidence in its proper perspective.

4. Before placing these points regarding the merits of the appeal, Mr. Ghorai urged that this suit ought not to have been treated by the lower appellate court as barred by limitation. It is conceded by the learned Government pleader, Mr. Chakravorty that this suit is not barred by limitation and It will be governed by Article 49 of the Indian Limitation Act. Accordingly, this point as urged by Mr. Ghorai is accepted. His second preliminary objection was that the lower appellate court ought not to have found that the order under which the Magistrate referred the present plaintiffs to the Civil Court regarding the return of the articles, was a proper order. Taking this point for consideration, it will appear that u/s 518 of the Code of Criminal Procedure, the learned Assistant Sessions Judge did not pass any order for disposal of the articles u/s 517 of the Code, but in lieu thereof directed the property to be delivered to the Sub divisional Magistrate, who was required in such a case to deal with it as if it had been seized by the police and the seizure had been reported to him in the manner referred to in the following sections of the Code. Regarding disposal of property, it will appear that the

relevant orders excepting one, have not been placed before the courts below, but it appears from the last order passed by the learned Magistrate that the plaintiffs were referred to the Civil Court. It is within the jurisdiction of the Magistrate to pass orders both u/s 517 as also u/s 523 of the Code to dispose of the property seized in a summary manner and may according to his discretion deliver the property to the person who according to his summary enquiry was found entitled to present possession thereof. If any party is aggrieved by such an order his remedy lies in the appellate or the revisional Courts and the propriety or otherwise of such an order cannot be questioned in any Civil Court. The orders u/s 517 and Section 523 of the Code do not settle any rights or confer any title. They are merely empowering sections to dispose of the property seized in a summary way. The orders are concerned only with the right to immediate possession and not to the question of title or proprietary right to the property. The jurisdiction of the Civil Courts, in such a case remains unaffected and, therefore, It may be pointed out that the order of the learned Magistrate referring the plaintiffs to the Civil Court was a proper order and on that score the suit is perfectly maintainable and the. decision to the contrary by the lower appellate court! was wrong.

5. Next turning to the question as made out by Mr. Ghorai regarding the merits of the appeal, it will appear that If there are two persons asserting title over any movable and Immovable property and if such an article is found in the possession of either the first party or the second party, as the case may be, the presumption is that the person who has the actual possession has title thereto. On this principle of law, it has been urged by Mr. Ghorai that when once the seizure is made of the disputed articles from the possession of the plaintiff No. 1, it should be presumed unless the contrary is shown by the other side that the title of the articles was with the plaintiffs, it will appear that both parties in this suit adduced sufficient evidence in support of each party's case regarding ownership and possession of their articles and the lower appellate court has proceeded to make a finding of fact as to the ownership on the basis of the entire evidence on record. It is the general principle of law that when both parties adduce evidence in support of their case, the question of onus vanishes and, therefore, the point for consideration is whether the learned Subordinate Judge made a correct finding of fact regarding the ownership. He has dealt with the question of ownership and possession in great details in his judgment and upon consideration of those facts, he has come to the conclusion that there is no satisfactory reason to show that the plaintiffs are the owners of the disputed articles. As regards the necklace, he has said that plaintiff No. 2 has miserably failed to prove the ownership of the necklace and her evidence being discrepant with the evidence of, P.W. 1, no reliance on the evidence of both can be placed. Regarding Mr. Choral's third point whether the articles seized were actually obtained from the lawful possession of the plaintiff No. 1, the learned Subordinate Judge has also made a finding of fact that the plaintiff No. 1 approached the learned "Magistrate as late as on 14-8-1952, although he was

acquitted on 4-12-1950 and this delay, according to the lower appellate court, is a very strong suspicious circumstance to warrant the conclusion that the possession thereof was not a lawful one. These findings are undoubtedly findings of fact and the dispute between the parties must be deemed to be concluded by these findings and this Court In second appeal cannot interfere with them. He has further found that the defendant No. 7 took return of the disputed necklace from the court under orders of the Magistrate and that there was practically no evidence in the case to show that the defendant No. 4 took return of the disputed syringe and the money-bag from the court. Accordingly, the lower appellate court was of opinion that the plaintiffs could not get return of those articles from defendant No. 4 and that they were also not entitled to recover the same from defendant No. 7 as no title or ownership was proved. This being the position, the question whether the weight of the ornaments as stated by the plaintiffs, tallies with the actual weight is not of much importance. In this view of the matter, I am afraid that these findings of fact cannot also be interfered with by this Court.

6. As regards liability of the State of West Bengal and the defendant No. 2, Nagendra Nath Sen Gupta, it may at once be said that the Police Officer in seizing the articles u/s 51 of the Code was discharging his duties in his official capacity and the order which was passed by the learned Magistrate under Sections 517 and 923 was a judicial order and until it was set aside by a higher court, its validity was unaffected and there cannot be any show of reason why the State of West Bengal and the Sub-Inspector personally should be made liable in this suit. It appears from the order of the learned Munsif that he proceeded on a footing that the order of the learned Magistrate was wrong and, therefore, a decree was necessary to be passed against them. This is not the correct view of the law and I think his order was rightly set aside by the lower appellate court. In the result, the appeal fails and it must be dismissed. Having regard to the nature of the case, I direct that each party should bear his own costs in this appeal.