
(1931) 03 CAL CK 0009
In the Calcutta High Court

Ram Ranjan Mallik and Others

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 12-03-1931

Acts Referred:

Citation : AIR 1931 Cal 430

Hon'ble Judges : Suhrawardy, J;Graham, J

Bench : Full Bench

Judgement

Graham, J.—This appeal by the plaintiffs arises out of a suit to recover possession of 11 logs of sal wood on declaration of title thereto, or in the alternative to recover a sum of Rs. 400 as the value thereof. The plaintiffs' case was that the logs in question belonged to them having formerly been the property of their ancestor one Hari Mohan Malik, who had a timber business in mouza Ballavpara, that the logs foundered in a cyclone in the year 1271 B.S. (1864), and were found embeded in the River Ganges and that the defendant's officers [removed them and rejected plaintiffs' claim thereto. The claim which they set up to the logs was based upon three grounds : firstly, that the logs belonged to their predecessor Hari Mohan Mallik; secondly, that they were entitled to them because they had been found within the ambit of their mouza Ballavpara; and thirdly, that as finders of the logs they were entitled to them or to such share of them as the Act gave them, under the Treasure Trove Act.

2. The defendant, the Secretary of State for India in Council denied the plaintiff's title to the timber, or that it was found within their mouza Ballavpara, or that plaintiffs were the finders of the logs and had any claim under the Treasure Trove Act.

3. The trial Court held that plaintiffs had failed to prove that the logs belonged to Hari Mohan Mallik, or that they were the finders, or that the logs were found within mouza Ballavpara, and dismissed the suit.

4. On appeal by the plaintiffs that decision was affirmed and they have

accordingly filed this second appeal. Four contentions have been urged on their behalf. In the first place it is argued that the Forest Act has no application; secondly, that the logs having been found upon the property of the plaintiffs they are under the common law entitled to them. Thirdly, that the Act which is applicable to the case is the Treasure Trove Act, and that under that Act the plaintiffs as the finders are entitled to the logs, or their value or to such portion thereof as they are entitled to under that Act. Fourth and lastly that, even if the Forest Act; does apply, the findings arrived at are sufficient to warrant a declaration of the plaintiffs' rights to the logs.

5. With regard to the first of these contentions we think there can be no doubt that the Forest Act applies. Section 45 of the Act deals with "the collection of drift and stranded timber." It lays down inter alia that

all timber found adrift, beached, stranded or sunk in such areas as the Local Government directs shall be deemed to be the property of Government unless and until any person establishes his right and title thereto as provided in this chapter.

6. The section and following sections then set out the procedure to be adopted when timber has been collected and removed to a Government depot. The object of this chapter of the Act was explained by their Lordships of the Judicial Committee in the case of *Amriteswari Debi v. Secretary of State* [1897] 24 Cal. 504 and it was pointed out that that object is to regulate the rights of owners in drift and stranded timber and not to deprive them of those rights; that the Act does not divest the owner of, or transfer to the Government any right therein, and that compliance by Government with the conditions laid down in the Act is obligatory.

7. In view of the clear provisions of the Act it might have been expected that the pleadings would contain some reference to compliance therewith, or to the failure to comply therewith. The pleadings however are silent upon the point, nor does the evidence throw any light on the subject. It appears that the plaintiffs did make a claim to the logs, but whether that was in consequence of any notice issued u/s 46 of the Act there is nothing to show. It was certainly the duty of the Government to comply with the formalities prescribed in the Act. The point is not however perhaps of much importance in this instance in view of the fact that the plaintiffs whether they had notice or not, did prefer a claim and that claim was rejected.

8. Turning again to Section 45 of the Act, it was argued on behalf of the appellant that none of the terms or expressions employed therein covers the case of timber which is found as here embedded in the bed of a river. We have no doubt however that timber so found does come within the description given, and that the Act. which deals with forest produce [generally, and in this chapter in particular with the collection of drift and stranded timber, does apply.

9. It was next contended that the logs having been found upon the property of

the plaintiffs they are under the common law entitled to them or their value. In support of this proposition reliance was placed upon a decision of the Madras High Court in the case of *Manager of Hampi Sri Virupaksha Swami Temple v. Lambana Golya* [1908] 31 Mad. 397. In that case the plaintiff as manager of a temple sued for a declaration of his right as such manager to a golden girdle found by the defendant in a certain field belonging to the temple. The defendant apparently pleaded that he was entitled to the girdle under the Treasure Trove Act. Their Lordships held that that Act had no application since the property in order to come under the Act must have been hidden. They further held that under the English law the possession of the land carries with it possession of everything which is attached to or under that land and in the absence of a better title the right to possess it also extent in the case of articles found in a public place. They observed further that was the law in this country also.

10. We see no reason to doubt the correctness of this view of the law. A difficulty (arises however owing to the fact that the Court of appeal below has not recorded any finding as to whether the logs were found within the plaintiffs' mouza Ballavpara. The Munsif did arrive at a finding upon the point and observed that he was

not satisfied on plaintiffs' evidence that the logs were found at Ballavpara.

11. The learned Subordinate Judge either through inadvertence or because in his view of the case no finding of the point was necessary, came to no finding. He appears to have approached the case from the wrong point of view and to have considered that the only question was whether the plaintiffs had been able to prove that the disputed timber belonged to their predecessor Hari Mohan Mallik. That however was only one of the grounds upon which the plaintiffs rested their claim. In view of this omission we are constrained, much as we regret the further delay involved in the disposal of the case, to hold that the case must go back to the Court of appeal below for a finding upon the point whether the logs were or were not found within the ambit of the plaintiff's mouza Ballavpara.

12. If the finding is in the affirmative, the plaintiffs as owners of that mouza will be entitled to the logs or their value, since there is nothing in the Forest Act; which can have the effect of depriving them of that right. The plaintiffs will however be liable to make good to Government the reasonable cost of collecting and storing the timber since this duty was imposed upon it by the Act.

13. The third contention that the Treasure Trove Act is applicable to the case is without substance for the reason stated in the Madras case referred to above viz., that that Act applies only to things which have been hidden.

14. As to the fourth contention it is clear from what has already been stated that the findings arrived at are not sufficient to warrant a declaration of the plaintiffs' right to the logs, and as we have indicated a remand is necessary in order that a finding may be come to upon the point.

15. In the result the appeal succeeds, and the case is sent back to the Court of appeal below to be disposed of according to law in the light of the observations made above. Costs will abide the result.

Suhrawardy, J.

16. I agree.