
(1980) 03 MAD CK 0038
In the Madras High Court

Rani Leela Kumari and Others

APPELLANT

Vs

J. Zamberlal

RESPONDENT

Date of Decision : 10-03-1980

Acts Referred:

Citation : (1980) ILR (Mad) 370 : (1980) 2 MLJ 47

Hon'ble Judges : V. Sethuraman, J;G. Ramanujam, J

Bench : Full Bench

Judgement

V. Sethuraman, J.—The plaintiffs in O.S. No. 1907 of 1971 on the file of the City Civil Court, Madras, are the appellants. The first plaintiff

died after filing the suit and plaintiffs 2 to 6 are his legal representatives and it is they, who are the appellants herein. The first plaintiff pledged with

the defendant, a pawn broker, valuable jewels described in the pawn ticket No. A-6685 dated 22nd March, 1970 as security for a loan of Rs.

30,000 taken on that day. On 25th April, 1970 the first plaintiff paid to the defendant a sum of Rs. 11,000 and the same was endorsed and

acknowledged by the defendant on the pawn ticket itself. There was thus a balance of Rs. 19,000 which had to be repaid with interest at 12% per

annum. The first plaintiff claimed that he approached the defendant to pay the sum of Rs. 19,000 with interest, but the defendant refused to deliver

the jewels to him and to receive the amount from him. The first plaintiff, therefore, came forward with the suit for redemption of the pledged jewels

on payment of the sum of Rs. 21,090 and for a permanent injunction restraining the defendant from bringing the pledged jewels to sale by public

auction.

2. The defendant resisted the suit contending that on 17th September, 1970 the

first plaintiff, apart from the sum of Rs. 11,000 paid on 26th April, 1970 as admitted by the first plaintiff, made a further payment of Rs. 19,000 that he issued a receipt bearing No. A. 6673 and that after the payment of the total sum of Rs. 30,000, the first plaintiff had taken back the jewels. It was also stated that the first plaintiff represented that the original pawn ticket was lost and endorsed on the duplicate about the loss of the original ticket. It was, therefore, stated that there was no question of the first plaintiff paying any sum of Rs. 19,000 and the defendant refusing to receive it and that the whole proceedings were the off-shoot of some other litigation between the parties.

On the pleadings, the following issues were raised:

1. Whether the plaintiff is entitled to redeem the jewels on payment of Rs. 19,000 ?
 2. Whether Rs. 19,000 was paid by the plaintiff and jewels were redeemed by the plaintiff already on 17th September, 1970?
 3. To what relief ?
3. On behalf of the plaintiffs the second plaintiff gave evidence and she being a Purdanashin lady was examined before the Commissioner. The defendant examined himself as his sole witness. Before the Commissioner the pawn ticket issued to the first plaintiff was marked as Exhibit C-1 and the duplicate thereof was marked as Exhibit C-4. Exhibit C-5 is the receipt book of the defendant in which the plaintiff was alleged to have signed. These are the principal exhibits.
4. The learned Subordinate Judge considered the oral and documentary evidence and found that the plaintiffs were not entitled to redeem the jewels on payment of Rs. 19,000, that they were not, therefore, entitled to the return of the jewels and that the first plaintiff had paid the amount due towards the pledge and received the jewels as contended by the defendant. Consequently the suit was dismissed with costs. The unsuccessful plaintiffs have, therefore, filed the present appeal.
 5. On behalf of the appellants, Mr. A. K. Sreeraman, the learned Counsel contended that the first plaintiff had not paid back the amount, as alleged by the defendant, and obtained the return of the jewellery and that the finding to the contrary was absolutely unjustified. He further

contended that the defendant who was expected to maintain the necessary records and books of account, had not produced his books, that D. W.

1 while he gave evidence on the forenoon of 11th February, 1974, undertook to produce the account books after lunch and that when he was

examined after lunch, he pleaded that the books had been filed before the Income Tax authorities. It was, therefore, stated that the defendant

having withheld the production of the vital records could not be taken to have proved that the first plaintiff had paid back the amount and taken

return of the jewellery.

6. For the respondent Mr. Srivatsamani, the learned Counsel contended that on the basis of the exhibits the Court below had rightly drawn an

inference that the amount was paid by the first plaintiff and that the jewels were returned to him and that, therefore, the present suit was not

maintainable.

7. During the course of the arguments we called upon the respondent to produce be the account books, and time was granted for that purpose. He

has now produced a book called the pledge book marked as Exhibit R-3. No oral evidence was found necessary to be examined in this case for

the purpose of receiving Exhibit R-3 in evidence, as it was admitted by the learned Counsel for the appellants that this book could be taken to have

been maintained in the usual course of business.

8. Therefore, the first question that required to be examined was whether the amount due under the pledge had already been paid by the first

plaintiff during his life time and the relevant jewellery had been returned to him. On this aspect, while in the written statement it was stated that a

sum of Rs. 19,000 was paid by the first plaintiff on 17th September, 1970, in the reply to the suit notice issued by the defendant through his

Advocate it was stated that the sum of Rs. 19,000 was paid on 7th August, 1970 and that there was a receipt under receipt No. A-6673 for

having received the said sum. Thus, even as regards the date on which the first plaintiff was said to have paid the amount, there is a discrepancy

between the reply to the suit notice marked as Exhibit A-1 and the written statement. In C-5(a), which is the counter-foil of the receipt No. A-

6673 dated 7th August, 1970, there is a mention of receipt of a sum of Rs. 19,760 and not merely Rs. 19,000 as alleged in the reply notice and in

the written statement, though under different dates. In the pawn ticket issued to each and every pawnor, there is a statement at the back in printed

Tamil words running as follows:

9. This part of the counter-foil has been marked as Ex. O-4(3-e). It is after these words, there is a purported, signature of the first plaintiff marked

as Ex. C-4(C). The signature of the first plaintiff is disputed. If really there was any representation that the pawn ticket was lost and if there was a

payment on another date, one would have expected the endorsement containing the date as well as the additional payment to discharge the amount

due under the transaction on the ticket counterfoil itself. There is absolutely no date under the purported signature. While there is an endorsement

for the receipt of Rs. 11,000 on 26th April, 1970, there is absolutely no endorsement on the duplicate in Ex. C-4 as regards the alleged payment

of Rs. 19,000. It is not clear from Ex. C-4 itself whether any amount was paid subsequent to the initial admitted payment of Rs. 11,000.

10. It is in this context that we have to scrutinise the entries in Ex. B-3. Column No. 1 of gives the number of the pledge as 6685 in the present

case. There is no dispute about it. The name and address of the pawner is given in column 2 and the date of loan, the amount of principal loan and

the rate of interest are all given in columns 2 to 5. Running across columns 3 to 6 there is a narration of the payment of Rs. 11,000 on 26th April,

1970. It is below that narration (here is recording of a receipt of Rs. 19,760. There is an erasure in the entry made after the erasure. There is no

mention of any date in columns 2 to 5, as regards the receipt of Rs. 19,760. This is in contrast to the recording of the receipt of Rs. 11,000 where

the date is given as 26th April, 1970. In the entry relating to the receipt of Rs. 11,000 there is a narration of interest for one month having been

paid, while in respect of the sum of Rs. 19,760 there is no such narration. In column 7 there is a description of the articles pledged and in column 8

their value. Column 9 sets out the time for repayment as 18 months and in column 10 the date of repayment is shown as 7th August, 1970. Even

here, there is a correction and over-writing. Thus, Ex. B-3 itself contains internal evidence of the entry therein not having been recorded in the

normal course.

11. Section 10 of the Tamil Nadu Pawn Brokers Act, 1943, provides for the Pawn

Broker keeping a pledge book and other records as specified

therein. It is true that Ex. B-3 is a register maintained as required by Section 10 read with Rule 7 and Form E. However, it is difficult to believe that

the defendant, who is carrying on business on such a large-scale as shown by Ex. C-1 relating to the present case did not maintain a cash book

and a ledger. However, it is unnecessary to pursue this point in the light of the suspicious nature of the entries in Ex. B-3 statutorily required to be

maintained by the defendant. Though there is oral evidence of D. W. 1 to the effect that the amount due under the pledge had been paid and the

jewels returned to the party we are unable to accept the oral evidence. There is absolutely no evidence to show that this book was ever produced

before the Income Tax authorities as stated by D. W. 1 in the witness-box. If it had been produced there would be the seal of the Income Tax

department on it. There is none. It would be unsafe to act on the evidence of a person, who is so unreliable as the defendant here. There is no

other independent and disinterested evidence to show that the amount due was paid either on 7th August, 1970. or on 17th September, 1970. It

has therefore to follow that the suit filed by the plaintiffs has to be decreed.

12. In the event of the jewels not being available for return, the question that arises is as to what is the amount that has to be decreed. The learned

Counsel for the respondent submitted that the jewels had been shown as being of the value of Rs. 38,000 in Ex. C-4 and that the first plaintiff

would only be entitled to that amount subject to any adjustment of the amount due to the defendant. It is in this connection that a decision of the

Supreme Court in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, , has been cited by Mr. A. K. Sreeraman, the learned

Counsel for the appellants. That was a case in which the two trucks had been hired by the Union of India. After the agreement was terminated, the

owner of the vehicles was intimated that he could, remove the trucks. However, when the owner went for getting the return, the trucks were not

delivered to him, nor were the hire charges paid. He, therefore, came forward with a suit. But the question relevant for our purpose debated in that

case was as to the value of the vehicles, which had not been returned by the Union of India. In that case while in the suit notice the owner had

claimed only a sum of Rs. 3,500 as the price of the two trucks, in the suit that

was filed, he valued the trucks at Rs. 14,000. The question was whether he was entitled to the higher value claimed by him. In para-graph 50 their Lordships observed as follows:

It follows from the above suit the position in law in regard to be measure of damages in an action for wrongful conversion is far from clear and the law in regard to the same cannot be said to be perfectly well-settled. Whatever be the position in regard to the same in action for wrongful conversion, one thing is quite clear that in actions for wrongful detention the measure of damages can only be the value of the goods as at the date of the verdict or judgment. The tort is complete the moment the goods are wrongfully converted by the defendant and no question can arise in these cases of any continuing wrong. In a case of wrongful detention, however, the cause of action may certainly arise the moment there is a refusal by the defendant to re-deliver the goods on demand made by the plaintiff in that behalf. But even though the cause of action thus arises on a refusal to re-deliver the said goods to the plaintiff the wrongful detention of the goods is a continuing wrong and the wrongful detention continues right upto the time when the defendant re-delivers the goods either of his own volition or under compulsion of a decree of the Court. There is moreover this distinction between actions for wrongful conversion and those for wrongful detention that in the former the plaintiff abandons his title to the goods and claims damages from the defendant on the basis that the goods have been wrongfully converted by the defendant either to his own use or have been wrongfully dealt with by him. In the latter case, however, the plaintiff asserts his title to the goods all the time and sues the defendant for specific delivery of the chattel or for re delivery of the goods bailed to him on the basis that he has a title in these goods. The claim for the redelivery of the goods by the defendant to him is based on his title in these goods not only at the time when the action is filed but right upto the period when the same are re-delivered by the defendant to him. The wrongful detention thus being a tort which continues all the time until the re-delivery of the goods by the defendant to the plaintiff the only verdict or judgment which the Court can give in actions for wrongful detention is that the defendant do deliver to the plaintiff the goods thus wrongfully detained by him or pay in the alternative the value thereof which can only be

ascertained as on the date of the verdict or judgment in favour of the plaintiff.

13. Again, in paragraph 52 their Lordships observed as follows:

It is, therefore, clear that in actions for wrongful detention the plaintiff is entitled on default of the defendant in-re-delivering the goods to him, to

payment in the alternative of the value of the goods thus wrongfully detained as at the date of the verdict or judgment, in other words, at the date of

the decree. We are, therefore, of opinion that the appellants were entitled to recover from the respondent the value of the said trucks which, as has

been already stated, was Rs. 7,000 in the alternative on default committed by the respondent in redelivery of the same to the appellants.

Thus, it is the date of the judgment or decree that would be the relevant date. In the present case the decree was passed on 27th February, 1974,

and the plaintiffs would be entitled to the value of the jewellery as on that date. In case any question of court fees arises, the plaintiff would have to

pay the same on the value of the goods as on the date of the decree.

14. The learned Counsel for the appellants stated that the value has to be ascertained as on the present date. In other words, he contended that the

date of decree would be the date of decree passed by us in the appeal. The delay in the disposal of the appeal not being due to the fault of either

of the parties, the present value cannot be taken. In the case before the Supreme Court the trial Court passed a decree on 7th July, 1944, the High

Court disposed of the appeal on 7th April, 1948 and the Supreme Court on 29th October, 1957- It is the valuation as on the date of the decree of

the trial Court that was adopted in that case and the same basis should follow here.

15. The result is that the appeal is allowed with costs.

16. This appeal having been set down this day for being spoken to pursuant to the letter of the Advocate for the appellant dated 1st March, 1980,

the Court delivered the following observation:

G. Ramanujam, J.

This matter has been posted before us for being spoken to. After hearing the learned Counsel for the appellant, we are of the view that there is no

necessity to modify the direction regarding the valuation of the jewels.