

(1956) 09 KAR CK 0001

In the Karnataka High Court

Case No : Civil Revision Petition No. 426 of 1954

Samaraj

APPELLANT

Vs

Kuppuswamy

RESPONDENT

Date of Decision : 05-09-1956

Acts Referred:

Contract Act, 1872 — Section 148, 151

Citation : AIR 1957 Kar 55 : (1956) ILR (Kar) 281

Hon'ble Judges : Padmanabhiah, J

Bench : Single Bench

Advocate : C. Sharada, for N.K. Gopaliengar, for the Appellant; E.V. Mathew, for the Respondent

Judgement

1. This is a revision petition preferred by the petitioner-plaintiff against the judgment of the learned Subordinate Judge, Civil Station, Bangalore, in S. C. No. 52 of 52-53 dismissing his suit filed against the respondent.

2. The facts that have given rise to this petition are briefly as under:

3. The petitioner was the plaintiff and the respondent the defendant in the lower Court. The plaintiff is a Cycle Shop owner having his place of business in Cavalry Road, Civil Station, Bangalore. The defendant is a merchant residing in the same area. On 3-12-51 the defendant hired from the plaintiff a Hercules Bicycle bearing No. 9. 6956 with other accessories attached to it. The defendant took delivery of the bicycle but he failed to return the same or to pay the hire. When demanded the defendant said that he had lost the bicycle whereupon the plaintiff filed the present suit claiming in all Rs. 390/- towards the price of the bicycle and the hire due to the plaintiff from 8-12-51 up to the date of suit.

4. The defendant admitted having hired the bicycle from the plaintiff but he contended that after having taken the bicycle he went to the Court leaving the bicycle in the Cycle stand in the custody of the Contractor in charge of the stand that after returning he found the cycle missing and could not trace it in spite of

serious attempts in that behalf, that he took all the care that a prudent man would take under the circumstances and that he cannot be held liable for the value of the bicycle. He further contended that the loss of the bicycle was due to circumstances beyond his control, that the value claimed in the suit was excessive and that the suit was liable to be dismissed.

5. In reply the plaintiff stated that he does not admit the defendant having left the cycle in the stand and of his having lost it and that even if those allegations were true, the defendant could not be exonerated from his liability to account to the plaintiff for the loss of the bicycle.

The learned Subordinate Judge held that the liability of the defendant was that of a bailee u/s 151 of the Contract Act, that the defendant had taken such care as any prudent man would take in respect of the bicycle, that the loss was due to causes beyond the control of the defendant and that he was not liable for the claim, and he accordingly dismissed the plaintiff's suit. As against that decision, this revision petition is filed.

6. I agree with the finding of the learned Judge that the liability of the defendant was that of a bailee u/s 151 of the Contract Act. A "Bailment" is defined u/s 148 of the Contract Act as

"the delivery of goods by one person to another for some purpose upon a contract that they shall when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them."

In this case, the cycle was hired to the defendant by the plaintiff for the specified purpose of defendant's use for a few hours and then to be returned to the plaintiff. But I am not in agreement with the finding of the learned Judge that the defendant had taken such care of the bicycle as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same nature and value. It is only when the "care" as contemplated u/s 151 of the Contract Act is taken that a bailee will be exonerated from all liability for loss, destruction or deterioration of the thing bailed u/s 152 of the Contract Act.

Under Section 151, the standard of care or diligence required of a bailee is no doubt, that of an average prudent man in respect of his own goods of the same bulk and value in similar circumstances, but no hard and fast rule can be laid down for fixing the measure of care due from the bailee, and that should invariably depend upon the facts of each case.

7. Now the point to be considered is whether the defendant took as much care of the bicycle as a man of ordinary prudence would under similar circumstances take of his own goods. In this particular case what the defendant did was to leave the bicycle in the cycle stand provided near the courts in charge of the Contractor there. It is admitted that the Stand is situated in an open space which is accessible to one and all and that hundreds of bicycles will be parked there.

It may be that most of the persons leave their bicycles to the care of the

contractor in the stand as has been done by this defendant. But in my opinion this is not the care that is expected of an ordinary prudent man in dealing with an article like the one on hand i.e. a bicycle.

Leaving a bicycle in such an open yard in charge of an individual like the contractor who in his turn had left the stand in charge of two boys, without even taking the elementary care of locking the bicycle, and keeping the bicycle in the Stand for nearly four hours as in this case (from 11 A. M. to 3 P. M.) does not amount to the "care" that is prescribed by Section 151 of the Contract Act.

The fact that many others act in the same way as the defendant has done, cannot bring the "care" taken by the defendant within the meaning of "care" prescribed u/s 151 of the Contract Act. Leaving a bicycle in the stand under the circumstances stated above always involves a risk to the knowledge of the person keeping it there which risk a bailee is not expected to take with respect to the articles bailed. The defendant was, therefore, in my opinion, guilty of negligence in leaving the bicycle in the stand under the circumstances mentioned above. Hence I hold that the defendant did not take the "care" prescribed u/s 151 of the Contract Act in respect of the bicycle bailed to him by the plaintiff and that he is liable for the value of the said bicycle.

8. There is another aspect which deserves to be considered. It need hardly be stated that the burden of proof of showing that the bicycle hired from the plaintiff was lost, was on the defendant and this burden has not been discharged.

It was contended by the learned counsel for the defendant that the loss of the bicycle is not disputed by the plaintiff. This is not a correct statement. Both in the plaint and in the reply statement the plaintiff has stated that he does not know about the loss of the bicycle pleaded by the defendant. That is a fact which was purely within the knowledge of the defendant, and the plaintiff cannot be expected to know which bicycle was lost and under what circumstances.

In the plaint the plaintiff has given the name and number of the bicycle hired as "Hercules" bearing No. J 6956 and this is admitted by the defendant. The defendant has not proved that this was the bicycle that he left in the cycle stand and that it was this bicycle that was lost. Exhibit III is said to be the token given by the Contractor to the defendant for having taken custody of the bicycle.

That token does not give the number or any other particulars of the bicycle. Therefore, in my opinion, the identity of the bicycle that was left by the defendant has not been established as the one which the defendant hired from the plaintiff in any view of the case, I think that the plaintiff is entitled to succeed.

9. It may not be necessary in this case to decide the responsibility of the Contractor of the Cycle Stand or the relationship that is created between the contractor and the defendant or the nature of the liability that the Contractor has incurred towards the defendant. As admitted by the defendant, the loss of the bicycle was due to the negligence of the Contractor.

It is open to the defendant to take such steps as may be necessary against the contractor if so advised. We cannot find fault with the plaintiff for not impleading the contractor in this suit Inasmuch as there is no privity of contract between the two.

10. Exhibit A is the bill showing the value of the bicycle in question. That the bicycle was fixed with a dynamo light is not disputed. What the defendant has stated is that the value of the cycle and its accessories has purposely been exaggerated. Except this bare statement there is nothing to show that it was so. The Cycle that was purchased by the plaintiff on 19-1-1951 has been lost a few months later and it cannot be said that the claim is exorbitant or excessive.

I think that the plaintiff is entitled to the value of the bicycle as found in Ext. A and to the value of the dynamo which is put as Rs. 30/- odd in the plaint. The plaintiff will have a decree for Rs. 306-3-6 as claimed in the plaint towards the value of the bicycle and the dynamo lamp. Inasmuch as the plaintiff gets a decree for the value of the bicycle, he is not entitled to the amount claimed in the plaint by way of hire.

12. In the result, this petition is allowed and the judgment and decree of the learned subordinate Judge are reversed and the plaintiff's suit stands decreed for Rs. 306-3-6 with proportionate costs and current interest at the rate of 6% per annum on the above sum from the date of suit Up to the date of realisation.

13. Petition allowed.