
(2018) 03 BOM CK 0108
In the Bombay High Court
Case No : Second Appeal No. 400 of 2004

SHRI CHINTAMAN WANGNUJI KORE GONDIA.	APPELLANT
Vs	
STATE OF MAH & 2 OTHERS.	RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

Indian Forest Act, 1927 — Section 26 (f), 43
Civil Procedure Code, 1908 — Section 80

Citation : (2018) 03 BOM CK 0108

Hon'ble Judges : A.S. CHANDURKAR, J

Bench : Single Bench

Advocate : K. V. Kotwal, . G. R. Tiwari

Judgement

A.S. CHANDURKAR, J.

1.The appellant is the unsuccessful plaintiff whose suit for compensation caused on account of his property valued at Rs.74,550/- having decayed

while in the custody of the defendants has filed this Second Appeal as the trial Court has dismissed the suit filed by him and the appellate Court has

confirmed that judgment.

2.It is the case of the plaintiff that in the year 1979 he had purchased some teakwood from the Forest Department as well as some villagers. The

teakwood was thereafter stored in his house. On 13th July, 1991, the Range Forest Officer took a search of the plaintiff's house and seized all the

teakwood along with instruments that were sa400.04 used for preparing wooden furniture. The plaintiff along with two others was prosecuted for

having committed offence punishable under Section 26 (f) of the Indian Forest Act, 1927 [for short, ""the said Act""]. The learned Judicial Magistrate

First Class by order dated 7 th September, 1996 discharged the plaintiff, but

directed seizure of the confiscated teakwood. The plaintiff being aggrieved by the order of seizure filed a Revision Application and the learned Sessions Judge on 1st August, 1997 allowed that Revision Application and directed the seized teakwood to be returned to the plaintiff. After receiving the certified copies, the plaintiff demanded the said teakwood from the defendant no.3. On 3rd April, 1998, the plaintiff went to the forest depot for receiving back the said teakwood. He, however, found that the teakwood was decayed and had become useless. The plaintiff, therefore, refused to receive back the teakwood. He, however, received back the instruments used for preparing the furniture. The plaintiff, therefore, issued a notice on 29 th September, 1999 and demanded an amount of Rs.87,050/- towards compensation. As this notice was not complied, the plaintiff filed a suit for seeking compensation.

3.In the Written Statement filed by the defendants, a stand was taken that though the plaintiff was offered the seized teakwood, he had refused to receive back the same. The teakwood was kept in a proper and safe custody and it was denied that the same had lost its value. It was, therefore, prayed that the suit was liable to be dismissed.

4.The plaintiff examined himself and his witnesses. The defendant examined one witness. After considering that that evidence, the trial Court found that the defendants were not responsible for any damage alleged to have been caused to the seized property. It was, in fact, the liability of the plaintiff to protect his seized property. On that count, the suit came to be dismissed. The appellate Court recorded a finding that the seized teakwood was, in fact, damaged by nature, but in view of provisions of Section 43 of the said Act, it was not open for the plaintiff to claim damages from the defendants. The appeal, therefore, came to be dismissed. Being aggrieved, the Second Appeal has been filed.

5.Following substantial question of law was framed while admitting the Second Appeal:-

Whether the respondents were negligent in storing Sawn wood seized from the appellant, and therefore were not entitled to protection of Section 43 of the Indian Forest Act?

6.Shri K. V. Kotwal, learned counsel for the appellant - original plaintiff, submitted that the plaintiff was admittedly the owner of the seized teakwood.

This aspect was considered in the criminal proceedings which had ended in the acquittal of the plaintiff. The Sessions Court had, in fact, directed

return of the seized woods to the plaintiff as the plaintiff was its owner. Those orders had attained finality. It was submitted that both the Courts

wrongly held that in view of provisions of Section 43 of the said Act, the defendants were not liable for the damage caused to the seized goods. After

the teakwood was seized, it was in the custody of the defendants at their depot. Even under Section 43 of the said Act, if any loss or damage is

caused to the seized goods kept at the depot on account of any negligent act, the liability of the Government and the Forest Officers was not excluded.

The appellate Court having found that the teakwood was damaged as it was kept in the open, it ought to have compensated the plaintiff for the value

of the teakwood. The plaintiff was, in fact, justified in not accepting the damaged teakwood as it was of no value. In support of his submissions, the

learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in N. Nagendra Rao & Co. Vs. State of A. P. [(1994) 6 SCC 205]

and prayed for decreeing the suit.

7.Ms. Geeta Tiwari, learned Asstt. Govt. Pleader for the respondents, supported the impugned judgments. It was urged that the negligence on the part

of the defendants had not been proved and therefore, in view of the provisions of Section 43 of the said Act, the defendants could not be held liable to

satisfy the claim of the plaintiff. Both the Courts had recorded a finding in that regard and therefore, no interference was called for in the Second

Appeal. The learned counsel placed reliance on the decision in The State of Jharkand Vs. Binod Kumar Saria [2007 (3) JCR 503] and sought

dismissal of the appeal.

8.I have heard the learned counsel for the parties at length and with their assistance, I have perused the records of the case.

9.The evidence on record led by the parties indicates the following :-

[a]The plaintiff along with two others were charged by the Range Forest Officer for being in possession of teakwood under Section 23 read with

Section 34 of the said Act. Criminal Case No. 230 of 1992 was decided by the learned Judicial Magistrate First Class on 7th September, 1996 in

which the plaintiff was discharged. However, the teakwood seized was directed to be auctioned and the sale proceeds were to be confiscated by the

State Government [Exh.21].

[b]The plaintiff being aggrieved by that part of the order directing seizure of the teakwood and putting it to auction had filed Criminal Revision No. 1 of

1997. The learned Additional Sessions Judge, Bhandara, by judgment dated 1st August, 1997 [Exh.19] allowed that Revision Application and directed

the teakwood to be returned to the plaintiff.

[c]On 23rd March, 1998 [Exh.20], the plaintiff was informed to go to the Forest Depot and collect the teakwood as per the orders passed. As per the

deposition of Witness No.1 [Exh.23] examined by the defendants, the plaintiff had visited the Dongargaon Depot on 3rd April, 1998 pursuant to the

aforesaid letter. The custody of the articles at Sr. Nos. 1 to 16 was taken by the plaintiff. The teakwood at Sr. Nos. 17 and 18 was not accepted on

the ground that same had decayed.

[d]On 29th September, 1999 [Exh.18], a legal notice under Section 80 of the Civil Procedure Code, 1908 was issued to the defendants and the same

was duly served [Exh.16].

10.It is, therefore, an admitted position on record that the plaintiff was held entitled to return of the seized items from the defendants. While Item Nos.

1 to 16 were accepted by the plaintiff as said items in good condition, the teakwood at Sr. Nos. 17 and 18 totally comprising eighteen units was not

accepted as it had become valueless. The plaintiff in his deposition at Exh.14 has stated that the teakwood was kept in an open area and was in

contact with nature, namely air and rain, and therefore, it had decayed. In the cross- examination of the witness examined by the defendants, this fact

has been admitted by stating that as per the practice of the forest depot, the seized property was kept in open space. This fact is reiterated by the

plaintiff's witness no.2 [Exh.21], whose bullock cart had been taken on hire for bringing back the seized articles. It is also pertinent to note that the

first appellate Court in paragraph 11 of its judgment has recorded a finding that the seized teakwood was, in fact, damaged by nature. It is, thus, clear

that Item Nos. 17 and 18 being eighteen units of teakwood which the plaintiff was entitled to receive back were sa400.04 decayed and were, thus, not

taken back by the plaintiff.

11.Under provisions of Section 43 of the said Act, which reads as under:-

43. Government and Forest Officers not liable for damage to forest-produce at depot.- The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other fore-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently."", a Forest Officer would not be responsible for any loss or damage caused when such forest produce is kept at the depot except when such loss or damage is caused negligently, maliciously or fraudulently.

In the present case, the plaintiff seeks damages on the count that on account of the negligence on the part of the defendants the teakwood to which he was entitled has been damaged/decayed. It cannot be disputed that after the forest-produce was seized by the Authorities in the year 1991, it was the responsibility as well as the liability of the defendant no.3 to take care of the same. On account of the said teakwood being kept in the open for more than seven years, it got decayed as it was in contact with nature. The material on record is, thus, sufficient to come to the conclusion that the defendants were negligent in taking care of the forest-produce when it was within their custody pursuant to the seizure. In the light of provisions of Section 43 of the said Act, it is held that the defendants would be liable for damages on account of the loss caused due to their negligent act in taking care of the seized teakwood.

12.The learned counsel for the plaintiff is justified in relying upon the observations of the Hon'ble Supreme Court in N. Nagendra Rao & Co. [supra] as made in paragraphs 30 and 31 of the said judgment. It was observed that if the commodity seized by the Authorities subsequently became useless due to negligence of the officers concerned in taking care of the same, it ceased to be an essential commodity and the owner was well within his rights to seek the price thereof as if the essential commodity had been sold to the Government. According to the plaintiff, the teakwood seized was valued at Rs.69,000-00. He, therefore, claimed compensation to the tune of Rs.74,550/-which amount included the charges of making eighteen benches and Rs.1950/- towards the cost of one teak box. It is an admitted position on record that the plaintiff could not produce the receipt indicating

purchase of the teakwood. The amount of damages to which the plaintiff has been held entitled to claim would, therefore, have to be determined. In

that regard, useful reference can be made to the judgment of the Hon'ble Supreme Court in Vohra Sadikbhai Rajakbhai & others Vs. State of Gujarat

& others [(2016) 12 SCC 1]. In that case, the plaintiffs sought to claim damages from the defendants on account of the gross negligence in not

maintaining a particular level of the water in the dam. As a result, about 1500 Boar trees were were uprooted and washed away. The plaintiffs,

however, did not lead any specific evidence to show actual cost of each tree to arrive at the precise quantum of damages. In that context, it was

observed by the Hon'ble Supreme Court that even in the absence of evidence showing exact loss suffered, the plaintiffs would still be entitled to

reasonable compensation when the factum of suffering loss stands proved. It was observed that where a wrong has been committed, a wrongdoer

must suffer from the impossibility of accurately ascertaining the amount of damages.

13. Though the plaintiff has valued the teakwood at Rs.69,000- 00 and has thereafter claimed total damages to the tune of Rs.74,550- 00, I find that in

the light of the evidence on record, coupled with the fact that the seizure of the teakwood was effected on 13th July, 1991, the plaintiff would be

entitled to reasonable compensation of Rs.60,000-00 [rupees sixty thousand only] from the defendants. In the facts of the case and in exercise of

discretion under Section 34 of the Code of Civil Procedure, 1908, the plaintiff would be entitled to receive the aforesaid amount with interest at the

rate of six per cent per annum from the date of filing of the suit till realization. This is by treating the decree as one for payment of money as held in

Union of India Vs. A. Venkataiah [AIR 1975 Madras 119].

14. In view of aforesaid adjudication, the substantial question of law as framed is answered by holding that the defendants were negligent in storing the

teakwood seized from the plaintiff and were, therefore, not entitled to seek protection under Section 43 of the said Act.

15. The Second Appeal is, thus, allowed in aforesaid terms, leaving the parties to bear their own costs.