
(1934) 07 PAT CK 0023
In the Patna High Court

Sitaram Syam Narain

APPELLANT

Vs

Iswari Charan Sarangi and Others

RESPONDENT

Date of Decision : 05-07-1934

Acts Referred:

Evidence Act, 1872 — Section 103

Citation : AIR 1934 Patna 492 : 151 Ind. Cas. 942

Hon'ble Judges : Courtney Terrell, C.J;Agarwala, J

Bench : Division Bench

Judgement

Courtney-Terrell, C. J.

1. This is a Letters Patent appeal from a decision of a learned Judge of this Court sitting singly, affirming the judgment of the lower Appellate Court in second appeal dismissing the plaintiff's suit for conversion.

2. The plaintiff has a monopoly license for collecting Kendu leaves in a certain part of the Chaibassa forest. The defendants who do not enjoy any such license are proprietors of the village Sarashposh which is on the edge of the forest. The plaintiff employs labourers to gather the leaves and deliver them to his depot and in the course of their journey to the depot they have to pass this village Sarashposh-owned by the defendants. The finding of fact is that the defendants purchased from the labourers leaves which were the property of the plaintiff. They were subsequently found by the Forest Department to be in possession of some 50,000 bundles of leaves. As to these leaves, the case of the defendants was that they were all gathered from plants growing in their own neighbourhood. The Subordinate Judge in his finding of fact by which we are bound has found that some portion of the 50,000 bundles of leaves were those obtained by the defendants wrongfully from the plaintiff's own part of the forest and were not, as the defendants state gathered from plants growing in their own village. The defendants after such finding made no attempt to show what portion of the 50,000 bundles were their own and what portion belonged to the plaintiff. The learned Subordinate Judge in those circumstances thought that as there was no

definite evidence as to what proportion of the 50,000 bundles was in fact the property of the plaintiff, came to the conclusion that it was his duty to dismiss the suit although he had specifically found that part of the leaves in suit was the property of the plaintiff.

3. The plaintiff came in second appeal before a learned Judge of this Court and he by some accident, possibly by a confusion of the mind caused by the argument raised by the defendants, failed to notice that finding of fact by the learned Subordinate Judge notwithstanding that he quite correctly appreciated the law which was applicable to the circumstances which were found in fact by the Subordinate Judge. The law is well established both by the Common Law and by the Evidence Act. So long ago as the time of Sir. Edward Coke, C. J., the law was well settled. In *Warde v. Aeyre* (1861) 2 Bul 323 : 80 E R 1107. Lord Coke stated the law as follows:

In this case the law is, that if J. S have a heap of come, and J. D. will intermingle his come with the come of J. S. he shall here have all the come, because this was so done by J. D. of his own wrong.

4. And by the Evidence Act, s. 103 it is provided:

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

5. Here it was within the knowledge of the defendants as to what proportion of the 50,000 bundles of Kendu leaves was the property of the plaintiff and what proportion was the property of the defendants and he being a wrong-doer the burden of proving that proportion lay upon him and that burden he made no effort to discharge. In those circumstances the law as stated by Lord Coke is applicable and it must be presumed as against the defendant that the whole of the 50,000 bundles was the property of the plaintiff and must be taken as the measure of the plaintiff's loss. The defendant attempted to show in the course of the cause that the value of the 50,000 bundles of Kendu leaves was in the neighbourhood of Re. 1,600. The plaintiff on the other hand has valued those bundles in his plaint at the rate of Rs. 500 and has sought to recover that sum only and to that sum he is entitled with costs throughout. It is clear that the learned Judge who decided this case was not aware of the finding of fact by the learned Subordinate Judge, for his attention was only directed to the concluding portion of the judgment which was an erroneous conclusion of law.

6. The result is that the appeal, in my opinion, should be allowed and the plaintiff's suit decreed for the sum of Rs. 500 with interest at 6 per cent, per annum from the date of suit till the date of realisation and costs throughout.

Agarwala, J.

7. I agree.