

(1961) 08 MAD CK 0011
In the Madras High Court
Case No : Appeal No. 34 of 1957

Sri Narasimhaswami, Namagiri Amman and Sri
Ranganathaswami Temples

APPELLANT

Vs

Muthukrishna Iyengar

RESPONDENT

Date of Decision : 24-08-1961

Acts Referred:

Contract Act, 1872 — Section 148

Citation : AIR 1962 Mad 244 : (1962) 75 LW 220

Hon'ble Judges : Kailasam, J; Jagadisan, J

Bench : Division Bench

Judgement

Jagadisan, J.

(1) This is an appeal by the plaintiff, Sri Narasimhaswami Namagiri Amman and Sri Ranganathaswami temples Namakkal by its executive officer in

O. S. No. 147 of 1954 on the file of the Sub Court, Salem, against the judgment and decree dismissing the suit. Valuable good ornaments and

jewels entrusted to the defendant, an archaka of the temple, for decorating and adorning the Goddess were lost and the suit was laid for the

recovery of a sum of Rs. 8450, the value of the lost jewels from the defendant. The plaintiff charged the defendant with having misappropriated the

jewels or in the alternative having failed to exercise due diligence and reasonable care in keeping the jewels safe.

But the defendant denied the charges and contended that he should not be made liable for the return of the jewels or their value. The temple lost

the jewels on 9-10-1951 and the suit was instituted on 30-9-1954. The defendant raised a plea of limitation which was negatived by the learned

Subordinate Judge quite rightly. The only vital issue tried by the learned

Subordinate Judge was,

Whether the plaint mentioned jewels were lost owing to the negligence of the defendant or want of care and conduct of the defendant.

On this issue the finding of the trial court was that the plaint mentioned jewels were not lost due to the negligence or want of care or conduct of the defendant.

(2) In the course of the hearing of this appeal we framed an additional issue

Whether the defendant committed theft or misappropriation of the plaint mentioned jewels as charged by the plaintiff.

and directed the trial court to try the issue after giving opportunities to both sides to let in fresh evidence. The trial Court tried this additional issue

and has now submitted a finding that the defendant has committed theft of the jewels and has misappropriated them. The respondent has filed a

memorandum of objections to these findings.

(3) During the trial of the additional issue P.W. 4 was recalled and examined and on behalf of the defendant D. Ws. 3 and 4 have been examined

as fresh witnesses. The only question that arises for consideration now is whether the defendant is liable to make good to the plaintiff the value of

lost jewels belonging to the deity.

(4) The defendant was an archaka employed by the temple to do puja at the shrines of Sri Narasimhaswami Namagiri Amman and Sri

Ranganathaswami. He has his turn of puja service to the Goddess between the dates 7-10-1951 and 11-10-1951 both days inclusive. It is quite

clear that every archaka during the turn of his puja service is entrusted with the jewels belonging to the deity to be kept by him in safe custody to

be used by him for decorating the deity and to be returned to the temple authorities on the expiry of his turn duty. The defendant had executed an

agreement in favour of the temple. Ex. A-8 dated 15-12-1947 accepting due responsibility for return to such jewels as may happen to be

entrusted to him at the time of his service. Ex. A-3 is the register to jewels in which the defendant signed on 7-10-1951 in token of his having

obtained custody of the jewels mentioned therein. The list of jewels of Sri Namagiri Amman is Ex. A-5 pages 1 to 3 of Ex. A-3. Admittedly the

defendant were entrusted with these items of jewels belonging to the deity on 7-10-1951 when his turn of puja commenced.

It is also now admitted by the defendant that on the morning of 9-10-1951 which was the Ayuthapuja day one Prasanna Rao of Kattuputtur

presented a gold ""Kasumalai"" weighing 24 1/2 sovereigns and that he got the jewel from Prasanna Rao and decked the deity with it. On these

admitted facts there was a contract of bailment between the temple and the defendant and the defendant was the bailee in respect of the entrusted

jewels. Sec. 148 of the Indian Contract Act defines ""bailment"" as follows :

A bailment is 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. The person delivering the goods is called the bailor.

The person to whom they are delivered is called the bailee.

(5) On the morning of 10-10-1951 it was discovered that the gold ornaments belonging to the deity which were in existence on 9-10-1951 and

which adorned the deity on that date were missing. Information was given to the Inspector of Police, Namakkal, and Ex. A-14 dated 10-10-1951

is the copy of the first information report. The police investigated the matter interrogated the defendant, kept him under custody for a long period,

but ultimately failed to trace the jewels or detect the thief. The police submitted the usual report that the case was undetected.

(6) The circumstances under which the jewels were lost to the temple are indeed mysterious. As to the events that happened on 9-10-1951 and on

10-10-1951 there is only the oral evidence of the witnesses on either side Ex. A-2 is the plan of the temple. Both the Shrines that of Sri

Ranganatha and Sri Narasimhaswami are situated in the fort area of Namakkal. There is a compound wall 15" high on all the four sides of the

shrines. The main entrance to the shrines faces west. There is a big front entrance with massive doors of 9"" thickness. Between the compound wall

and the walls of Sri Namagiriamman shrine there is an open space. The shrine has got the usual mahamandapam, then the arthamandapam and then

the garbhagraham, the sanctum sanctorum of the deity. There is an entrance leading to the arthamandapam from the mahamandapam, and there are

two entrances leading to the garbhagraham from the arthamandapam. There are no doors for the garbhagraham as such where the idol of Sri

Namagiriamman is installed. All the three sets of doors the one from the

Mahamandapam to the Arthamandapam and the two from the arthamandapam to the garbhagraham are provided with locks and there is also a chain going round the doors, the chain being fastened with a lock at the bottom of the doors. The door between the mahamandapam and arthamandapam is locked with the key of the devastanam but the custody of the key is always with the archaka. The two doors leading from the arthamandapam to the garbhagraham are always bolted by locks of the archaka himself and of course he has the keys of those locks. These facts are not in dispute.

(After discussing the evidence in the case their Lordships proceeded).

* * *

(7) On the evidence on record which has been discussed above, it is reasonable to infer either that the defendant was negligent in the discharge of his duties in the matter of safe custody of the jewels or that the defendant himself misappropriated the jewels by taking them away from the deity on the night of 9-10-1951 when he returned home for the day.

(8) The position of the defendant as a bailee within the definition of the term under S. 148 of the Contract Act cannot be and has not been disputed. It is unnecessary to discuss the question whether the defendant was a gratuitous bailee or a bailee for reward or hire as the provisions of

the Indian Contract Act do not make a distinction between the two kinds of bailees in regard to their duty to take care of the goods bailed.

The English law draws a distinction between a gratuitous bailee and a bailee for reward or hire in the matter of the degree of care to be taken by

the bailee to avoid liability for loss or damages. A bailee for reward is bound to use ordinary care of a reasonable man and his failure to use such

care is deemed to be negligence. But an involuntary or gratuitous bailee who is said to have a naked bailment of goods entrusted is liable for loss

arising only out of gross neglect, fraud or breach of directions. Even in cases of gratuitous bailee, distinction was made between mandate and deposit,

the former requiring the duty to use reasonable care and the latter casting a liability only for gross neglect. The trend in English decisions as

developed in recent years seems to hold that the duty of a gratuitous bailee is to take ordinary care of a reasonable prudent man whether in

mandate or deposit. In *Elvin and Powell Ltd v. Plummer Roddis Ltd.* (1934) 50

TLR 158, Hawkes, J, said :

If persons are voluntary bailees and had done everything reasonable they were not liable to pay damages if something which they did resulted in the loss of the property.

See also *Blount v. War Office*, 1931WLR 736.

Section 151 of the Contract Act covers all cases of bailment and is as follows :

In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar

circumstances, take of his own goods or the same bulk, quality and value as the goods bailed.

Once the contract of bailment is proved and there is the entrustment of the goods with the bailed the loss of the subject matter of the bailment is

itself prima facie evidence of the negligence of the bailee. In order to escape liability for the loss occurred the onus to proof will be upon the bailee

to show that he had taken the necessary standard of care as imposed upon him by the statute. In Halsbury's Laws of England Vol. 2, 3rd Edn.,

page 117, the rule of law relating to onus to proof is thus enunciated :

When a chattel entrusted to a custodian is lost, injured, or destroyed, the onus of proof is on the custodian to show that the injury did not happen

in consequence of his neglect to use such care and diligence as a prudent or careful man would exercise in relation to his own property. If he

succeeds in showing this he is not bound to show how or when the loss or damage occurred. If a custodian declines either to produce the chattel

entrusted to him, when required to do so by the owner, or to explain how it has disappeared, the refusal amounts prima facie to evidence of breach

of duty on his part, and throws on him the onus of showing that he exercised due care in the custody of the chattel and in the selection of the

servants employed by him in the warehousing.

(9) In our judgment the defendant has failed to discharge the onus which was upon him to show that the loss occurred in spite of every reasonable

care which he as an ordinary prudent man took in keeping the jewels under safe custody. It seems to us that a loss by private stealth committed by

a person other than the bailee is not sufficient to rebut the presumption of negligence against the bailee on the happening of the loss. Chitty in his

text book on Contracts dealing with bailment at page 67 observes thus :

In the case of loss or damage to goods bailed, the onus is on the bailee to show that the loss or damage was not attributable to any lack of care

which by law is required of him; and as though robbery by force is considered to be irresistible, a loss by private stealth is said to be presumptive

evidence of ordinary neglect.

Reference is made to Jones on Bailments, pages 44, 76, 119 and to Giblin v. Mullen (1869) 2 PC 317.

(10) The temple jewels have been lost at a time when the defendant was properly in custody of them as bailee. We cannot relieve the defendant

from his liability to pay the value of the missing jewels as it is reasonably clear that either he was negligent in not taking the requisite amount of care,

caution and diligence, in the matter of the safe keeping of the jewels or he must have dishonestly appropriated the jewels for himself.

(11) The appeal is allowed; the judgment and decree of the court below are set aside. There will be a decree in favour of the plaintiff against the

defendant for recovery of a sum of Rs. 8450 with interest thereon at 6 per cent per annum from the date of the suit till the date of realisation.

Having regard to the fact that the plaintiff filed the suit in the year 1954, very nearly three years after the loss of the jewels the parties will bear their

respective costs both here and in the court below.

(12) Appeal allowed.