

Banshi Vs. Goverdhan

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Court : Madhya Pradesh

Decided On : Apr-01-1975

Reported in : AIR1976MP125

Judge : S.M.N. Raina, J.

Appeal No. : Second Appeal No. 487 of 1968

Appellant : Banshi

Respondent : Goverdhan

Advocate for Pet/Ap. : R.K. Pandey, Adv.

Disposition : Appeal partly allowed

Judgement :

S.M.N. Raina, J.

1. This is a second appeal by the plaintiff arising out of a suit for recovery of a sum of Rs 1,090/- as hire charges of a cycle,
2. The plaintiff rung a shop known as 'Durga Cycle Store at Pandariya, teh-sil Mungali, district Bilaspur. On 4-4-1961, the defendant took a cycle on hire from the plaintiff agreeing to pay hire charges at the rate of Re. 1/- per day.

The cycle was to be returned to the plaintiff by 27-7-1961. As the defendant failed to return the cycle, the plaintiff obtained a decree for Rs. 90/- on account of hirecharges in the Nyaya Panchayat.

3. The case of the plaintiff is that after the decision of the Nyaya Panchayat the defendant neither returned the cycle nor paid the hire charges to the plaintiff. On 1-4-1962, the plaintiff asked the defendant to pay the decretal amount and the hire charges. The defendant promised to pay the whole amount and agreed to keep the cycle with him on hire at the rate of Re. 1/- per day. As the defendant did not return the cycle and pay the hire charges, the plaintiff filed this suit claiming hire charges amounting to Rs. 1,090/- for the period from 30-3-1962 to 29-3-1965.

4. The defendant resisted the suit on the ground that he had returned the cycle to the plaintiff but as the frame of the cycle was broken the plaintiff refused to take back the cycle. The plaintiff returned the frame to the defendant asking him to get it repaired. The defendant got the frame repaired but the plaintiff refused to take it. He denied that he had entered into any agreement on 30-3-1962 for retaining the cycle on hire at the rate of Re. 1/- per day.

5. The trial Court decreed the claim in full, but in appeal the learned District Judge reversed the decree and dismissed the suit on the ground of limitation. Being aggrieved thereby the plaintiff has filed this appeal

6. At the hearing of this appeal none appeared for the respondent and, therefore, the appeal was heard ex parte.

7. Both the Courts below have disbelieved the defendant's version that the defendant had returned the cycle to the plaintiff; but as its frame was broken, the plaintiff returned the frame to the defendant for getting it repaired and he later on refused to take it after it was repaired. This is a finding of fact based on appreciation of evidence. Thus it has not been proved that the defendant had returned the cycle to the plaintiff.

8. The learned Additional District Judge has held that the plaintiff has failed to prove that the defendant entered into an oral agreement with the plaintiff on 1-4-

1962 and promised to keep the cycle on hire in future at the rate of Re. 1/-per day. This is also a finding of fact and cannot be challenged in second appeal. The only point for consideration is whether in view of this finding the entire claim of the plaintiff is liable to be dismissed as barred by limitation.

9. Shri R. K. Pandey, learned counsel for the plaintiff-appellant, urged that since the cycle has been detained by the defendant he is liable to pay damages for the use and occupation thereof even in the absence of any agreement to pay hire charges. There appears to be force in this contention. In fact, in a case like this the plaintiff should have brought an action in detinue. Detinue consists in wrongful detention of the possession of movable property, even though the original possession may be lawful. Thus a bailee is liable in detinue if he holds over, after the bailment is determined. In an action in detinue, the plaintiff is entitled to recover the movable property or its value, besides damages for detention. Detention, being a continuing wrong, the damages accrue from day to day and, therefore, the claim for damages for a period of three years before the date of the suit would be within time; but in assessing damages it is necessary to bear in mind that the object of awarding damages is to place the plaintiff in the same position, as far as possible, in which he would have been if the wrongful act had not been committed. Bearing this principle in mind, the plaintiff cannot claim damages exceeding the value of the property itself. In the absence of clear evidence on the point, the learned counsel for the appellant agreed that the value of the bicycle in question may be assessed at Rs. 300/-. I, therefore, hold that the plaintiff is entitled to damages to the extent of Rs. 300/-.

10. The appeal is thus partly allowed and the claim of the plaintiff is decreed to the extent of Rs. 300/- (Three Hundred) only with proportionate costs throughout.