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Broadening the Scope of Judicial Improvisation in Bailment

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I. INTRODUCTION

Bailment is an immensely vivid aspect of law as it is not entirely covered in just one subject of law. Essentially, bailment is delivery of goods but after much perusal one can say that it covers much more than mere delivery of goods. It is an amalgam of contract, property and tort law.² Since, in most cases bailment arose out of a valid contract, it was believed that contract was an essential pre-requisite for the creation of bailment and it could be seen in judgments like ‘R v Ashwell’ and ‘Banbury v Bank of Montreal’.³ Earlier, ‘consent’ and ‘contract’ were pre-requisites for a valid contract of bailment. Further, the bailor could earlier sue in detinue for wrongful detention.⁴ Bailment, as we see it today, was much less complex earlier as it had not developed completely. With the course of time, the concept of bailment grew deeper and wider. One aspect of bailment that is bailment without consent and contract developed and continues to develop ambiguously. It is this aspect that the paper is centered around.

II. MODERN DAY SCENARIO OF BAILMENT

In today’s time the concept of bailment has evolved and expanded relatively. The essence of bailment continues to be possession but the requirements of a contract and bailor’s consent are no longer necessary.⁵ The orthodox understanding of bailment through the lens of consent seems redundant today as it transcends its scope to cover cases where the goods are found by the bailee and where the goods are seized by the state.⁶ However, there is a great deal of ambiguity still attached to the concept of bailment as the Indian Contract Act does not have an explicit provision for seized goods. Furthermore, the Act is not exhaustive of contract law and is open to judicial improvisation. Since, there is no clear-cut framework, therefore, improvisation becomes rudderless.

¹ Author is a student at OP Jindal Global University, India.

² 2 Chitty, Chitty on Contracts 215 (31st ed. 2012)

³ 2 Chitty, Chitty on Contracts 216 (31st ed. 2012)

⁴ Stoljar, Samuel. "The Early History of Bailment." *The American Journal of Legal History* 1, no. 1 (1957): 5-34. doi:10.2307/844405.

⁵ 2 Chitty, Chitty on Contracts 216-217 (31st ed. 2012)

⁶ *ibid*

III. TRUSTS AND BAILMENT

One of the implications of an ambiguous structure is staggered application of concepts. Law of trusts is often overlapped with the law of bailment which leads to miscarriage of justice. A beneficiary of trust is only entitled to an equitable interest whereas a bailee is entitled to legal interest.⁷ An overlap of such distinct concepts serves to the detriment of the bailor. Additionally, a trustee has the legal title or ownership whereas the bailee only has possessory rights.⁸ It is a result of this fallacious understanding of title in bailment that courts are able to apply law of property to deny a bailor his/her legal rights. In the judgment of ‘Arjun Padhy v State of Orissa’ the court said that the general rule of returning the goods upon acquittal is subject to reasonable restrictions and no person can claim such goods as a matter of right.⁹ The said ratio in this case is erroneous because it overlooks the fact that bailment entails transfer of possession and not ownership. Such a transfer gives certain proprietary rights to the bailor and imposes obligations on the bailee to return the goods after the purpose for which they were delivered is achieved.¹⁰

APPREHENSIVENESS OF THE STATE

The state has been perpetually angst about losing its authority over people and this can be seen in various provisions of law. Ranging from criminal law to contract law, these provisions are drafted with the intention of saving the state from bearing the brunt of an intellectual identity crises. Bailee’s duties and responsibilities are listed in the sections 151, 154 and 161 which apply in a broad sense as a blanket principle to all cases of bailment where the state is not privy to the contract. The very same sections seize to apply in its broad sense in a reverse scenario when the state is linked with the contract of bailment. The only possible way to zero down on the minute details of such judicial interpretations is through an analysis of case laws. In ‘Ram Gulam and anr v Government of UP’ it was decided that if goods are seized by police then contractual liability for bailment will not arise because the state has sovereign immunity under article 299 of the Indian Constitution. This article of the Indian constitution is used as a corollary to the Indian Contract Act to designate a partially alien identity to the state from the contract of bailment. In the case of ‘Ram Gulam v Government of UP’, plaintiff’s goods were stolen from police custody and the plaintiff initiated a suit for the restoration of the suit. It was decided that the government was not

⁷ 2 Chitty, Chitty on Contracts 218 (31st ed. 2012)

⁸ *ibid*

⁹ AIR 1965 Ori 198, 1965 CriLJ 659

¹⁰ 2 Chitty, Chitty on Contracts 218 (31st ed. 2012)

liable as the goods were stolen during the discharge of a sovereign function.¹¹ According to the case of ‘Ram Gulam v Government of UP’, in a given fact circumstance where, in one case, the car is with an individual party for a purpose and in the other the car is with a state organization under a court order. The former would amount to a contract of bailment and the latter would not. The second limb of discrimination that sprouts from such judicial interpretation is that during the custody of the goods the state is relieved of its liability to take due care of the goods. This argument is different from the one of bailee’s duty to return the goods as it talks about bailee’s duty to take due care of goods while they are in his possession and custody. Ideally, if the goods are to be eventually returned to the bailor they have to be returned in the exact condition that they were seized but according to this logic, there is no certainty that the goods will be returned like that or not. The state cannot get away with such an erroneous judgment because ‘Ram Gulam v Government of UP’ is not the only judgment professing the same ratio. In the case of ‘Kasturi Lal v State of UP’, plaintiff’s gold was seized from him by police officers in the exercise of their statutory powers and was never returned to the plaintiff. The state was not held liable as the police officers acted negligently in the discharge of a sovereign function which gave them immunity under the constitution of India.¹² The judgment in this case seems like a mirror image of ‘Ram Gulam v Government of UP’ and the wrongdoers went scot free because they were representatives of the state. In the same fact circumstance, had the wrongdoers been individual parties, then they would have been held liable for breaching section 151 of the Indian Contract Act. However, since, the provisions are not made for the state under the same act, therefore, representatives of the state can be as negligent as they want to be in the discharge of their ‘sovereign duties’.

REMEDYING ‘RAM GULAM V GOVERNMENT OF UP’

Indian Contract law took a positive turn in the year 1967 when the judgment in ‘State of Maharashtra v Memon Mohamed Haji Hasan’ remedied the judgment given in the case of ‘Ram Gulam v State of UP’ and several other cases of the same nature. The facts of this case were that two trucks of the plaintiff were seized by the state and were negligently kept in the custody which led to their extreme deterioration.¹³ Further, the goods were put on auction and in the meanwhile the plaintiff got an order from the court to have the trucks redelivered to him. After coming across the fact that the goods were being auctioned, the plaintiff initiated a suit against the state.¹⁴ In this case it was decided that when goods are confiscated or seized

¹¹ AIR 1950 All 206

¹² 1965 AIR 1039, 1965 SCR (1) 375

¹³ 1967 AIR 1885, 1967 SCR (3) 938

¹⁴ *ibid*

on the grounds of suspicion, the state owes a duty of care to the person whose goods are seized till the date of judgment.¹⁵ Furthermore, if the accused is acquitted then the state is supposed to return the seized goods.¹⁶ In a nutshell, bailment arises when goods are seized by the state on the grounds of suspicion and article 299 does not absolve the state from its duties as a bailee.¹⁷

IV. CONCLUSION

Law of contracts is relatively a new spectrum of law in India and it has developed exponentially through the course of time. From a stage where ‘consent’ and ‘contract’ were essential for the creation of bailment to the abolition of such rigid requirements that narrowed the scope of bailment. The final leg of development in bailment, required for contract law to flourish and function on the principles of equity, is to tackle with the problem of ambiguity in the area of bailment of goods seized by the state. As stated earlier, the scope of judicial improvisation is still staggering because the framework of contract law has still not been made conspicuous on this issue. The problem of ambiguity is further supplemented by the provision of sovereign immunity in the Indian Constitution. Although, ‘State of Maharashtra v Memon Mohamed Haji Hasan’ serves as good law but the obstacles mentioned above provide more scope for deviation than one precedent can prevent. Harm done by lack of clarity in the Indian Contract Act is greater than the harm prevented by ‘State of Maharashtra v Memon Mohamed Haji Hasan’.

V. SUGGESTIONS

In India, the scope as well as grip of tort law is too miniscule to have an impact on contract law. In England, on the contrary, tort law not only supplements but strengthens the grip of contract law. Section 2(2) as well as section 3 of the Torts (Interference with goods) Act 1977 furnish a ground for suit if the bailor wrongfully detains the goods and provide remedies respectively.¹⁸ This proves how unambiguous the stance of contract law supplemented with tort law is in UK. India could do the same by strengthening tort law which would in turn benefit contract law. A solution to the problem of infringement of justice through sovereign immunity can be found in the Crown Proceeding Act of England 1947 wherein under section 1 the liability of the crown is not kept distinct from the liability of an ordinary third party.¹⁹ Since the Indian Contract Act is not exhaustive of contract law, therefore, in order for it to

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ 2 Chitty, Chitty on Contracts 218 (31st ed. 2012)

¹⁹ Crown Proceedings Act, 1947

develop in the correct manner such English provisions have to be incorporated so as to cater to the principles of equity in practice as well as theory.
