



Position of the Finder of the Lost Goods under the Indian Contract Act: An Analysis

Dr. Madhu Sudan Dash

Reader, P.G. Department of Law, Utkal University, Bhubaneswar-4, Odisha

ABSTRACT

A person who finds the lost goods does not acquire absolute ownership of the goods. Under Indian Contract Act, the position of the finder of the lost goods arises out of the quasi-contractual situation but not under any contractual situation. His duties, responsibilities and liabilities are at par with bailee. His title is contingent upon the possible discovery of the true owner.

KEYWORDS

Introduction:

The finder of the lost goods is a person who finds the goods of another person presumably not knowing the true owner at that time. Now the question is what is lost and how it is lost? The answer is the goods are lost when the owner has involuntarily parted with the possession of the goods and that he is ignorant of its location. However owner intentionally places the goods somewhere so that it can be found again in due course, but the owner subsequently forgets where it was placed, it can be said the goods are lost. A person who finds the lost goods does not acquire absolute ownership of the goods. Similarly, the goods when is in someone's possession, he cannot be considered as finder of the goods. The individual who acquires possession of lost goods is the best owner and has superior rights on the goods over anyone except the true owner. In this circumstance, the finder is only the apparent owner. The finder's title on the goods may be forfeited upon discovery of the true owner, whose title in it is unaffected by the fact that the goods has been lost. A finder's title is contingent upon the possible discovery of the true owner. Therefore, the finder cannot transfer title to another person.¹

Quasi-contractual situation:

Under Indian Contract Act, the position of the finder of the lost goods arises out of the quasi-contractual situation but not under any contractual situation. The expression quasi-contract has no relation or affinity with contract, rather implied by law. A finder of the lost goods is under obligation to take care of the goods as a man of ordinary prudence. Even this case, in fact, is not contract in true sense of the term, but they present certain relations which resemble those created by contract. The rights and liabilities of the finder do not arise out of contract, but the conditions create certain relations by which parties become bound. A quasi-contract is not a consensual contract arising out of consensual relations to a transaction; but something which the law brings into existence by a fiction irrespective of the agreement of the parties.² Since this is a quasi contract, the liability exists independent of the agreement and rest upon the equity, justice and good conscience. It is because of this Lord Mansfield preferred to apply the principle that law must prevent "unjust enrichment"³. In India the quasi-contract or restitution has been held as third category of law not founded upon contract or tort.⁴

Responsibility of Finder of Goods:

Responsibility of a finder of lost goods has been laid down by section 71 of the Contract Act, 1872 which states that "a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as bailee." A finder of the goods is subject to the same responsibilities and liabilities as those of the bailee's of goods. He has

to take the same degree of care and caution in respect of the goods found as the bailee has in respect of the goods bailed to him. The person who finds goods belonging to another is entitled to retain the goods against the owner until he gets compensation from him. He has the right of lien against the goods for the expenses which he incurred in preserving the goods in the safe custody, but this does not give him the right to sue the finder for the trouble and expenses incurred by him. He can sue the owner for the reward where a specific reward has been offered. The finder of the goods is entitled to its possession as against everyone except the real owner.⁵ Thus, for instance, **X** picked up a diamond on the floor of **Y**'s shop and handed it to **Y** to keep it tm the owner, appeared. In Spite of wide advertisements in the newspapers, no one appeared to claim it. After sometime **X** tendered to **Y** the expenses of advertisement and indemnity bond and requested him to return the diamond; but **Y** refused to do so. **Y** was held liable for damages; and **X** was held entitled to get the possession and to retain the good as against everyone except the true owner. If a finder dishonestly appropriates to his own use when he knows the owner or has the means of discovering the true owner, he is guilty of criminal misappropriation of property.⁶ But when he takes the property for the purpose of protecting it, or restoring it to the owner, he is not guilty of any offence.

Furthermore, a person who, on finding lost goods, takes charge of the good is called the finder of the lost goods, and his position is that of bailee of goods (Sec. 171 of the Contract Act, 1872). The finder is under an obligation, to take care of the goods as a man of ordinary prudence would take, under similar circumstances, of his own goods. Secondly, he is bound to return the goods to the true owner. These are the quasi contractual obligations of a finder of goods.

Right of the Finder of the Lost Goods:

The following are his right as envisaged by the sections 168 and 169 of the Indian Contract Act. (i) He has right to retain possession of the goods so long as not claimed by the true owner, since finder of lost goods is the best owner as against rest of the world except the true owner. (ii) He is entitled to be compensated for the trouble and expenses voluntarily incurred by him in preserving the goods and finding out the owner, but for such expenses he has no right to sue the owner for compensation (Sec. 168). He has a particular lien upon those goods for payment of these expenses, i. e.; he can refuse to return the goods until he is paid for the expenses and trouble. (iii) He can sue for any rewards if offered by the owner for the return of the lost goods. The finder of goods may retain the goods against the owner where the owner has offered a specific reward for the return of goods lost, but it

must within his contemplation of offering the reward by the owner. The finder may sue for such reward, and may retain the goods until he receives it. (iv) If the goods found are commonly a subject-matter of sale, and if the owner cannot with reasonable diligence be found, or if he refuses, on demand, pay the lawful charges of the finder, he may sell them when; (a) they are in danger of perishing or of losing the greater part of their value, or (b) when the lawful charges of the finder amount to two-thirds of their value (Sec. 169).

Duties of Finder of goods:

The duties and obligation of a finder of the goods is treated at par with the bailee. So, the finder's position has been considered along with bailment. Since he is considered as the bailee, the duties of the bailee, under the contract of bailment, are the duties of the finder of goods as follows:

To Take Care of the Goods: The foremost duty of a bailee is to take as much care of the goods bailed as a reasonable and prudent man will take of his own goods. According to English law there are three degrees of negligence and three degrees of diligence which may be exercised by the bailee of goods according to the circumstances of each case. But according to Indian law there is only one standard of diligence or care and that is the care of a reasonable or prudent man to be exercised by the bailee whether the contract of bailment is gratuitous or non-gratuitous (Sec. 151).

Bailee should not make unauthorized use of the Goods Bailed: Section 154 lays down a bailee's liability who makes unauthorized use of the goods bailed. It says that, "If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment; he is liable to make compensation to the bailor for damage arising to the goods from or during such use of them." The liability for an unauthorized use of the goods arises even if the bailee is not guilty of any negligence while using and even if the damage is the result of accident.

Bailee Should Not Bailed-Goods with other Goods: It is the duty of the bailee that he should not mix up bailor's good with his own goods. If the bailee mixes up his own goods with those of the bailor, the following rules shall apply : (a) If the bailee mixes the bailor's goods with his own goods with the bailor's consent, the bailor and the bailee shall have an interest in proportion to their respective shares in the mixture (Sec. 155). (b) If the bailed goods have been mixed up with his own goods without the bailor's consent, and the goods are separable or divisible, "the property in the goods remains in the parties respectively; but the bailee shall bear the expenses of separation or division and any damage arising from mixture (Sec. 156). (c) If the mixture is without consent and is inseparable and hence the bailed goods cannot be delivered back, the bailee shall have to compensate the bailor for the loss of goods.

Duty to Return the Goods Bailed: It is the duty of the bailee to return or deliver the goods according to the bailor's direction on the expiry of the period of bailment or when the purpose has been accomplished. However, if the bailee makes a default in returning or tendering the goods at the proper time to the bailor, he shall be responsible "for any loss, destruction or deterioration of the goods from that time" as an insurer (Sec. 161).

Duty to Return Increase to the Goods bailed: Section 163 of the Act enacts that, "In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor or according to his directions, any increase or Profit which may have accrued from the Goods bailed."

Duty not to set up Jus Tertii: It is the duty of the bailee that he should not set up an adverse title to the goods when demanded by the bailor. Finder of goods is not responsible on re-delivery to owner without title.

Conclusion: From the above analysis, it implies that the legal position of the finder of the lost goods under the Contract Act is as like as the position of bailee even though the contract of bailment arises upon a contract for some purpose but not the finder of the lost goods. In literal sense, his position is mere a custodian of the goods. Neither he can dishonestly appropriate to his own use, nor can he transfer it to any one for his personal gain. He is bound by the law to take appropriate care of the goods until the true owner is found.

REFERENCES

Ominsky, Harris. 2002. "Finders Keepers? First Impressions and Ancient Wisdom." *Probate & Property* 16 (May-June): 59–63. West, Mark D. 2003. "Losers: Recovering Lost Property in Japan and the United States." *Law & Society Review* 37 (June): 369–423. | *State of West Bengal v. B.K. Mondal, A.I.R. 1962, SC.* | *Moses v. Macferlan, (1760) 2 Burr. 1005.* | *Mulchand v. State of Madhya Pradesh, A.I.R. 1968, SC, 1218.* | *Hollins v. Fowler, L.R. 7 H. L. 757.* | Explanation (2), Section 403, Indian Penal Code. |