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

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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 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 the goods are 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

Right of the Finder of the Lost Goods:
The following are his rights 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 bailor. So, the finder's position has been considered along with bailment. Since he is considered as the bailor, the duties of the bailor, 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 mixing his own goods with those of the bailor the following rules shall apply: (a) If 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