

distinctly the private properties of the zamindari, and therefore partible, while the other items Nos. 9 to 15 were appurtenant to the zamindari as palaces and places of residence, &c., and therefore impartible. Schedule E relates to movables which we agree with the Sub-Judge in finding to be partible, as the rule of impartibility applicable to zamindaris does not extend to the personal property left by a zamindar (*Maharajuluu Guru v. Rajah Row Puntulu*(1)).

The result of our decision is that the appeal of the plaintiff is dismissed and the Sub-Judge's decree is confirmed in all respects excepting as regards some of the 'paunai' lands comprised in schedule C of the plaint which are now all declared to be appurtenant to the zamindari, and plaintiff has therefore no right to share therein. The Lower Court's decree will be modified accordingly, and the proportionate costs there decreed payable by the defendant to the plaintiff will be reduced by that extent and added to the proportionate costs payable by the plaintiff to the defendant.

The appeal of the defendant is otherwise dismissed. In regard to costs in this Court, we shall leave each party to bear his own, each having failed on the main grounds of his appeal.

RAMASAMI
KAMAYA
NAIK
v.
SUNDARA-
LINGASAMI
KAMAYA
NAIK

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

SESHAM PATER AND ANOTHER (PLAINTIFFS), PETITIONERS,

v.

L. S. MOSS (DEFENDANT), RESPONDENT.*

1893
Dec. 8, 12.
1894.
April 5.

Indian Railways Act—Act IX of 1890, ss. 72 and 76—The Carrier's Act—Act III of 1865—Indian Contract Act IX of 1872, ss. 151, 152 and 161—Liability of Railway Companies as bailees.

Subject to the provisions of Act IX of 1890, the responsibility of Railway Companies for loss of goods delivered to them for carriage is that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act. In a suit for damages occasioned by such a loss the plaintiff need not prove how the loss occurred, but on proof of the loss, the Company will, in absence of proof of any ground upon which it can be exonerated, be liable as a bailee.

(1) 5 M.H.O.R., 13.

* Civil Revision Petition No. 655 of 1892.

SESHAM
PATTER-
e.
L. S. MOSS.

PETITION under section 25 of Act IX of 1887, praying the High Court to revise the decree of V. Kelu Eradi, District Munsif of Palghat, in small cause suit No. 839 of 1892.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

Mahadeva Ayyar for petitioners.

Barclay, Morgan & Orr for respondent.

JUDGMENT.—Under section 72 of the Indian Railways Act, the responsibility of the Railway Company for loss of goods delivered to be carried by the Railway is, subject to the provisions of that Act, that of a bailee under sections 151, 152 and 161 of the Indian Contract Act. Under section 76 of the former enactment, it is not necessary for the plaintiffs to prove how the loss was caused. Act III of 1865, sections 8 and 9 are declared by section 72 not to affect the responsibility of the Railway Company as defined by the latter section. The plaintiffs must show in the first instance the alleged loss or deficiency, and then the Railway Company will be bound to show that the loss occurred under circumstances which would exempt a bailee from responsibility for it.

The District Munsif finds that the plaintiffs' allegation that the bags of pepper were cut open and their contents were extracted whilst they remained in the custody of the Railway Company is not proved. Adverting to the several possible causes of the loss on which the defendant relied, he finds that they are not made out, but as regards the carelessness of the weighing clerks, he does not record a distinct finding. He eventually dismisses the suit on the ground that the plaintiffs did not prove their allegation that the bags of pepper were cut open and their contents extracted. The District Munsif has not tried this suit with reference to the requirements of the Railway Act and recorded distinct findings as to whether the quantity delivered was proved to be what is alleged in the plaint, or whether the quantity entered in the forwarding note in excess of the quantity delivered is due to a mistake on the part of weighing clerks, and as to whether the Railway Company has proved any ground upon which they can be exonerated from liability as bailees. He will submit distinct findings on the questions mentioned above upon the evidence on record within three weeks of the re-opening of the Court after the Christmas vacation, and seven days will be allowed for filing objections after the finding has been posted up in this Court.