

STATE OF GUJARAT V. MEMON MAHOMED: EXISTENCE OF BAILMENT WITHOUT ENFORCEABLE CONTRACT

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INTRODUCTION

In common parlance “Bailment” refers to the transfer of ownership from one person to another keeping the possession with the first person. The hereunder case analysis of the State of Gujarat v Memon explores the extent of the bailment and elaborates on the shortcomings. The article explores the concept of the bailor-bailee relationship, rights, and liabilities.

The article also observes some similar cases like Ram Gulam v Govt of U.P and L.M. Co-operative Bank v Prabhudas Hathibhai. These cases helped in establishing the concept of statutory bailment i.e. Bailment between two parties exists even without the presence of an enforceable contract. Moreover, the article establishes the fact that it is imminent to inculcate the concept in the Indian Contract Act of 1872.

THE CONCEPT OF BAILMENT

In common parlance, Bailment means or refers to a legal relationship by which the original owner of the property or an asset transferred the asset from one person to another, the other person who will acquire the asset will get the ownership, however, will not get the possession. If bailment comes to subsistence from an agreement, the agreement would be considered for future references, however, bailment can also exist even if the enforceable agreement or simply an agreement is not there. Bailment laws are governed by the Contract Act. Under the contract act, there can be a bond between a bailor and bailee although there is no legal or any binding between parties hereto.

Difference between bailment and contract: Under the Contract Act, for valid agreement free consent is mandatory, however, bailment differs in this regard. The bailment display of the ownership shall suffice the requirement. Foremost, the condition of the bailment is that the other person shall reinstate the position of the real owner once work is accomplished or an asset is returned to the real owner. Bailment is a dominant relationship that comes into existence between two parties.

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This case is based upon the aforesaid facts of the Bailment. This case strives to find out the relationship that exists between the bailor and the bailee, the need for consent for becoming a bailee, the existence of a legal relationship, and the position of the bailee if the asset is missing or destroyed.¹

CASE FACT²

Parties Background: Memon Mahomed Haji Hasam (hereinafter referred to as Haji Memon), was the owner of the 2 vehicles, which were used by Ayub Iqbal and company for fish export in the state of Junagadh (State of Gujarat). Gujarat State Police authorities nabbed Ayub Iqbal and Company in connection with a smuggling case, the seizure was by Junagarh State Sea Customs Act of S.Y. 1998. The respondent was smuggling the items using these trucks and some of the items were illegal products. Moreover, the import tariffs on the trucks were pending.

Reason for the suit: Haji Memon had requested the return of the vehicle following the hearing of his case, however, was later apprised that confiscated products were disposed of under a magistrate order passed under S.523 of the CrPC, and that the vehicles have been destroyed due to environmental changes. Only the skeleton of the truck was there for Haji Memon.

Transfer of the case: At the same time, the annexure of the Junagadh state into Saurashtra and thereafter merger of the newly formed Saurashtra state with Bombay and further State of Bombay annexed into the State of Gujarat took place. Henceforth, the appeal was directed to the Saurashtra Revenue Tribunal for further action. The lawsuit against authorities was filed by the Haji Memon, looking for monetary compensation for the vehicle damage.

Argument by Haji Memon: Authorities were acting as a bailee and held the responsibility to look after the trucks.

Argument by Authorities: Their responsibility was to seize the truck. Moreover, they don't have any binding agreement with Haji Memon, hence, there is no bailment contract in place. Authorities were following the orders of the Trial Court and High Court.

The vehicles were in the custody of the Authorities between 1947 to Oct- 1951, and they were lying unattended in an open space. The Government should have taken reasonable care of the vehicle.

¹ Indian Contract Act 1872, s 148

² *State of Bombay (Now Gujarat) v Memon Mahomed Haji Hasam.* (1967), AIR 1885, SCR (3) 938

Issue of the case:

1. Does Bailor and Bailee's relationship exist?
2. Whether responsibility for reasonable care lies with authorities.
3. If the above questions are true then should authorities pay the compensation?

ANALYSIS OF THE CASE

Following the above response of the Authorities Hazi Memon further argues that the seizure of the goods was valid and within the limits of the authorities, however, the State Government should be considered as bailee from the time of seizure to the time of appeal, hence, reasonable care was expected. Authorities cited Section 148 of the Contract Act, wherein bailment may arise only from the valid contract between two parties.

COURT OBSERVATION

The seizure of products was by the legal ambit, however, there exists implied responsibility of reasonable care. The confiscation order was not final and it was subject to appeal and amendment. It may be possible that the order can be overturned and an asset might be returned to the owner in the same condition minus natural depreciation. This fact was known to the state and still, they have permitted the auction of the asset as an unclaimed asset.

In common parlance, the finder of the asset is required to maintain reasonable care of the asset until they are returned to the original owner. Comprehending the same logic, the state should have taken reasonable care of the vehicles.

Under the Indian Contract Act 1872 which governs bailment. The bailor gives the asset to the bailee with an oral bound bailment contract, which makes it legally binding and lawful remuneration. Similarly, Authorities had the vehicles of the Haji Memon, which failed to follow the process of legally binding and lawful remuneration. Comprehending the aforesaid scenario, vehicles were under the custody of the Authorities, which shall be considered as bailee. Hence, Haji Memon was awarded the compensation.

JUDGMENT

Honorable Judge J.Shelat gave the judgment of the case.

Held that *"There being thus a legal obligation to preserve the property intact, as well as the obligation to take reasonable care of it so that the Government can return it in the same*

condition in which it was seized (let aside natural depreciation), the State Government's position until the order became final was that of the bailee," it was held.

"The Contract Act only applies to bailment when it emerges from a contract, but it is incorrect to claim that a bailment cannot exist without an enforceable contract."

Relationships between parties exist as bailor and bailee, even without the presence of an enforceable instrument.

OTHER CASES FOR REFERENCE

Before concluding it would be prudent to observe similar cases of the reference purpose. Initially, the position of the statutory bailment was not considered which can be observed in the case of *Ram Gulam v. Govt. of U.P.*³

Under the case, Allahabad High Court gave the guidelines that bailment doesn't exist without a contract. In this case, the plaintiff's stolen ornaments were recovered by the police. However, to the dismay of the owner the ornaments, were again misplaced or stolen, and with the best of the efforts they were not found. It was held by the court that ornaments were not handed over to the State, hence, the state cannot indemnify the owner of the ornaments. In reality, ornaments were in the custody of the police, making them bailee. Hence, reasonable care was required by them and hence should pay compensation for the mismanagement. Over the period, various Courts of India acknowledged the importance of the bailment which can exist between two parties without any enforceable contract.

This concept can be observed in the case of *L.M. Co-Operative Bank v. Prabhudas Hathibhai*⁴. Under this case, the Bombay High Court held that the bank should be considered as the bailee. In this case, a package of tobacco belonging to Party A was pledged to the plaintiff's bank. The packages were lying in the godown of party A. Due to non-payment of income tax, the packages were attached by the Collector. Heavy rain damaged the packages lying in the godown of Party A. It was held that although packages are in the possession of Party A, the government should be considered as Bailee.

³ *Ram Gulam and Anr v Government of U.P.* (1949), AIR 1950, ALL 206

⁴ *L.M. Co-Operative Bank v Prabhudas Hathibhai.* (1965), AIR 1966, Bom 134

CONCLUSION

In this article, we have observed the concept of bailment which may exist between two parties even without the presence of a formal enforceable contract. This concept holds paramount importance and its effect can be seen in the Law Commission of India report.

The Law Commission of India⁵ in its 13th report had suggested to amend the definition of the bailment. Under the report, bailment without an agreement should be included in the Indian Contract Act 1872, however, action from the government side is awaited.

From the Ram Gulam case to the Haji Mammon case, a paradigm shift has been observed on the part of the Court. The Court has realized and acknowledged the concept of statutory bailment. In developed nations like the USA and Great Britain, judicial authorities have included the concept in the Contract Act. This concept needs immediate attention and is the need of the hour to be included in the Indian Contract Act 1872.



⁵ Aniket Sachan, 'Statutory Bailment Jurisprudence: Need of the Hour' (Blog.ipleaders.in, 21 June 2019) <<https://blog.ipleaders.in/statutory-bailment-jurisprudence/>> accessed 6th August 2023