

Sheo Prasad vs Dominion Of India on 11 January, 1954

Equivalent citations: AIR1954ALL747, AIR 1954 ALLAHABAD 747

JUDGMENT

Malik, C.J.

1. This case has been- argued at great length but the point involved in the Civil Revision is a very short one: Certain goods were consigned from Chandpur Ghat to Allahabad. The consignment was deliverable to self. The railway receipt was, however, endorsed in favour of the plaintiff who took delivery of the goods and found that there Was a shortage of 2 maunds and 7 seers. The value of the shortage was Rs. 174/-. The plaintiff filed a suit for recovery of the amount.

2. On behalf of the defendant it was denied that the plaintiff was entitled to maintain the suit.

3. The plaintiff, in the witness-box, stated that the consignor had sent the goods to him for sale. The exact words were as follows:

"He (the consignor) kept the goods into my 'arhat' to sell it and pay its price to him after deducting my commission."

After the plaintiff examined himself no other evidence was given and the lower Court dismissed the suit on the ground that the plaintiff was not the owner of the goods and he had, therefore, no right to file the suit.

4. Against the decision of the lower Court a civil revision under Section 25 of the Court of Small Causes has been filed in this Court.

5. It is urged by learned counsel for the applicant that the railway receipt having been endorsed in favour of the plaintiff, the plaintiff had sufficient interest to maintain the suit. It has also been urged that, as the plaintiff would have earned a commission by the sale of the goods at a certain percentage of the sale price, his interest had suffered by reason of the short delivery and he had a right to bring an action.

6. The second point is not worthy of very Serious consideration as the claim based on the basis of the loss of commission must be deemed to be remote and the plaintiff has not claimed the loss of commission that he might have suffered but has claimed the price of the goods lost in transit.

7. The first question, however, is of some importance, whether a transferee simpliciter of a railway receipt can maintain a suit for price of goods lost in transit. It can no longer be seriously contested

that a railway receipt is a document of title and by endorsement of the railway receipt the title in the goods can be transferred to the endorsee. If the case stood merely at that there would be no difficulty in holding that the plaintiff was entitled to bring a suit, being the endorsee of the railway receipt and 'prima facie' the owner of the goods. The difficulty, however, has arisen by reason of the plaintiff's own statement that the goods were merely kept in his arhat for sale and after the sale the price less commission was to be paid to the person to whom the goods belonged.

8. In -- 'Dolatram Dwarkadas v. B. B. & C. I. Rly. Co.', AIR 1914 Bom 178 (A) it was held that a railway receipt was a mercantile document of title and the endorsee of the receipt had sufficient interest in the goods covered by it to maintain an action against the railway company for damages in respect of the goods covered by the receipt. The nature of the action, however, in that case was a little different from the one with which we are concerned. In that case, the endorsee of the railway receipt had gone to take delivery, the railway had accepted that he had the right to take delivery, he had signed the receipt book and paid freight and demurrage, he took delivery of 96 bags and claimed open delivery of 19 bags, the railway refused to give him open delivery and it was urged on behalf of the endorsee before the High Court of Bombay that the railway having chosen to accept the freight and demurrage from the plaintiff and having taken his signature in anticipation of the delivery to him, was not entitled to refuse delivery and that the defendant having by 'its acts recognised the plaintiff as the person entitled to take delivery was estopped from contending that it was not liable for failure to give delivery.

The learned Judges allowed the revision holding that a railway receipt was a mercantile document of title and proceeded to say:

"That being so, we think, it necessarily follows that the endorsee of such a railway receipt has sufficient interest in the goods covered by it to maintain an action of this kind."

It may, therefore, be accepted that it was decided in that case that if a railway receipt has been duly endorsed, the endorsee has a right to take delivery and that the wrongful refusal of the railway to give delivery entitles him to bring a suit.

9. From the facts quoted in the report it does not appear that it was a case where a part of the consignment had been lost and the suit was filed for price of the goods lost. 'Prima facie' such a suit for loss of goods can be filed by the person to whom the goods belonged or who had a substantial interest in the same.

10. In -- 'Shamji Bhanji & Co. v. North Western Rly. Co.', AIR 1947 Bom 169 (B) the point came up for decision before a learned single Judge, Bhagwati, J., who held that even though a railway receipt was a document of title to goods a mere endorsement of a railway receipt was not by itself enough to transfer the property in the goods represented by the receipt to the endorsee thereof; that without anything more, the endorsement of the railway receipt only constituted the endorsee the agent of the consignee for the purpose of taking delivery of the goods, represented by the receipt, from the railway company. The facts of that case were peculiar and these observations must not, to our

minds, be understood to mean that an endorsee of a railway receipt must always be deemed to be a mere agent who has no interest in the goods. The Privy Council in -- 'Ramdas Vithaldas v. Amerchand & Co.', AIR 1916 PC 7 at p. 8 (C) has held as follows;

"In their Lordships' opinion the only possible conclusion is that whenever any doubt arises as to whether a particular document is a "document showing title" or a "document of title" to goods for the purposes of the Indian Contract Act, the test is whether the document in question is used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or delivery, the possessor of the document to transfer or receive the goods thereby represented. In the present case, it has been found as a fact by both the Courts below, and is not and indeed cannot be disputed before this Board, that the railway receipts in question satisfy the test. It is, therefore, unnecessary to consider whether, apart from the evidence as to the ordinary course of business, the effect of Sections 4 and 137 of the Transfer of Property Act would be conclusive on the point."

Chapter VIII of the Transfer of Property Act deals with transfers of actionable claims and how they are to be made. Section 137 of the Act, however, provides that "Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being by law or custom, negotiable, or to any mercantile document of title to goods."

and in the Explanation appended to the section the expression "mercantile document of title to goods" includes a railway receipt.

A railway receipt, therefore, being a mercantile document of title to goods, it is possible to transfer the title in the goods, to the endorsee by mere endorsement. It is, therefore, not possible to accept the contention that a mere endorsement of a railway receipt was not by itself enough to transfer the property in the goods represented by the receipt and the endorsee has to prove 'aliunde' that he is the owner of the goods covered by the railway receipt endorsed in his favour.

11. The presumption must be in favour of the endorsee though from other facts and circumstances it may be possible to hold that the goods had not been transferred to the endorsee and he was merely deputed to act as agent.

12. Great reliance has been placed by learned counsel for the applicant on a judgment of the East Punjab High Court in -- 'Jalan and Sons, Ltd. v. Governor General in Council', AIR 1949 EP 190 (D). The sixth and seventh paragraphs of the judgment no doubt lay down that the case of an endorsee of a railway receipt is altogether different from the case of an ordinary agent and that such an endorsee being in a position to take delivery of the goods covered by the railway receipt and give a complete discharge to the railway he is competent to bring a suit in respect of the goods, but in paragraph 8 of the judgment the learned Judges went on to hold that in the case before them the endorsee had become the owner of the goods and had beneficial interest in the same as he was entitled to earn a commission on the proceeds of the sale of the goods.

If he had become the owner of the goods and the evidence on the point was accepted by the learned Judges, the fact whether he was entitled to a share in the sale proceeds may not have been of much importance for the purpose of the decision of the case. A trustee who has no beneficial interest in the goods but is the owner of the goods can always maintain a suit if the goods are lost or damaged.

Learned counsel for the applicant has admitted that on the statement made by his client he cannot claim that the applicant became the owner of the goods but he has urged that he had a beneficial interest in the same as he was entitled to commission on the sale proceeds as in the case of *Jalan & Sons Ltd (D)*'. The learned Judges, however, did not hold that the mere fact that the plaintiff was entitled to get a commission was enough to entitle him to maintain the suit. They have laid stress on both the points that he was the owner of the goods and had considerable interest in the sale proceeds of the same. The learned Judges accepted the contention that a mere agent for taking delivery had no right to file a suit for damages for loss of goods and pointed out that in the case before them the plaintiff was not constituted a mere agent for the purpose of taking delivery but he was entitled to take delivery in his own right as owner to get possession of the goods and then to sell them as owner. It cannot, therefore, be said that the decision relied upon helps the applicant. The observations in the judgment must be read in connection with the facts of the particular case.

13. In the case before us, it being admitted that the goods belonged to the consignor, that the consignor had merely authorised the plaintiff to take delivery of the goods and that the goods were kept at the shop of the plaintiff for the purpose of sale as an agent of the consignor, the plaintiff's right being only to get a share in the sale proceeds by way of commission, we do not think that the case is covered by the decision quoted.

14. The judgment of the lower Court appears to be right. The revision must, therefore, fail and is dismissed with costs.