Madras High Court
S.A. Srinivasa Aiyangar vs Douglas And Grant, Limited, ... on 11 December, 1919
Equivalent citations: 57 Ind Cas 62
Author: Oldfield
Bench: Oldfield, S Aiyar
JUDGMENT Oldfield, J.

1. The first question we have to decide is as to the nature of the relation between the parties. Had plaintiff, when the rupture between them took place, become the owner of the machinery, which is the subject of the dispute, or was he still merely hiring it from the defendant firm, as the latter contends, and was its removal by the firm from plaintiff's possession justified by Clause 9 of the agreement, Exhibit II ?.

2. There is no doubt that there was also between the parties another agreement, Exhibit I, to which some reference is made in the appeal grounds here and has been made in argument. But the trial Judge has explained the difficulties in the way of treating it as proved, and, as no reference according to Mr. Chamier, who appeared in the lower Appellate Court, was made to it there in argument or is made in the judgment under appeal, I restrict consideration to Exhibit II. That document is, as the lower Appellate Court opined, badly drawn up and defective. But it is the only available foundation for a decision; and on the question above stated it, in my opinion, justifies the lower Appellate Court's conclusion.

3. The defeats in Exhibit II render English authority, dealing with the construction of more carefully drafted hire purchase agreements, useless; and we have been referred to no relevant Indian decisions. The terms of Exhibit II must, therefore, be decisive. True, Clause 10 contains a reference to instalments of purchase money and it may be conceded that the amount of the instalments, specified in Clause 2 as pay. able by plaintiff, for which he had given a pro note as security, represents, as he contends, much more than any probable amount of hire for the use of the machine. But, on the other hand, there are the references throughout to the parties as hirer and owner, which cannot be regarded as inadvertent or without significance, and there are in clauses 6, 10 and 11 duties to the owner imposed on the hirer for the preservation and insurance of the property and in clauses 7 and 8 prohibitions against parting with possession of or incumbering it, which are difficult, if not impossible, to reconcile with plaintiff's ownership. Much stress has been laid by both sides on claues7, that "the machinery be kept in possession of the hirer and in trust to the owners," Plaintiff argued that it was consistent only with a completed sale, the provision for the retention of possession by the hirer in trust for the owner being intended to secure the latter's lien in the property for the unpaid purchase-money and resembling the provision similarly construed by Giedt, J., in Juggernath Augurwallah v. E.A. Smith 34 C. 178. But, if such a ground of decision was available in that case (and it may be respectfully observed that the other members of the bench did not avail themselves of it), there was to support it at least the explicit reference in the contract then in question to the parties as buyers and sellers, which corresponds with nothing in Exhibit II. In that document, the description of them throughout being appropriate to a contract of hiring, there is nothing to support the contention that a sale and a deviation from Section 95 of the Indian Contract Act were contemplated and that the parties meant by special contract to apply the provision for the

lien allowed to a seller over goods still in his possession to the machinery in dispute, after it had left that of defendant. It is only by adoption of some such construction of Clause 7 that plaintiff's claim can succeed; and, when there is nothing in that clause or elsewhere to justify that construction directly, it cannot be preferred to the more natural interpretation, proposed by defendant, that the real ownership was not to be affected by the transfer of possession, consistently with the contract being one of hire-purchase or, to speak with more exactitude, one of hire with an option of purchase, not yet exercised by the payment of the last instalment agreed on.

4. Plaintiff, failing in his main contention, has objected to the dismissal in toto of his suit by the lower Appellate Court, contending that he should have been allowed a refund of what he has paid in accordance with one of his alternative prayers. Exhibit II, it is material, differs from the ordinary form of a hire-purchase agreement [see Chitty on Contracts, 7th Edition, page 478, and Helby v. Matthews (1895) A.C. 471 : 64 L.J.Q.B. 485 : 11 R. 232 : 72 L.T. 841 43 W.R. 561 : 60 J.P. 20, because it contains no provision for the forfeiture of previous payments in case of default in an instalment; and at least in India, where contracts of this nature are unfamiliar, it is not admissible to supply the deficiency by implication in super session of the ordinary law. The result to be arrived at is the restoration of the parties to their original positions; and it will be secured if defendant, receiving back the machinery, is given reasonable compensation for its use and if plaintiff received back the balance of the amount he has paid, Defendant apart from reliance on the implied right to forfeiture above referred to accepts this; and plaintiff contends here only for inclusion in the amount to be awarded to him of damages on certain accounts, in respect of which the lower Appellate Court has found against him on the facts. We, therefore, call for a finding only on the following issue:

What is the amount of reasonable compensation payable by plaintiff to defendant for the use of the machinery during the time it was in the former's possession?

5. Fresh evidence may be taken. Finding is due in six weeks after the re opening of the lower Appellate Court. Seven days for objections.

Seshagiri Aiyar, J.

6. I agree. As pointed out by my learned brother, the first question is as to the nature of the relationship which Exhibit 10 has created between the parties. I do not agree with the extreme contention put forward on either side. Mr. T.M. Krishnaswami Aiyar argued that the contract was one for sale subject to a right of lien for unpaid purchase money. Mr. Chamier, on the other hand, urged that the contract was one for hire and that the consideration mentioned in the document must be taken to be the sum total of the rent to be paid by the hirer. The learned Vakil for the appellant naturally relied upon the first agreement between the parties (Exhibit 1), dated the 22nd of September 1913. That in terms is undoubtedly an agreement to sell. Whether it is still subsisting or whether it was open to the appellant to have sued for specific performance of contract after paying or tendering the balance due, it is not neae3sary to discuss. In my opinion, whatever may have been the previous negotiations, we are bound to construe Exhibit II as it stands and without reference to what had actually taken place when negotiations commenced. In Exhibit II there is no provision for payment of rent as such. In paragraph 10 there is a reference to the purchase price, and all the other

paragraphs in the agreement are inconsistent with the idea of a completed sale. My construction of the document is that it was agreed between the parties that the appellant should pay a portion of the price agreed upon at once; and that the title should vest in. him only on the payment of the balance within the time limited. In other words, no title was to vest in the plaintiff until the whole consideration was paid. In this view Section 78 of the Contract Act cannot affect the respondent. That section only controls cases where there has been a concluded sale and "the parties agree, expressly or by implication, that the payment of or delivery, or both, shall be postponed." In such a case no doubt the property vests in the purchaser from the moment the bargain is concluded. But on my reading of the document that the completion of the sale was postponed Section 78 is not an answer to the defence, Mr. Chamfer's contention is equally unsustainable. There is no provision for rent. As regards the payment of Rs. 1,900 on the date of the agreement the learned Counsel was unable to suggest to what period that amount should be allocated as rent. Even as regards the balance there is nothing in the document indicative of the intention to allocate it as rent for any particular period. The argument is further opposed to the language employed in paragraph 10 of the agreement.

7. The draftsman of Exhibit II seams to have had a very hazy idea of a hire-purchase agreement. The essence of such an agreement is there must be a letting on hire at a particular rate of rent; there must also be a provision that on the amount of payment reaching the total of the sum stipulated as the price, the goods shall become the property of the hirer and a further clause usually inserted in such agreements is that if default is made by the hirer, the previous payments shall be forfeited to the lender. Exhibit II does not conform in its essentials to such an agreement. Therefore, it should be construed with special reference to the intention of the parties and not with reference to any pre-conceived notions regarding hire purchase agreement, In this view the decision in Lee v. Butler (1893) 2 Q.B. 318 : 62 L.J.Q.B. 591 : 4 R. 563 : 69 L.T. 370 : 42 W.R. 88 is not in print. If a hire-purchase agreement in its main particulars conforms to what is usually understood between the parties, the absence of one or the other of the subsidiary provisions may be explained away as was done in the above case. Moreover, that case was distinguished in Helby v. Matthews (1895) A.C. 471 : 64 L.J.Q.B. 485 : 11 R. 232 : 72 L.T. 841 43 W.R. 561 : 60 J.P. 20, which is more analogus to the present one. The case nearest in point is Juggernath Augruwallah v. E.A. Smith 34 C. 178. The observations of Geidt, J., were relied on by Mr. Krishnaswami Aiyar. The learned Judge seems to suggest that in the case of sale of goods a lien would subsist in favour of the seller even after the goods had passed out of his possession. The observation may be justified with reference to the particular facts of the case. But as a general proposition of law it seems to me somewhat doubtful. Moreover, the learned Judge was dealing with a case where there was an undoubted sale and not as in the present case where we have to spell out a sale from very meagre data. The other learned Judges who took part in the decision did not express themselves in the same way as Mr. Justice Geidt I do not feel pressed by this decision. I must, therefore, hold that Exhibit II does not evidence either a completed sale or simply a contract for hire. As I said before, it evidences a sale to come into operation on the payment of all the instalments. In this view the further question arises whether the plaintiff is not entitled either wholly or in part to the refund of the money paid by him., The District Judge disposes of this claim; by saying "nor is he entitled to recover what he has paid as Exhibit II makes, no provision for such a relief." I do not think the fact that no provision is made for re-payment is conclusion of the claim. Mr. Chamier has been unable to draw our attention to any

clause in Exhibit II by which a forfeiture is either expressly or by implication provided for. That being the position, we have to apply the general law in snob oases. It is well understood that where owing to the default of a purchaser the sale falls through, he is entitled in the absence of a forfeiture clause to a refund of the money paid by him towards the purchase. Such principle is every day enforced in the case of contracts for the sale of immoveable property, and I fail to see why the same is not applicable is sales of moveable property. It was said that the plaintiff has not offered to pay all the damages arising from his failure to complete the contract and, therefore, he is not entitled to enforce his equitable claim for refund. But it has been the practice in this Court not to insist upon these technicalities in pleadings and to administer substantial Justice as between the parties. The plaint seeks this relief in the alternative. In my opinion an issue must go down to the lower Court for determining the amount which ought to be set off either by way of interest, damages or other losses which the defendant is entitled to by the failure of the plaintiff to carry out the terms of the contract, Subject to these deductions the plaintiff is entitled to a decree for the amount of the money which he paid towards the sale of the machinery. I agree that the issue suggested by my, learned brother should be remitted for finding.

8. In compliance with the above order contained in the judgment, the District Judge of Tanjore submitted the following

9. FINLING.-- In this appeal I am asked to record a finding as to what is the amount of reasonable compensation payable by the plaintiff to defendant for the use of the machinery during the time it was in the former's possession. Each side is allowed to adduce fresh evidence. The evidence offered is very scanty, but I have to make the best of it.

10. The plaintiff wanted to call evidence to show that for part of the time the machinery was in his possession, it was defective and not in working order. But I disallowed that evidence, as it seemed to me excluded by the terms of the reference and as it was offered at a very belated Stage of the case.

11. In the order of remand Mr. Justice Oldfield says "defendant apart from reliance on the implied right to forfeiture above referred to accepts this" i.e., the principle of restoring the parties to their original position, "and plaintiff contends here only for their inclusion in the amount to be awarded to him of damages on certain accounts in respect of which the lower Appellate Court has found against him on the facts." Therefore, no new matter for reduction of compensation was urged in the High Court and only such matters of fact were urged on which I have already found against the plaintiff. Similarly Mr. Justice Seshagiri Aiyar said "an issue must go down to the lower Court for determining the amount which ought to be set off either by way of interest, damages or other losses which the defendant is entitled to by the failure of the plaintiff to carry out the terms of the contract." Nothing is said as to any set-off which the plaintiff may claim against the defendant. It seemed to me, therefore, clear that the High Court did not intend that fresh evidence should be adduced to rebut findings of this Court already disallowing certain claims for damages.

12. As to these allegations, which are that the machinery was damaged when it arrived, and that the defendant delayed sending his fitter to put it up, and other charges, I have already pointed out in my judgment (paragraph 14) that the plaintiff adduced no evidence whatever to prove them. I am

satisfied that the High Court did not intend to allow him at this late stage to put forward evidence which he obviously ought to have adduced at the hearing of the suit itself and to rebut which defendant would be entitled to call further evidence.

13. I, therefore, confined myself to the consideration of the question, what would be a reasonable rent which plaintiff would have paid the defendant for the use of the machinery while he had it, premising that it was in good workable order when he received it.

14. Plaintiff says that the machinery reached him on 26th February 1914 and that the mill was working from 2nd July 1914 till 21st December 1915. He files Exhibit EE as a statement of his mill accounts. But I am of opinion that this book is a concoction. It has obviously been written all at one time, and is much too clean and fresh to have been in daily use in the mill from the beginning of 1914 to the end of 1915. It has not been filed in this suit until now. If it had been in existence when the suit was tried, it would have been filed there at least to support the claim for damages. I have no doubt it has been got up either for the purposes of this remand, or for the purposes of another suit in which one Krishna Rao is suing the plaintiff for a share in the profits of the mill. I can place no reliance upon it.

15. P.W. No. 2, one of the plaintiff's mill servants, states that he was working in the mill from 7 A.M. till 6 P.M., yet that the mill itself worked from, one or two hours a day. He admits that it had been making profits enough to meet the cost of the installments of purchase-money. I find his evidence to be of no practical use.

16. P.W. No. 3, owner of two rice mills in Tanjore, states that he gets a net profit from each of Rs. 40 to Rs. 50 a month and that his mills get work for 2 to 3 hours a day. D.W. No. 2 states that he owns a rice mill in Karaikkal for which he obtained the machinery from the defendant company, that it worked 12 hours a day and that between February 1915 to April 1919 he made a net profit of Rs. 2,085.

17. Neither P.W. No. 3 nor D.W. No. 2 filed any accounts. The evidence is thus very meagre, but D.W. No. 3 and D.W. No. 2 agree more or less on the normal profit which such a mill will bring in to a full owner. They fix it at about Rs. 500 a year. I take it, as there is no evidence to the contrary, that this is a normal profit for such a mill in normal working order.

18. The cost of the plaint machinery was Rs. 3,800. If this had been lent in cash the lender would expect probably 7 or 8 per cent. on his money, a matter of Rs. 300 a year roughly. If a full owner's profit is Rs. 500 a year, Rs. 300 a year does not seem to me too much for the hire of the machinery. I, therefore, fix the amount which one renting the machinery would probably have to pay for its use at Rs. 300 a year.

19. The next question is as to the time in which the mill has been in working order D.W. No. 1 in his evidence given in the suit stated that the mill would not be ready to work till March 1914. It went on till 21st December 1915 according to the plaintiff, and this is the date given also by D.W. No. 1. I take it then that normally it should have been working for 21 months. At the rate of Rs. 300 a year, this

gives Rs. 525.

20. I, therefore, return a finding that Rs. 525 is the amount of reasonable compensation payable by plaintiff to defendant for the use of the machinery while it was in plaintiff's possession.

21. This second appeal coming on for final hearing after the return of the finding of the lower Appellate Court upon the issue referred by this Court for trial, the Court delivered the following

22. We accept the finding and grant plaintiff a decree for Rs. 1,375 with interest at 6 per cent. from date of plaint. Parties to pay and receive proportionate costs. The appellant will pay the stamp value to Government.