
(1960) 01 PAT CK 0008
In the Patna High Court
Case No : Civil Revision No. 170 of 1958

Bihariji Mills Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-01-1960

Acts Referred:

Railways Act, 1890 — Section 72

Citation : AIR 1960 Patna 457

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Advocate : Girindra Nath Mukherji, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—The plaintiff-company has come up to this Court u/s 25 of the Provincial Small Cause Courts Act against the decision of the learned Small Cause Court Judge dismissing its suit for recovery of certain amount of compensation for damage caused to a consignment of Maida, Ata and Suji booked from Marufganj (Patna Ghat) to Darbhanga on 18-6-1955. The plaintiffs simple suit in the plaint was that it was the owner of the consignment in question, and at the destination, station 56 bags of Maida were found damaged by rain water. The extent of damage assessed was 30 per cent of the total value of the contents in 28 bags and 15 per cent in the other 28 bags. The railway in its written statement raised various pleas, one of which was

""That the plaintiff has got no right to sue; this defendant does not admit that the plaintiff is either the consignee or the consignor or the owner of the consignment in suit"

The pleas of want of negligence and defects in notices have failed in the Court below, and the decision in that regard is in favour of the plaintiff-company. But the suit has failed on the ground that the railway receipt was endorsed by the

plaintiff-company to Kunjlal Madanlal of Darbhanga, although it shows it as the consignor and the consignee of the goods. The learned Small Cause Court Judge also seems to be of the view that the plaintiff-company has not proved by satisfactory evidence that it was the owner of the goods at the relevant time.

2. Mr. Mukherji appearing for the plaintiff company submitted that a suit for damages against the railway can be filed either by the consignee or the endorsee, and it being the former, was entitled to maintain the suit. He also submitted that the mere fact of endorsement on the railway receipt was not sufficient to hold that the title in the goods had passed on to the endorsee, as it may well be that Kunjlal Madanlal, the endorsee was simply an agent of the plaintiff company appointed to take delivery of the goods in question.

In support of this contention, learned Counsel placed reliance upon AIR 1947 169 (Bom.) and *Sri Ram Krishna Mills, Ltd. Vs. Governor-General in Council*, . Mr. Bose appearing for the opposite party has drawn my attention to an unreported Division Bench decision of this Court in *Union of India, New Delhi v. Firm Harchand Rai Bansidhar*, First Appeal 532 of 1954 decided by Rai and U. N. Sinha JJ. on 19-8-1959, wherein the principle decided seems to be that the only person who is entitled to maintain such a suit is the person who is the owner of the goods at the relevant time.

It does not matter whether he is the consignee or the endorsee of the railway receipt or not. Mr. Bose, therefore, on the strength of this authority, submitted that on the facts and in the circumstances of the instant case the plaintiff-company, having failed to prove that even after the endorsement of the railway receipt, it retained the property in the goods to itself, had no right to maintain the suit.

3. Bhagwati, J. in the Bombay case relied upon on behalf of the petitioner, has held at pages 174-175--

""The railway receipt being a document of title to goods can be dealt with by the consignee in various waysHe might sell the goods represented by the railway receipt to a bona fide purchaser for value thereof and endorse the railway receipt in favour of such bona fide purchaser for value, thus creating in him an indefeasible title to the goods as against an unpaid vendor claiming a lien thereon or claiming to exercise a right of stoppage in transit with reference to the goods. This right which a consignee has of dealing with the railway receipt which is a document of title to the goods represented thereby depends, however, as I have already stated, on the facts of each particular case.... The endorsement as such is not sufficient to invest the bona fide pledgee for value or the bona fide transferee for value with that right. It is the circumstances attendant upon the transaction that have the effect. Merely by reason of an endorsement on the face of a railway receipt it cannot be urged that the endorsee of the railway receipts became the prima facie owner of the goods represented by the railway receipt or had any rights in the goods represented by the railway receipt created in him of

the type mentioned above." If I may say so with respect, the principle underlying the Bombay decision has been accepted by the Bench of this Court in the unreported decision referred to by me above. In that case the plaintiff was neither a consignee nor an endorsee of the railway receipt, yet on a consideration of the evidence and the attending circumstances their Lordships held--

"The title to the goods had, therefore, passed to the plaintiff by the appropriation of 2-2-1952. Although Brij Mohan Ratan Lal had not endorsed the railway receipt to the plaintiff, in view of the entries in the invoice it can hardly be said, that Brjj Mohan Ratan Lal had reserved the right of disposal of the goods as contemplated by Section 23 Sub-section (2) of the Indian Sale of Goods Act, 1930."

In the earlier portion of the judgment also it was found that the goods which were despatched in that case from Ahmedabad were the goods of the plaintiff. Reading this judgment as a whole, it is manifest that this Court has accepted the principle that it is that person who is entitled to maintain a suit for damages against the railway, who is the owner of the goods at the relevant time. The decision of Beevor, J. in the case of Sri Ram Krishna Mills, Ltd. Vs. Governor-General in Council, does not help the contention put forward on behalf of the petitioner. There the plaintiff petitioner's suit had failed in the Court below on the ground that he was neither the consignee nor the endorsee of the railway receipt. The High Court upheld this decision on that ground. The unreported Division Bench decision of this Court, in my opinion, lays down a principle of law different from the one enunciated by Beevor, J., in that case.

4. Applying the principle of law which I have mentioned above to the facts of the present case, I find that the plaintiff company did not make out a specific case in its plaint that it had endorsed the railway receipt to Kunjlal Madan Lal and had appointed them its agent merely for the purpose of taking delivery of the goods. It did not state at what point of time the title to a portion of the goods had passed on to Kunjlal Madan Lal. As has been observed by the learned Small Cause Court Judge, the account books had not been produced in support of the plea taken by P. W. 1 that Kunjlal Madan Lal had not paid the price of the damaged goods.

On referring to the evidence of P. W. 1, I find that he had simply stated in the examination-in-chief that he had taken the Bijak and the railway receipt to Darbhanga and had given them to the consignee. He does not say on what date the endorsement on the railway receipt was made in favour of Kunjlal Madan Lal or when they paid the price of the consignment. On recall he simply stated that the goods supplied to Kunjlal Madan Lal were on orders, and that they did not pay for the damaged contents to the plaintiff mill.

The evidence on recall is not at all clear on the point as to what the witness meant, whether Kunjlal Madan Lal did not pay only to the extent of 30 per cent and 15 per cent of the value of the contents of the 56 bags or they did not pay

the price of 56 bags at all, and so the property in the said 56 bags remained with the plaintiff. It has come in evidence that the entire consignment was delivered to an employee of Kunjlal Madanlal. P. W. 1 does not claim that the mill took delivery of the 56 bags and retained its property.

In that situation, I am not prepared to differ from the finding of the learned Small Cause Court Judge that the property in the consignment or, for the matter of that, in 56 bags did not remain with the plaintiff company. That being so, the decision that the plaintiff has no right to maintain the suit has got to be upheld. I, therefore, dismiss this application in revision, but, on the facts of this case, make no order as to costs.