
(1949) 08 AHC CK 0027

In the Allahabad High Court

Case No : Civil Revision Application No. 121 of 1948

Chunna Lal

APPELLANT

Vs

Governor General in Council

RESPONDENT

Date of Decision : 02-08-1949

Acts Referred:

Railways Act, 1890 — Section 72

Citation : AIR 1950 All 89

Hon'ble Judges : Seth, J

Bench : Single Bench

Advocate : M.L. Chaturvedi, for the Appellant;

Final Decision : Allowed

Judgement

Seth, J.—This is a plaintiff's application in revision u/s 25, Provincial Small Cause Courts Act. The plaintiff sent five consignments of green chillies from Mathura to Ahmedabad. The consignee were Messrs. Lalobhai Chhagan Lal. The consignments were not delivered by the Railway Company to the consignee, nor, were they returned to the consignor. The consignor, Chunna Lal, therefore brought the present suit for the recovery of a sum of Rs. 415 on account of the loss suffered by him.

2. The suit has been thrown out in limine on the ground that the consignor, Chunna Lal, had no right to maintain the suit. The Court below has relied upon a decision of the Madras High Court in the Poochammal Vs. Sundarammal and Others, wherein it has been held that a consignee alone can sue for loss caused by the non-delivery of goods after goods have been delivered to Railway Company for consignment.

3. The ratio of decision is that when goods are delivered to a Railway Company for transmission to a buyer, the property in the goods passes to the buyer and any loss that is occasioned thereafter is the loss to the buyer and no loss to the seller, and that the seller having suffered no loss, is not entitled to claim any

damages from the Railway Company. It would thus appear that a consignor is not incompetent to sue but that he cannot succeed in the suit because he cannot prove any loss to himself, having suffered none. This decision cannot be treated to be an authority in support of the pro-position that even where the consignor remains the owner of the goods he is not entitled to maintain a suit for the loss.

4. In the present case the plaintiff definitely alleged that the consignee was his commission agent, meaning thereby that the property in the goods had not passed to the consignee, but that the consignee was to take delivery of the goods and to deal with them as the plaintiff's agent. The learned Judge has dismissed the suit before evidence was produced in the case. He has thus decided the case without affording an opportunity to the plaintiff to substantiate his allegation that the property in goods had not passed to the consignee. In my opinion the plaintiff could not be non-suited unless he had failed to prove that he was the owner of the goods and that the property in the goods had not passed to the consignee. The issue could not be decided in limine without taking evidence, as it has been decided by the Court below.

5. This application in revision is, therefore, allowed, the decree of the Court below is set aside and the case is remanded to that Court with the direction that it should decide it after giving an opportunity to the plaintiff to prove his case. The plaintiff applicant is entitled to the costs of this application in revision. Other costs will be in the discretion of the Court below.

6. Before parting with this case I would like to observe that, although duly served, the opposite parties have not put in appearance in this Court to oppose this application in revision.