

(1984) 10 KL CK 0013
In the High Court Of Kerala
Case No : A.S. No. 93 of 1978

Deccan Queen Motor Service

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 25-10-1984

Acts Referred:

Sales of Goods Act, 1930 — Section 2(4)
Transfer of Property Act, 1882 — Section 137

Citation : AIR 1985 Ker 129

Hon'ble Judges : T. Kochu Thommen, J; M. Fathima Beevi, J

Bench : Division Bench

Advocate : Chandrasekharan and Chandrasekhara Menon, for the Appellant;

Final Decision : Dismissed

Judgement

Thommen, J.—The 3rd defendant in O.S. No. 87 of 1975 is the appellant. The plaintiff and defendants 1 and 2 are the respondents. The suit was decreed against all the three defendants holding them jointly and severally liable for the amounts claimed by the plaintiff. The 3rd defendant is a carrier of goods. Goods consigned by the first defendant to himself were entrusted by him with the 3rd defendant for carriage from Chalisseri (Trichur) to Bombay. "Goods consignment notes", Exts. A14 to A21, were issued by the 3rd defendant in favour of the first defendant. The term "the consignee's copies of this set are intended to be assigned or negotiated with a bank" is printed in red on the face of each note. The notes were subsequently negotiated by the first defendant in favour of the plaintiff-bank, as seen from his signature on the back of the notes, and along with them the relative promissory notes and invoices were also handed over to the bank. As the goods consigned to Bombay had not reached their destination and their whereabouts were unknown to the bank, lawyer's notices were caused to be sent by the bank to each of the defendants for payment of the value paid by the bank to the first defendant under the relevant documents. The second defendant is the wife of the first defendant and she had executed a guarantee in

favour of the bank to the extent of Rs. 15,000/-.

2. The bank's case is that defendants 1 and 2 are liable to the bank by reason of the first defendant having discounted the notes and on the strength of contract or security. The bank further contends that the 3rd defendant is liable to reimburse the bank the loss sustained by it owing to the loss of the goods.

3. Neither the first defendant nor the second defendant has challenged the decree passed against them. The contention of the 3rd defendant, the appellant, is that the goods entrusted with it by the first defendant were returned to him for non-payment of freight. The first defendant alone is therefore liable in respect of the goods. If the bank has suffered loss on account of the failure of the first defendant to pay the freight and have the goods transported, it should look to the first two defendants for reimbursement.

4. The 3rd defendant has no case that the consignment notes are not documents of title. There is no whisper to such effect in its written statement. However in ground L of its Memorandum of Appeal there is a statement to such effect.

5. It is not disputed that the goods were entrusted with the carrier, the 3rd defendant, by the first defendant for carriage to Bombay. Although the 3rd defendant had raised a contention that the freight had not been paid, that contention was, in our view, rightly rejected by the learned Judge, for it is stated in bold letters on the face of each note that the freight has been paid. It is also not disputed that the bank has paid value for the notes negotiated in its favour. As endorsee for value, the property in the goods, in our view, passed to the bank.

6. In so far as it was not contended before the trial court that the notes in question were not documents of title, it is too late to raise any such contention here, for whether or not a document, such as the consignment note in question, is a document of title and is therefore negotiable by force of the practice of the trade is not purely a question of law, but a mixed question of law and fact. In any view, in the light of Ext A37, to which we shall presently revert, such a contention would be totally unsustainable.

7. Section 137 of the Transfer of Property Act, 1882 (Act IV of 1882) and Section 2(4) of the Sale of Goods Act, 1930 (No. III of 1930) attribute negotiability to all such mercantile documents as are used in the ordinary course of business as proof of the possession or control of the goods or authorising or purporting to authorise by endorsement or delivery the possessor of the documents to transfer or receive the goods thereby represented. The long uninterrupted practice of the trade cannot be overlooked in considering the character of a document which is put forth as a document of title. If the plaintiff had a contention that such was not the case with these documents, it is a matter which ought to have been agitated during the trial. Both sides had at all material times acted on the assumption that the consignment notes were documents of title. If any proof of that practice is required, Ext A37 is indeed clear evidence. This is an agreement between the bank and the 3rd defendant to the effect that any lorry receipt

issued by the 3rd defendant with the necessary clauses printed on it would be accepted by both parties as a document of title. In the circumstances it cannot be disputed that the goods covered by the consignment notes (Exts. A14 to A21) became the property of the bank when these notes were endorsed for value in its favour. The bank thus stepped into the shoes of the first defendant in respect of all his rights against the carrier.

8. The carrier had bound itself liable to deliver the goods only upon production of the consignment notes. If as a matter of fact, as claimed by the 3rd defendant, the goods had been redelivered to the first defendant without production of the consignment notes, it did so at its own risk and cost. The 3rd defendant was fully liable and responsible for the goods, and it was its duty to carry and deliver them to the holder in due course of these notes. In the circumstance, the decree making the 3rd defendant jointly and severally liable for the value of the goods is, in our view, impeccable.

9. Sri. Achan appearing for the appellant has fairly stated that the objection concerning the jurisdiction of the court below is not pressed in view of Section 21 of the Civil P.C. This is recorded.

10. The appeal is dismissed. In the circumstances of the case, we do not make any order as to costs.