

(2014) 02 MAD CK 0007
In the Madras High Court
Case No : O.S.A. No. 50 of 2014

Glints Global Pte. Ltd. and PVM Golden Shipping Private Ltd.	APPELLANT
Vs	
EISA Trading Inc., Mediterranean Shipping Company (U.K.) Limited, MSC Agency (India) Pvt. Ltd. and Suryadev Alloys and Power Private Ltd.	RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Sales of Goods Act, 1930 — Section 30

Citation : (2014) 02 MAD CK 0007

Hon'ble Judges : P. Devadass, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : Abdul Quddhose, for the Appellant; R. Thiagarajan, for Aiyar and Dolia for 4th Respondent and Mr. P. Giridharan for 3rd Respondent, for the Respondent

Final Decision : Disposed Off

Judgement

P. Devadass, J.—Aggrieved as against the order of the learned Single Judge passed in O.A. No. 907 of 2013 and A. Nos. 5499 and 6411 of 2013 in C.S. No. 786 of 2013, whereunder the learned Single Judge has refused to grant injunction, the plaintiffs have directed this Original Side Appeal. Heard the learned counsel for the appellants, the learned Senior Counsel for the fourth respondent and the learned counsel for the third respondent.

2. The matter relates to 509.10 M.T. of Steel Scrap. Who is to have the proprietary right over it is the tussle between the appellants (plaintiffs) and the fourth respondent (fourth defendant).

3. The appellants lay their claim over the cargo of steel scrap tracing from the first respondent, from whom the first appellant is alleged to have purchased the scrap. The second appellant is the consignee.

4. Admittedly, the original owner of the scrap is not in the picture. The main

contesting respondent is the fourth respondent, who stakes its claim by virtue of its purchase from the very same owner of the scrap.

5. Admittedly, the dealing is between the appellants and the first respondent, who is stated to have dealings with the owner of the scrap. So far as the fourth respondent is concerned, its dealing is direct. It directly dealt with the owner of the scrap.

6. The fourth respondent alleges that it is bonafide purchaser for value as against the appellants. The learned Senior Counsel appearing for the fourth respondent has drawn our attention to the footnote in the proforma invoice produced by the appellants which is to the effect that the Canadian Courts alone will have jurisdiction over this matter and this Court has no jurisdiction.

7. There are 21 containers of steel scrap. The scraps were carried by the carrier/second respondent and it had arrived the Port of Chennai. The carrier's Chennai agent is the third respondent. The appellants sought for delivery of the scrap on the strength of draft bills of lading, alleging that under proforma invoice they have paid the consideration. Admittedly, they are undated and unsigned. As against that, the fourth respondent claims the cargo on the strength of original bill of lading. As per the orders of the learned Single Judge, detention charges have been paid by the fourth respondent.

8. Thus, the controversy narrows down to the question who is to have the proprietary right over the cargo whether the holder of the draft bill of lading or the holder of the original bill of lading.

9. The learned Single Judge had gone into this moot question and referring to Section 30 of the Sale of Goods Act, concluded that unless the goods are appropriated by the seller with the consent of the buyer or the buyer with the consent of the seller, the proprietary rights over the goods will not pass. In the present case, since such a situation is not in favour of the appellants, the learned Single Judge taking note of the prima facie evidence produced by the fourth respondent in the form of original bill of lading, held that there is no prima facie case in favour of the appellants, namely, the title over the goods, and thus refused injunction and also directed the fourth respondent to take delivery of the cargo in pursuance of the original bill of lading, however, after spaying the detention charges.

10. A suit itself shall not be tried in an injunction application itself. The issues relating to the proprietary rights based on the draft bill of lading or the original bill of lading is to be decided by the trial Court. It is needless to say that the appellants will always have their claim with the first respondent or the original seller. It is pertinent to note that there is no privity of contract as between the appellants and the fourth respondent. The issue whether the fourth respondent is a bona fide purchaser for value or is there any collusion or fraud practiced upon, and jurisdiction question are matters to be decided by the trial Court.

11. The learned Senior Counsel appearing for the fourth respondent fairly submits that taking delivery of the cargo in pursuance of the interim order passed by the learned Single Judge is always subject to the result of the suit. In view of the foregoings, recording the said submission of the learned Senior Counsel, this Original Side Appeal is disposed of. Consequently, the order of the learned Single Judge is confirmed and the fourth respondent is entitled to take delivery of the containers after payment of necessary charges. No costs. Consequently, M.P. No. 1 of 2014 is closed.