

(1927) 03 MAD CK 0084
In the Madras High Court

K. Ragavendra Rao

APPELLANT

Vs

K.S. Shivji and Co.

RESPONDENT

Date of Decision : 18-03-1927

Acts Referred:

Contract Act, 1872 — Section 91

Citation : 108 Ind. Cas. 758

Hon'ble Judges : Srinivasa Ayyangar, J

Bench : Single Bench

Judgement

Srinivasa Ayyangar, J.—Plaintiff is the petitioner in this civil revision petition which has been filed to revise the judgment of the Small Cause Court at Kumbakonam. The claim in the suit relates to the value of one of six pertomax lights sold by the defendants to the plaintiff, and consigned by rail as goods to the plaintiff at Kumbakonam. The Railway receipt in respect of the consignment was first taken in the name of the defendants and on or about 8th August, 1915, endorsed in favour of the plaintiff and sent to him by post. Two questions were argued by the learned Vakil for the petitioner. The first was that because the Railway receipt was taken by the defendants in their own name the property did not pass to the plaintiff at Kumbakonam. That contention is not sustainable. The Railway receipt is a document of title relating to the goods and so view-(sic) plaintiff on the endorsement of the Railway receipt and delivery thereof to the plaintiff which was we may take it about the 9th of August. In this case there is no evidence whatever at what stage of the journey or when the damage to the lamp, the subject-matter of the suit occurred, If the question has to be decided with regard to the point of time at which the damage was done and we find on the said facts that the said property in the goods passed to the plaintiff on or about 8th or 9th August, it is necessary for the plaintiff to prove by satisfactory evidence that the damage to the goods was done at a time when the property was still with the defendants and did not pass to the plaintiff, because if the question has to be decided with reference to the time of the passing of the property it is clear that the damage must fall on the person in whom the

property vested at the time when the damage was done. As the plaintiff has come into Court with a claim for damages, it was incumbent on him to prove by satisfactory evidence that the damage to the lamp was done at the time when the property therein still remained with the defendants and did not pass to the plaintiff. There is admittedly no evidence with regard to it. The learned Vakil for the petitioner argued that it is impossible for the plaintiff to prove when exactly and at what stage the damage was done. That is undoubtedly unfortunate, but if the law is what it is, the mere inability to prove a thing on proof of which alone he can succeed cannot possibly be regarded as a ground for granting relief to the plaintiff.

2. The other contention put forward on behalf of the petitioner is that u/s 91 of the Contract Act in the case of goods delivered to a common carrier delivery to the common carrier will have the same effect as delivery to the purchaser, unless the delivery is so made as to enable him (the purchaser), to hold the carrier responsible for the safe custody or delivery of the goods. The contention was that in this case the delivery made by the defendants to the common carrier was not such as to enable the plaintiff to hold the carrier responsible for the damage to the goods. The section refers to the case of the wharfinger for the safe custody of the goods and to the case of a carrier for delivery of the goods and the section does not speak of any liability for delivery of the goods in the same condition in which they were at the time when they were delivered to the common carrier or in any proper condition. If such a result had been intended by the Legislature I am sure it would not have been difficult to give effect to it by apt words or to make the intention clear in some other way, As there has been in this case a delivery of the goods to the purchaser by the common carrier and the delivery was by obtaining a Railway receipt which was duly endorsed and delivered to the plaintiff so as to make the Railway Company responsible for the delivery to enable the plaintiff to claim delivery from the Railway Company it is clear that nothing in that section can be relied upon by the plaintiff for supporting his claim. After all on the facts of this case it seems to me fairly clear that the agreement between the parties was that the lights should be sent by goods train because there has been absolutely no complaint about the manner in which the goods were consigned by the defendants to the plaintiff. If, therefore, under the agreement the plaintiff required glass lamps of the kind to be consigned by the defendant to the plaintiff by goods train, I must assume that he realised the risk and responsibility in the manner and was willing to take the same himself. If on the other hand he had required that the lamps should be insured against any such damage he must have provided against it by proper conditions in the contract itself. If, therefore, under the agreement between the parties the defendants were to send the goods by goods train and to recover the price on the delivery of the Railway receipt, it is clear that the plaintiff got what he stipulated for and I am not at all sure whether the case could not be regarded as being on the same description as c. i. f. contracts with respect to goods borne over the sea where it has been held by all the Courts both here and in England

that the contract is really not for the goods themselves but for the documents of title to the goods. I am, therefore, satisfied that the judgment of the Small Cause Court is not erroneous. The petition fails and is dismissed with costs.