

(1922) 03 MAD CK 0002
In the Madras High Court

K.M.P.R. Firm

APPELLANT

Vs

The Official Assignee of Madras

RESPONDENT

Date of Decision : 03-03-1922

Acts Referred:

Citation : 70 Ind. Cas. 751 : (1922) 16 LW 75

Hon'ble Judges : Ramesam, J; Coutts-Trotter, J

Bench : Division Bench

Judgement

Coutts-Trotter, J.—This is a curious and interesting case and has been argued with ability on both sides. It arises in this way. A Firm called

A.T. Chetty and Co., sold to K.M.P.R. Firm 70 bales of grey mulls at Rs. 15 a piece, each bale to contain 100 pieces. That was on the 7th

September 1918 just before the looting. On the same day K.M.P.R. Firm entered into an exactly similar contract with K. Ponniah Chetty, an

insolvent. The insolvent entered into a contract with other people with which we are not concerned. In due course of time, the goods were

delivered to K.M.P.R. Firm and delivered by K.M.P.R. Firm to the insolvent Ponniah Chetty who delivered them to somebody else. Nearly two

years later, in July 1920, it was discovered that one bale contained 20 pieces in excess another 5 and a third a shortage of 11 pieces so that there

had been a delivery under the various contracts of 14 pieces in excess.

2. Now, it does not matter for the purposes of the case whether it was a sale of the bales or sale of the piece because if it was a sale of the bales, it

has been dealt with throughout on the evidence that this was not a mere question of an allowance for shortage or excess but that the excess was of

such a character on the one hand and the Shortage of such a character on the

other that the bales affected cannot be treated as delivered under the contract at all. If it was a sale of the pieces, the matter is even clearer because, it comes to this, that the man who contracted for the sale of 7,000 pieces had got 14 pieces which were not taken into account in the price which he paid. A question has arisen whether K.M.P.R. Firm had taken into account the price of these 14 pieces in their settlement with the Official Assignee as representing Ponniah Chetty's estate, they say: We delivered to you goods which you were not entitled to. We do not care what their subsequent history as. You had our goods and you have got to pay. ""It was argued at the trial on the evidence, that this was a contract void in part by reason of mutual mistake. From the discussion in this Court it was made abundantly clear that no such question as to a voidability arises in a case like the present where you have got a contract, good on the face of it, for unascertained goods described in a certain way which goods can be procured in the market after the date of the contract. There was no question of a contract about the subject-matter of which the parties were under a mutual mistake like a contract relating to a ship that was not in existence at the time of the contract or the other classical instances in the books. It is a question not of the formation of the contract but a question of the execution of the contract if it was entered into. There has been excess delivery as regards apart of the contract and a short delivery as regards the rest and setting off the extra pieces delivered in one against the shortage in the other, so far as the net bales go, the transaction is outside the contract. For practical purposes, we can treat the matter as if it was a contract for 7,000 pieces with a delivery of 7,014 and the 14 pieces must be treated as being outside the provisions of the contract altogether.

3. The short point is this: I deliver goods to a man by mistake and he under the same mistake passes them on to a third person and I sue him for the goods or their value. It is said by Mr. R.N. Aingar, that the matter is covered by Section 72 of the Contract Act: ""A person to whom money has been paid or anything delivered, by mistake or under coercion, must re-pay or return it"" and that there is no qualification there as to his having continued to act under the same mistake or altered his position and, therefore, however equitable the English law may be, which protects men in such a case; it is not in this Statute and cannot be imported into it. In the course

of the argument, we were referred to the English cases on the subject. They are mostly agency cases where money had been paid to an agent by mistake, and in good faith the agent had or had not paid it over to his principal, and the clear principle laid down in those cases is this, that if he still has the money in his hands, he has got to return it. *Bavins v. London and South-Western Bank* (1900) 1 Q.B. 270 : 69 L.J.Q.B. 164 : 81 L.T. 655. 48 W.R. 210 : 5 Com. Cas. 1 : 16 T.L.R. 61. If he has paid the money to his principal without notice of the claim, an action will not lie against the agent and must be brought, if brought at all, against the principal. The leading instances of the that doctrine are *Shand v. Grant* (1863) 15 C.B. 324 : 9 L.T. 390 : 137 R.R. 528 : 143 E.R. 109; *Holland v. Russell* (1863) 4 B. & S. 14 : 32 L.J.Q.B. 297 : 8 L.T. 468 : 11 W.R. 757 : 122 E.R. 365 : 129 R.R. 635 and *Kleinwort Sons and Co. v. Dunlop Rubber Co.* (1907) 97 L.T. 263 : (1970)23 T.L.R. 696 . In the last named case, Lord Atkinson put it in rather more general terms at page 265 by adding to the words "'or settled such an account with the principal as amounts to payment or did something which so prejudiced his position that it would be inequitable to require him to refund.'" It appears to me that the doctrine of law does not rest on anything peculiar to the relation of principal and agent though it is the most usual instance which presents itself. The general doctrine appears to be this. Where money is paid or goods delivered to a man by mistake, it can be recovered so long as his status quo is maintained, that is to say, so long as he can be equitably regarded as having still the benefit of that which was paid or delivered to him. That is rendered pretty clear by a case the other way. *Standish v. Ross* (1849) 3 Ex. 527 : (1849)19 L.J. Ex. 185 : 154 E.R. 954 : 77 R.R. 715 There the return of the money was resisted because it was said that the person to whom it had been delivered had in the meanwhile applied the money to a purchase. That may be a practical hardship for he might not have incurred the expenditure unless he thought the money was his. Still, if I have plaintiff's money which enables me to indulge in extravagance, I have already had the benefit of that money and whether I spent it wisely or foolishly he can get it from me although I have not got it. That principle, moreover, appears to be underlying the decision of the High Court of Bombay in *Gangadas Mulji v. Haji Ali Mahomed* 36 Ind. Cas. 433 : 42 B.

54 : 18 Bom. L.R. 826. Though speaking for myself, I deprecate the use* of the term "estoppel" in relation to such a case. I do not think that this

has anything to do with estoppel or that it depends upon the conduct of the person against whom the estoppel is, sought to be set up. The doctrine

involved in the cases is the doctrine of equitable ^restitution and does not depend on the conduct, whether good or ill, of anybody. It depends

upon whether the person whom it is sought to bring to book had his position so affected before the mistake was discovered that it would not be

equitable to compel him to meet the plaintiff's claim. It appears to me that if by reason of mistake instead of handing over 7000 pieces a person

hands over 7014 pieces to another and that person hands them to another labouring exactly under the same mistake as the person who delivered

them to him, it would be inequitable to compel that person to restore the goods or to pay for them to the person who delivered them to him. I am

quite prepared to say that Section 72 of the Contract Act, which I think has a bearing on this, has to be qualified by the doctrine of equity in order

to render it intelligible. It is conceded that it is so loosely drafted that by virtue of another section of the same Act, namely, Section 21, the word

mistake" has to be qualified by the addition of the words "of fact," otherwise it would cover extra goods delivered under a, mistake of law. But I

think the simple solution is that propounded by my learned brother in the course of the argument, namely, taking the section literally as suggested

by Mr. R.N. Aingar, it will not cover the case because the words are "a person to whom money has been paid (that is not forthcoming) or anything

delivered by mistake or coercion must repay or return it. What he should do when the money is simply passed on is not stated in the section.

Taking the words literally, he cannot return it when he has not got it. The same result is arrived at by applying the equitable doctrine.

4. It follows that the appeal fails and the judgment of Philips, J., which adopted the judgment in a similar case of Kumaraswamy Sastri, J., must be upheld.

5. I should like to say in conclusion that, although I think that the learned Judge's attention in Letters Patent Appeal No. 4 of 1919 was misdirected

to the question of void contract, if I may say so with respect, in another part of his judgment he states the proposition which I have endeavoured

to explain quite clearly and in a form which is practically identical with that which I have tried to arrive at in this judgment. The appeal fails and must"" be dismissed with costs-taxed on the Original Side scale.

Ramesam, J.

6. I agree with my learned brother in thinking that this is not a case of a void contract or series of void contracts. The contract or contracts are perfectly valid. The only mistake is in the performance of the contract or contracts. Either the title to the goods (14 bales) has passed or has not passed on account of the mistake in the performance of the contracts. If the title to the goods has not passed, the remedy of the owner of the goods is to trace his goods and sue for them. It is possible he has other remedies. If the title to the goods has passed, it may be that even the owner has no remedy. But an intermediate dealer in the goods like the plaintiff in the present case has no cause of action against and other in the position of the defendant. I think that the plain meaning of Section 72 of the Contract Act is that the person to whom the goods are delivered must return them if he has them. What his duty is, if he has not got them is another point on which the section is silent and consequently I entirely agree with my learned brother in his conclusion, viz., that he would not be liable in circumstances like those of the present case.