
(1927) 07 CAL CK 0072
In the Calcutta High Court

Mahim Chandra Sarkar

APPELLANT

Vs

E.I. Ry. Co.

RESPONDENT

Date of Decision : 29-07-1927

Acts Referred:

Citation : AIR 1928 Cal 544

Hon'ble Judges : Rankin, C.J.; Mitter, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case I am of opinion that the appeal must be allowed. The judgments of the Courts below are singularly deficient in dates of the material transactions, but the facts appear to be as follows : Dana Premji & Co. consigned a wagon of coal from Pathardihi station to Sahebganj station on the E.I. Ry. This coal was consigned to the Loco Foreman of the E.I. Ry. Co., and was intended for use by the R.I. Ry. That consignment was on 9th February 1922, and there was a consignment note. The next thing which happened, so far as Dana Premji & Co. are concerned, is that they received a notice from the R.I. Ry. Co., stating that that coal was unsuitable for their purposes and that it was rejected. The date of that notice is not given in the judgments. The next thing that happened was that they resold that wagon of coal to defendant 3. Defendant 3, at some date before 13th March 1922, sold it again to the plaintiff, the plaintiff being a person at Kushtia on the E.B. Ry. The exact dates of the contracts between Dana Premji & Co and Biswas, defendant 3, and between Biswas and the plaintiff are not given, but they must have taken place before the 13th March 1922.

2. It now appears, according to the ease of the R.I. Ry., that although the wagon of coal was rejected, the Railway Company nevertheless retained it and were proposing to use it. They say that the rejection was a mistake; but I need not point out that however much the Railway Company might have been mistaken, their refusal addressed to Dana Premji & Co. to accept this wagon of coal put Dana Premji & Co. in the position of being revested with the ownership of the coal and entitled to resell it. The property in that coal would pass upon such a

resale. It is said for the Railway Company that the coal came to Sahebganj and was immediately sent on to Jamalpur in order to be used. When it was used, by whom it was used and when it ceased to be in existence, there is no evidence at all. It may have been about a week or a month on one of the Railway Company's sidings or it may have been immediately consumed. On this point there appears to be no evidence at all, to which the learned advocates on either side are able to point, nor is there any mention of any finding as to this matter or any details about it given in the judgments.

3. What happened was this: that, in these circumstances, the Railway Company issued a new railway receipt at Sahebganj. It is a railway receipt or fresh invoice

issued in supersession of old invoice No. 44 of 9th February 1912 to Sahebganj,

and on that invoice the senders are Dama v Premji & Co. and the consignee is S.C. Biswas. The address for carriage is Kushtia. This railway receipt was endorsed on the back by S.C. Biswas to the plaintiff. Plaintiff says that he has paid Biswas for this coal and there is no finding to the contrary, nor does it matter.

4. The plaintiff brings this suit against the E.I. Ry. Co., amongst other defendants and the question is whether, in these circumstances, the E.I. Ry. Co has any answer to the plaintiff. In my opinion it has none.

5. The Courts below have differed in opinion. The learned Subordinate Judge of Krishnagar has taken the view, first, that the plaintiff has no locus standi. He has also been under some misapprehension, as is now admitted, upon facts, and says:

It appears that the wagon was first booked to Sahebganj and then was re-booked to Jamalpur; but, as a matter of fact, the coal was used up at Sahebganj. So that there was nothing to send to Kushtia. There was only a paper transaction regarding the fresh invoice No. 10.

6. That, as is now admitted, is an entire mistake.

7. Mr. Bose, on behalf of the R.I. Ry. Co., contends that the plaintiff has no locus standi and that unless it can be shown that this coal was not consumed before 13th March 1922 there was no contract vesting the coal in the plaintiff, and the plaintiff cannot recover it. It is to be observed that the Railway Company entered into this matter originally, not merely as carriers, but as purchasers. The coal was delivered to them by their own railway. They rejected the coal and the coal again became the property of Dana Premji & Co. They were as people who had rejected that coal under an obligation to deal properly with Dana Premji & Co's property. Dana Premji & Co. required them to reconsign the coal to Biswas. That is the basis of the document, -the invoice- to which I have already referred. This is an invoice in supersession of the original invoice. The Railway Company says by it:

We received certain coal at Pathardihi on the 9th February and we now undertake as carriers to send that to Kushtia to the order of S.C. Biswas.

8. That is the meaning of it. Dana Premji & Co. were quite entitled to give them that instruction and that instruction they accepted as carriers. S.C. Biswas, the nominal consignee, was a servant of the real consignee, defendant 3, J.N. Biswas. I need not say that the fact that he had no title of his own and was a bare trustee for J.N. Biswas does not make him any the less the proper person to endorse over the railway receipt to the plaintiff and the plaintiff gets as good a title in that way as he could have got. Indeed, if it had been endorsed over by J.N. Biswas, then the transaction would have been irregular, because it was for the consignee to make the endorsement. In these circumstances, I am of opinion, that the plaintiff has every right to sue the Railway Company for the coal that has not been delivered. He had a perfectly good contract with Biswas, who had a perfectly good contract with Dana Premji & Co., as regards a specific ascertained wagon-load of coal. It is not shown, nor is there any evidence that can be pointed out, that this coal ceased to exist on 13th March 1922. I am clearly of opinion that the burden of proving that it ceased to exist rests upon the person who asserts that proposition. Whether it ceased to exist or not, in my opinion, makes no difference to the present case, because the Railway Company on these facts received the coal on the 9th February upon certain instructions. They accepted, as they were bound to do, a change in that instruction, and they were under an obligation to deliver that coal to Dana Premji & Co. or their nominee and they had DO right to use it after they had rejected it. It seems to me that it is an ordinary case by a purchaser of coal against a Railway Company who has lost the coal or, as in this case, has converted the coal to its own use by mistake.

9. In my judgment, the judgment of the trial Court is right. The decree of the lower appellate Court is set aside and that of the trial Court is restored with costs against the R.I. Ry. Co. in this Court and in the lower appellate Court.

Mitter, J.

10. I agree.