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(1955) 09 AP CK 0013

In the Andhra Pradesh High Court

Case No : Second Appeals No''s. 2059 and 2077 of 1952

Maney Ramamurty and Bros — APPELLANT

Vs

The State of Madras (now Andhra) — RESPONDENT

Date of Decision : 01-09-1955

Acts Referred:
English Sale of Goods Act, 1979 — Section 25, 25(2), 25(3)

Citation : AIR 1957 AP 376

Hon'ble Judges : Subba Rao, C.J

Bench : Single Bench

Advocate : G. Chandrasekhara Sastry and S.M. Suryanarayana Murty, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, C.J.—These two Second Appeals arise out of two suits O.S. No. 214 of 1949 and O.S. No. 81 of 1950 on the file of the Court of the District Munsif, Air.alapurani. Though both the suits were tried separately, at the appellate stage both the appeals filed against separate judgments of the; first court were heard together by consent of parties and one judgment was delivered. Perhaps for that reason, the learned Judge did not give specific finding in the two appeals separately. As the findings are not clear, I found some difficulty in disposing of these appeals.

2. The two suits were filed against the province of Madras by two merchants. Ramamurthi & BrOrs. filed O. S. No. 214 of 1949 for a declaration that the assessment of sales tax on their turnover of Rs. 1,67,877-9-3 was illegal. Bonthu Swami Company filed O. S. No. 81 of 1950 for a similar declaration that the assessment on their turnover of Rs. 2,91,736-8-6 was illegal. They alleged that their respective turnovers related to transaction that took place outside the Province of Madras and, therefore, they were not liable to sales tax in the Province of Madras.

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3. In O.S. No. 214 of 1949, the District Munsif held that the sales had been effected in the Province of Madras and, therefore, the imposition of Sales Tax was valid. In O. S. No 81 of 1950 the same District Munsif held that the sales, the subject-matter of that suit, were effected outside the Province of Madras, and, therefore, the imposition of sales tax was invalid. On appeal, the learned Subordinate Judge held that the sales in both the suits were effected in the Province of Madras. On that finding, ho dismissed both the suits. Hence, the appeals.

4. The learned Subordinate Judge described the nature of the transactions as follows in para 9 of his judgment:

The buyer orders certain number of bags of cocoanuts of specified variety, each variety having its own trade name at the prices quoted by the seller. The seller hands over the goods to the railway station or at the out agency. All the expenses including the sale price, commission, profit, are billed against the buyer and the buyer would pay the railway freight at the destination. The railway receipt is taken to self i. o. in the name of the seller himself. This is sent to the buyer who resides in far off places. This is .sometimes done either directly or through a Bank. Sometimes the railway receipt is accompanied by the seller''s hundi and sometimes not. When the hundi is honoured, due intimation of it is received lay the buyer. Where it is not honoured on presentation, further business ways of recovering the amount are resorted to. They are not material for us. One important thing to be borne in mind is that, when the rail-'', way receipt is either sent to the buyer by post or "handed over here to the buyer''s agent, the seller H takes a blank endorsement on it.

5. It will be seen from the aforesaid description of the transactions between the parties that the goods were put on rail by the sellers and the railway receipts were either sent to the buyers or GIven to their agents with blank endorsements. Section 25 of the Sale of Goods Act lays down the . circumstances under which title in the goods pass to the buyer in transactions of this nature. Section 25 reads:

Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer, until the conditions imposed by the seller are fulfilled.

6. Ordinarily in sales of this nature, prima facie title passes to the buyer when the goods were delivered to the common carrier. But the question whether the seller has retained the right of disposal of the goods even after he delivered the goods to the common carrier can only be decided on the facts and circumstances of each case. In these cases, the sellers not only delivered the goods, to the

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common carrier but also sent the railway receipts to the buyers. Though the railway receipts were taken in the name of self, they were endorsed: in blank and were either sent or handed over to the agents of the buyers. They had also received hundies towards the price of the goods and they had discounted them in their banks and they were also-duly honoured. In the circumstances, I cannot hold that the sellers have reserved any right of disposal or jus disponendi over the goods.

7. Learned Counsel for the Appellants contends that the hundies were sent by the sellers along with the railway receipts to the buyers in foreign countries and that till hundies were honoured, the-property in the goods could not pass to the buyer and in regard to the transactions in question the hundies were only honoured in foreign countries. In'' support of his contention reliance is placed upon Section 25(3) of the Indian Sale of Goods Act, which reads:

Where toe seller of goods draws on the buyer for the price and transmits the bill of exchange and: bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if lie-wrongfully retains the bill of lading the property in the goods does not pass to him.

8. In terms this clause applies only to bills of lading. But the learned Counsel relied upon the principle underlying the rule, and in support of this contention, reference is made to Cahn and Mayer v. Puckett''s Bristol Channel Steam Packet Company Ltd. (1898) 2 QB 61 (A). There, the goods were sold and shipped to the buyer to whom the seller forwarded the bill of lading, together with a bill of exchange for acceptance. The buyer did not accept the bill of exchange but sold the goods and endorsed the bill of lading to the Plaintiff. The seller stopped the goods and indemnified the ship-owner. The buyer filed a suit against the shipowner for non-delivery of the goods. In dismissing the suit, Mathew J. held that, as the consent of the seller to the possession of the goods by the buyer was conditional on the buyer''s acceptance-of the bill of exchange, the buyer had not obtained possession of the goods with the consent of the seller within the meaning of the Sale of Goods Act. 1893. Section 25 Sub-section (2) and could not transfer title, under that clause, Benjamin in his book on Sale at page 385 summarised the principle thus:

Where a bill of exchange for the price of goods, drawn by the seller on the buyer is transmitted to-the buyer together with the bill of lading to secure-acceptance or payment of the bill of exchange, the buyer cannot retain the bill of lading unless, he accepts the bill of exchange and if he refuses acceptance or payment, as the case may be, acquires no right to the bill of lading or the goods of which it is symbol."

The same author points out Where the seller transmits direct to the buyer a bill of lading making the goods deliverable to the buyer''s order, unaccompanied by a bill of exchange, Whether drawn by the seller or not, the property in the goods

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prima facie vests unconditionally in -the buyer..... The fact that on the transmission of the bill of lading, the buyer is advised of the drawing of the bill of exchange does not suspend the passing of the property.

9. The aforesaid case and the passages from Benjamin establish that unless the railway receipt is sent along with the bill of exchange or hundi as the case may be, to the buyer, the inference that the; appropriation of the goods is conditional and that the seller reserved the right of disposal cannot be drawn. In the instant cases, accepting the statement in the judgment of the learned Judge that sometimes the railway receipts were accompanied by the sellers" hundies, there is nothing on record to prove that, in the case of the transactions in question, the sellers drew any negotiable instrument or hundi and sent it along with the railway receipt to the buyer.

10. Indeed, as the learned Judge pointed out, the usual course of the transactions was that the buyers drew the hundies and sent them to the sellers before the goods were put on rail. There is, therefore, no foundation in fuel: for the argument advanced by the learned Counsel. As aforesaid, the goods were put on rail at the expense of the sellers. They were paid by the hundies half the amount at the time of the contract; and the other half before the goods were consigned. They took the railway receipts in the name of self and endorsed them in blank to the buyers or their agents. On the aforesaid facts, I agree with the learned Subordinate Judge that the property in the goods passed to the buyer in East Godavari District i. e. the Province of Madras, as it then was, and therefore the turnover in respect of the said transactions was liable to sales tax. The appeals fail and are dismissed with costs. No leave.

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