

(1955) 03 MAD CK 0051
In the Madras High Court

M.K. Ranganathan and Another

APPELLANT

Vs

The Calcutta Tramways Co., Ltd. and Others

RESPONDENT

Date of Decision : 31-03-1955

Acts Referred:

Transfer of Property Act, 1882 — Section 118, 119

Citation : AIR 1956 Mad 285 : (1956) 1 MLJ 335

Hon'ble Judges : Rajamannar, C.J;Somasundaram, J

Bench : Division Bench

Judgement

1. This is an appeal from the judgment of Balakrishna Ayyar, J., allowing an application made by the first respondent, namely, the Calcutta Tramways Company, Ltd., in the following circumstances: The Madras Electric Tramways, Ltd., was a company carrying on the business of running tramways in the city of Madras. Towards the end of 1952, the company urgently needed certain traction motors for its tramcars, and they were unable to immediately import them from abroad. So they approached the Calcutta Tramways Co., Ltd., to help them in their difficulty by supplying them on loan the required motors. The Calcutta company agreed to send on loan to the Madras company 36 English Electric Tramways traction-motors from their stock after overhauling them, the cost of reconditioning them and delivery to Madras to be met by the Madras Company. The said motors had been imported by the Calcutta company under a " No-sale licence ", on the terms of which they were precluded from selling any of these motors to anybody. On 3rd December, 1952, the Chief Engineer of the Calcutta company wrote to the Works Manager, intimating to him that orders had been issued that 36 motors are to be overhauled and sent on loan to the Madras Tramways. This letter contains a postscript which is important. It runs as follows:

Under no circumstances may this transaction be recorded as a sale as the material is on loan to the Madras Company for a special purpose in an emergency. Similarly the Madras Company will record that the materials are the property of the Calcutta Tramways Company, Limited, loaned to them in an

emergency. The period of the loan is specified as 12 months.

2. On 8th December, 1952, the Calcutta company wrote to their Secretaries in London, Messrs. Hays, Akers & Hays, who also happened to be the Secretaries of the Madras company as well, informing them of the above arrangement. In this letter, they made it clear that the motors sent to the Madras company should be replaced and that no financial transaction should take place between the two companies, as the motors were imported under a "No-sale licence". On 8th January, 1953, the Chief Accountant of the Calcutta company advised the Madras company of the despatch of two motors and in this letter there is again a reiteration of the arrangement, namely, that the motors were being supplied on loan for replacement when the Madras company imported their own motors from the United Kingdom. Mr. Brookes, the Managing Director of the Madras company wrote to Messrs. Hays, Akers & Hays, stating inter alia that the minimum time in which the money required for importing the motors could be remitted would be six months from the end of February. To this, Messrs. Hays, Akers & Hays, replied assuring the Madras company that they would not be worried on the question of replacing the motors.

3. In due course, the remaining 34 motors were shipped from Calcutta and were received by the Madras company. On each of these motors were plates which made it clear that the motor was being supplied on loan. On 11th April, 1953, the Madras company ceased to carry on business and Mr. Brookes, for and on behalf of the trustee of the Debenture-holders of the said company, took possession of all the assets under the powers reserved to him by the concerned trust-deed. Such assets included the 36 motors supplied by the Calcutta company. From a letter, dated 18th April, 1953, addressed by the Chief Accountant of the Calcutta company to the Madras company, it appears that Mr. Brookes evidently as Receiver on behalf of the Debenture-holders had intimated to the Calcutta company his intention to return the aforesaid motors. On 28th November, 1953, the Calcutta company wrote to Mr. Brookes as follows:

Loan-Motors.

With reference to the above, Mr. Webb has reported to us that you have 31 motors still crated, whilst five had already been used. Would you mind making out a detailed delivery order in favour of Messrs. Gordon Woodroffee and Company (Madras) Limited, Madras, who will arrange to collect and clear the packed motors and ship as early as possible to Calcutta. If there are any other points you would like to discuss regarding the motors, Mr. Blease is at present on his way out from Colombo to Calcutta.

4. On 20th January, 1954, the Madras Electric Tramways, Ltd., was ordered to be wound up by this Court. Mr. Brookes, however, continued to be in possession of the properties of the company and was engaged in negotiations for the sale of the entire undertaking. Referring to this in a letter addressed by Mr. Brookes to the Agent of the Calcutta company, he made it clear that the prospective

purchasers had been advised that all the 36 motors would be returned. He added:

So far as I am concerned, the 22 motors still in their cases are simple, they can be despatched as soon as I can get some labour for loading, etc. The seven lying on the floor should not present much difficulty again; as soon as I can get labour to make or repair the cases and to assemble pinions, gear cases and wheels. The seven fitted to the trams present the real problem. I do not see how they can be removed from the trams and in any case they would present a very difficult task even if I had the labour, as each tram would have to be brought into the workshop for the body to be lifted. For these 7 motors I would therefore propose to send you in substitution seven similar motors purchased from the Leeds Corporation. Will you please advise me if this is acceptable to you.

He also enquired if the Calcutta company would be prepared to sell any of these motors. To this, the Calcutta company replied unambiguously expressing their unwillingness to sell any of the motors. They wanted the 22 motors still in their cases to be re-shipped, and similarly the 7 motors lying on the floor, after being re-packed. So far as the 7 motors which had already been fitted to the tramcars which presented more difficulty, they were prepared to accept 7 similar motors purchased from the Leeds Corporation, though they preferred if possible to have their own motors.

5. In November, 1954, the Calcutta Tramways Co., Ltd., filed the application out of which this appeal arises, seeking the following reliefs: (1) that Mr. Brookes be directed or permitted to arrange for the immediate delivery to them or their authorised agents at Madras the 29 motors out of the 36 motors lent by them to the Madras Electric Tramways, Ltd., in the possession of Mr. Brookes and lying in the depots of the Madras Company, (2) that Mr. Brookes be directed to remove the remaining 7 motors from the Madras company's tramcars at the Egmore tramcar-shed and at the Mylapore tramcar-shed at the cost and expense of the applicants and deliver them to the applicants or their authorised agents at Madras. To this application the respondents were the Madras company in liquidation represented by the Official Receiver, Madras, and Mr. Brookes. Subsequently, notice was ordered by the Court to the Government of Madras and to two persons who had intervened in the liquidation proceedings and objected to the disposal of some of the assets of the Madras company. The application was opposed only by these persons who are also the appellants before us. The learned Judge, Balakrishna Ayyar, J., allowed the application holding that in the circumstances of the case the Calcutta company should be allowed to take back the motors.

6. Before dealing with the legal position arising out of the facts as to which there is really no dispute, we shall set out certain facts which emerge from the correspondence. It is abundantly clear that the Calcutta company never intended to sell their 36 motors to the Madras company for a price. They always emphasized the fact that they were giving the motors to the Madras company, only on loan. This was partly due to the fact that the motors had been imported

by them on "a "No-sale licence" under which they were precluded from selling the motors and partly because they themselves required the motors for their own use. Once we start with this fundamental fact, the further agreement between the two companies can be understood in a proper light. The Calcutta company having loaned the motors, could ask for one of two things, either the return of the motors themselves after the agreed period With the payment of an amount which would represent the depreciation in value on account of the wear and tear caused by the use of the motors by the Madras company, or the replacement of the motors by other motors of similar quality. The Calcutta company was obviously not anxious to charge the Madras company any hire. The Calcutta company preferred the second alternative. It is also clear that when the Madras company ceased to carry on business from 11th April, 1953, they had no further need of the motors, and that the Madras Company was not in a position to replace the motors. In these circumstances Mr. Brookes who had taken possession of the assets of the Madras company agreed to return the motors. Common sense and equitable considerations would suggest this to be the only just and proper course. Of course, if the law were otherwise, we have to apply it.

7. In spite of the able arguments of Mr. Mohan Kumaramangalam for the appellants, we are convinced that the law does not compel us to hold otherwise. The appellants' contention before Balakrishna Ayyar, J. and before us was that when the Calcutta company delivered the motors to the Madras company, the property in the motors passed to the Madras company. Mr. Kumaramangalam did not contend that there was a sale of the motors. Indeed, he could not contend so with success. In what way then could property have passed to the Madras company ? If the transaction is in the nature of bailment, the Madras company as bailee might have been entitled to the custody and possession of the motors. But the property in the goods could not pass to them. So learned Counsel took up the position that the transaction was a contract of exchange. In such a contract, the property in the goods which were transferred from one of the parties to the other passes eo instanti the goods are delivered, and for this proposition counsel relied on the ruling in *Volkart Brothers v. Vettivelu Nadan & Co* ILR (1888) Mad. 459. The only remedy, according to the learned Counsel, left to the Calcutta company, was to sue for damages or for specific performance of the agreement to replace the motors with new motors of similar quality.

8. It is not necessary for the purpose of this case to decide whether on the facts and in the circumstances of the case the property in the motors passed to the Madras company. In *Vokart Brothers v. Vettivelu Nadan & Co.* ILR (1888) Mad. 459, the goods were lost by fire and the only question was on whom should the loss fall. For this limited purpose, the learned Judges held that as the cotton which had been over-delivered by the plaintiffs to the defendants under an implied contract that the defendants should give in exchange cleaned and pressed cotton of like quantity and quality, the loss fell on the defendants when the cotton so delivered was accidentally destroyed by fire. It may be noticed that there could be no question in that case of any claim for the return of the very

cotton delivered by the plaintiffs to the defendants. Treating the transaction as a contract of exchange, we have here a case in which in pursuance of such a contract one of the parties has delivered his goods to the other party but that other party has failed and has become incapable of performing his part of the contract, namely, delivering similar goods in exchange. The short point for determination is whether in such circumstances the only remedy open to the party who had delivered the goods in pursuance of the contract of exchange is to recover compensation or damages or to sue for specific performance of the contract. In our opinion, apart from these remedies which he might have, the aggrieved party can also claim the return of the goods delivered by him if they are in the hands of the other party or his legal representative or transferee from him without consideration. An exchange is defined thus by Section 118 of the Transfer of Property Act:

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things, being money only, the transaction is called an "exchange".

There has been no such completed exchange in this case, because there has been no mutual transfer. One of the parties no doubt has transferred his property to the other but that other has not in his turn transferred his property. Section 119 is a specific provision dealing with a particular contingency. That section confers a right on a party to an exchange who is by reason or any defect in the title of any party deprived of the thing received by him in exchange, to claim compensation for the loss caused thereby or at his option for the return of the thing transferred if still in the possession of such other party or his legal representative or a transferee from him without consideration. It appears to us to follow impliedly from this section that if a party to an exchange has failed to obtain possession of the property which he was entitled to receive in exchange, then also he is entitled to the same reliefs, in the alternative. To illustrate the position: If A agrees to transfer property X to B and B in turn promises to transfer property Y to A, and in pursuance of this contract, A transfers his property X to B but B is unable to transfer his property Y to A then can either claim compensation for the loss caused by the failure of B to transfer property Y to him or in the alternative claim the return of his property, which he had transferred to B. No doubt Section 119 in terms provides for a slightly different case, namely where B also delivers his property Y to A but by reason of defect in the title of B to the said property A is deprived of property Y. But the principle underlying Section 119 of the Transfer of Property Act should also apply to the case where instead of a subsequent deprivation of transfer there is no transfer at all. There is one decision of the Calcutta High Court which supports the view we are taking. In *Jaharaddi Mandal v. Debnath Chaudhury*, 20 C.W.N. 657, the plaintiff gave up certain land of his for the erection of a market in exchange for lands elsewhere. Actually no such land was given to him in exchange. He therefore sued for possession of his land which had been taken from him. It was argued that the remedy of the plaintiff was by way of a suit for specific

performance of the alleged agreement to give him land elsewhere. The learned Judges rejected this argument and observed:

We cannot possibly accede to their contention that the remedy of the plaintiff is by way of a suit for recovery of the price of the land or for specific performance of the agreement to give other lands in exchange.

9. Even if we agree with Mr. Kumaramangalam that the Calcutta company's only remedy is to ask for specific performance, still in this case it can be held that the relief granted by Balakrishna Ayyar, J., is by way of specific performance. Under the contract, the Madras company was obliged to replace the motors lent by the Calcutta company by motors of like quality. It cannot be contended that the return of the very motors delivered by the Calcutta company would not be sufficient compliance with the demand, for specific performance. If delivery of similar motors would be sufficient compliance it must follow a fortiori that delivery of the same motors would also be sufficient compliance. In this case, the facts show that is possible, and Balakrishna Ayyar, J.'s., order only directs specific performance by return of the very motors which are still with the Receiver, Mr. Brookes. What would have been the position if the motors had been sold away or otherwise transferred by the Madras company to others, it is not necessary to consider. We hold that both in law and in equity the Calcutta company were entitled to the return of the motors and the order of the learned Judge was just and proper.

10. The appeal is therefore dismissed.