
(1925) 01 MAD CK 0033
In the Madras High Court

P. Ramiah and Co.

APPELLANT

Vs

T.R. Sadasiva Mudaliar and Bros.

RESPONDENT

Date of Decision : 19-01-1925

Acts Referred:

Citation : AIR 1925 Mad 1255 : (1925) ILR (Mad) 925 : (1925) 22 LW 341 :
(1925) 49 MLJ 228

Hon'ble Judges : Victor Murray Coutts Trotter, C.J.; Krishnan, J

Bench : Full Bench

Judgement

Victor Murray Coutts Trotter, C.J.—In this case the appellants bought some bales of grey shirtings from one Krishnaji Kesari Mull, a

Bombay merchant. They sold them to the plaintiffs and then they went through a long chain of changing hands and, in the end, some 7 or 8 months

after the bales had been sold, it turned! out that some of them were short by 10 pieces ; that is to say, whereas they purported to contain 60 pieces

they in fact contained only 50.

2. The learned Chief Justice, my predecessor, who tried this case found on the evidence before him that, although only 3 bales had been opened,

the reasonable conclusion of fact was that the shortage extended to the other 5 bales which were exactly of the same size, appearance and

description and, with that finding which the learned Judge was entitled to come to, we do not desire to interfere. There was evidence to support it

and one knows that to rip up a bale for the purpose of counting the contents has a most damaging effect upon its value in the market.

3. There are only two points really argued and they are both points of law. It appears that the defendants were unable when the mistake was found

out to have recourse to their sellers because the sellers had gone bankrupt. They may not be able to get a dividend. That being so, reliance was

placed on a judgment of this Court to which I was a party, *K.M.P.R. Firm Vs. The Official Assignee of Madras*, and as such the Assignee of *K.*

Ponniah Chetty, in which the facts were the converse. There, there had been an over-delivery of 14 pieces, a delivery which was thought to be

one of 7,000 pieces, but really turned out to be of 7,014 pieces. We there held that one of the persons in the chain was not accountable to his

immediate seller because he, in good faith, had passed all the 7,014 pieces to his immediate buyer, all parties being of the belief that they really

were only 7,000. Rightly or wrongly we held there and it may be we expressed the proposition in too general terms that in such cases redress

could be had by the plaintiff only if he was able to show that his goods which were not covered by the contract, namely, 14 extra pieces were in

the possession of the defendant or that the defendant had had the benefit of them. But in *Standish v. Ross* (1849) 3 Ex. 527 it was held that it was

unnecessary to plead any such circumstance. "It is quite true I had your money in my hands but unfortunately you paid them thinking you owed

the money. I have gone and spent it on a luxury." That was held in *Standish v. Ross* 1849 3 Ex. 527 not to be an answer to the claim. But it seems

to us that that case has no application whatever to a case like the present where the converse is the fact, where the seller has failed to deliver to the

buyer that which he contracted to deliver ; and it is unaffected by the fact that the unfortunate buyer has been held liable to a third person and the

still more lamentable fact that the unfortunate seller has got a remedy back only against an insolvent person--risk to which every commercial man is

liable.

4. Then a point is raised about limitation. It is said that this case falls within Article 62 of the Limitation Act because it is a case of money had and

received to the use of the plaintiff. No doubt, if one were drawing a pleading in an English Court in the approved *Bullen and Leake* style, after

setting out the facts which, after all, is the real function of a pleading, one would end up by saying "the money claimed is money had and received

to the use of the plaintiff." But it does not follow that* the article is exhaustive, because a later article, Article 86, provides for a special case of

money had and received to the plaintiff's use. It runs as follows:

For relief on the 3 years When the mistake

ground of mistake becomes known to

the plaintiff.

It specifies that the time when limitation begins to run in such a case is when the mistake becomes known to the plaintiff. It seems to me that that

special article must override the general provisions of Article 62 and that it fixes a time when the plaintiff's cause of action depends upon the fact

that he was mistaken as different from the time when the mistake was ascertained ; or, I suppose, in certain cases it may be that you would have to

qualify that by saying "" the time when the plaintiff ought to have discovered his mistake if he used reasonable diligence."" However, we are not

concerned with that here ; because, having regard to the known habits and customs of the piecegoods market here. I do not think any Judge

would venture to say that nine months was too long a time for the goods to be passing from hand to hand in their wholesale state as bales. It is a

well-settled principle on which the English Courts have acted for centuries that, in all cases where something turns upon a mistake or concealment

of fact by the fraud or deceit of the other side, the time from which limitation must be taken to run is always the time when it was brought to the

plaintiff's knowledge that there had been a mistake or a fraud. We therefore think that the learned Trial Judge was right on all the points in this case

and that the appeal must be dismissed with costs ; but there will be this modification of the decree-- and Mr. K.S. Krishnaswami Iyengar has very

wisely accepted it because, after all, it is apparently rather a hard case--that is, the time from which interest is to be taken to run is not the initial

short delivery but the time when the demand was made upon the defendants by the plaintiffs, i.e., the 24th April, 1919. The decree will be

modified to that extent, otherwise the appeal will stand dismissed with costs.

Krishnan, J.

5. I agree with the learned Chief Justice that this appeal fails. The first point taken on the facts of the case is that it has not been proved that all the

8 bales, in each of which a shortage of 10 pieces is claimed by the plaintiff, contained 1 only 50 pieces each and not 60. It is said that it is only as

regards 3 bales the shortage has been properly proved as they were opened and the pieces actually counted ; but as regards the other bales there

is no doubt whatever that the late learned Chief Justice is right in the view he took that they should be taken as shown to have contained only 50

pieces each. One of the bales opened for the purpose of finding out whether the 6 bales left in the hands of Motilal contained only 50 pieces each

or 60, was taken at random as a sample bale from the lot and it was found to contain only 50 pieces. That evidence is quite sufficient to justify the

findings as regards all the 8 bales. The fact of the shortage is thus established.

6. The next question is one of law based on the ruling of the learned Chief Justice, then Mr. Justice Coutts Trotter and Mr. Justice Ramesam in

K.M.P.R. Firm Vs. The Official Assignee of Madras, and as such the Assignee of K. Ponniah Chetty, . That case has now been explained by the

Chief Justice ; it does not really apply to the facts of the present case and it is therefore unnecessary to consider how that case overstated the law.

I should, however, not be taken as agreeing to the statement of the law in that case ; for I am inclined to think there is a little overstatement in it.

7. Reference has been made to Baylis v. Bishop of London (1913) 1 Ch 127 and Newall v. Tomtesson 6 CP 405. It is, however, unnecessary to

pursue this matter further as the facts of this case are quite different from the facts of those cases. It is said that, because the seller from whom the

defendant purchased the goods became insolvent, the defendant has lost his chance of getting his money from the seller and therefore he should not

be called upon to pay for shortage to his buyer. There is no authority cited to show that this doctrine is correct. It was the misfortune of the

defendants that their seller has become insolvent. Whether he became an insolvent after the defendants got notice that a claim was going to be

made against them by the plaintiffs or not is not very clear. For, if the insolvency happened only afterwards, it will be clearly defendants' own fault

if they did not take steps in time to recover what they would have been entitled to claim from their seller. However that may be, we are not

concerned with the question. It is clear that the defendants are bound to return the price which they received for the 10 pieces each of the 8 bales

in which there was a shortage.

8. The last question argued is one of limitation and it is one of some difficulty. It

is contended that Article 62 applies to the case. I do not see how that article can be applied, for it refers to money had and received by the defendant for the plaintiff's use. It does not refer to a case like this where money had been paid under a mistake of fact and is now sought to be recovered on the ground that it was so paid. Both the parties believed that the bales contained 60 pieces each and the price was paid and received on that footing; it was subsequently found out that there was a mistake, there being only 50 pieces in each of the 8 bales. The excess price paid is clearly money paid by mistake and Article 96 applies as the late learned Chief Justice has held. I agree therefore that the bar by limitation does not arise on the facts of this case. The appeal will be dismissed with the modification of the decree proposed as regards interest.

Victor Murray Coutts Trotter, C.J.

9. I should just like to add that, at the time I and my brother Ramesam decided the case K.M.P.R. Firm Vs. The Official Assignee of Madras, and as such the Assignee of K. Ponniah Chetty, Baylis v. Bishop of London (1913) 1 Ch 127 was not cited to us and I should like to consider that case further before expressing any final opinion as to the correctness of our decision in K.M.P.R. Firm Vs. The Official Assignee of Madras, and as such the Assignee of K. Ponniah Chetty, .