

(1999) 02 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal No. 8172 Of 1994

Prakash Roadlines (P) Ltd.

APPELLANT

Vs

Oriental Fire and General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 09-02-1999

Acts Referred:

Citation : (2003) 1 ALT 2 : (2000) 10 SCC 64

Hon'ble Judges : V.N. Khare, J;R.P. Sethi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

The Order of the Court was as follows:

1. M/s Indian Telephone Industries (ITI) (hereinafter referred to as the insured) purchased certain machinery from M/s Praga Tools Ltd. under the two invoices dated 31-3-1979 for their unit at Rae Bareilly. The said consignment was insured with the Plaintiff-Respondent. The carrier of goods was the Defendant-Appellant. It appears that the consignment reached the destination in a badly damaged condition. Under such circumstances, the insured put up a claim for damages before the Insurance Company. After the inspection of machinery the Insurance Company settled the claim of the insured by paying Rs. 2,23,189.57. The Respondent alleged that by virtue of having settled the claim, the insured subrogated its rights in favour of the Respondent as per letter of subrogation dated 26-7-1981, Ex. P-9.

2. On the strength of the said letter the Insurance Company filed a suit against the Defendant-Appellant for recovery of Rs. 1,88,305.97 with interest towards the damage caused to machinery in transit. In the said suit one of the additional issues framed was whether the suit at the instance of the Plaintiff was maintainable. While deciding this issue the trial court came to the conclusion that the letter dated 26-7-1981 is the deed of subrogation, and, therefore, the insured being not a party to the suit, the same was not maintainable.

Consequently, the suit was dismissed. The appeal filed by the Plaintiff-Respondent before the High Court of Karnataka was allowed and the suit was decreed. The High Court was of the view that Exhibit P-9 in fact was a deed of assignment and not a deed of subrogation.

3. Learned Counsel appearing for the Appellant reiterated the argument advanced before the High Court and contended that Exhibit P-9 in fact was a deed of subrogation and not a deed of assignment. It is true that this document is styled as a letter of subrogation but in the body of the letter it is mentioned thus:

We hereby assign, transfer and abandon to you all our rights against the railway company/administration or other persons whatsoever, caused or arising by reasons of said damages or loss and grant you full power to take and use all lawful ways and means in your own name and otherwise at your risk and expenses to recover the said damage or loss and we hereby subrogate to you the same rights as we have in consequence of our arising from the said loss or damage.

4. It is a settled law that a document has to be interpreted not by its nomenclature but what is contained in the said document. A reading of the document shows that it was a deed of assignment in favour of the Insurance Company. We are, therefore, in agreement with the view taken by the High Court. Consequently, we do not find any merit in the appeal. It is accordingly dismissed. There shall be no order as to costs.

Appeal dismissed.