
(1950) 07 MAD CK 0014
In the Madras High Court

Pulavarti Sitaramamurty and Another APPELLANT
Vs
Bangaru Sobhanadri and Another RESPONDENT

Date of Decision : 14-07-1950

Acts Referred:

Citation : (1950) 63 LW 947 : (1942) 55 LW 947 : (1950) 2 MLJ 505

Judgement

1. This is a petition for revising the judgment and decree of the Additional Subordinate Judge of Kakinada in S.C.S. No. 239 of 1947. The facts are briefly these. The plaintiffs, Bangaru Sobhanadri and Bangaru Krishnamurthi, had sued Pulavarti Sitaramamurthi and Pulavarthi Viswanadham for recovering damages of Rs. 789-13-6 for alleged breach of contract said to have been committed by the defendants in connection with the delivery of 50 bales of gunny bags consisting of 400 bags per bale. The contract, Exhibit A-1, was entered into on 8th July, 1947. Under its terms, 25 bales had to be delivered by 1st September, 1947, and the other 25 bales by 1st October, 1947, and it was expressly stated that the delivery order should be taken by the plaintiffs only after paying the amount to the defendants. The price was fixed at Rs. 85-8-6 per 100 bags. The plaintiffs, admittedly, did not go to the defendants with the money due and demand delivery, as the contract expressly required them to do. On 29th August, 1947, they sent a notice, Exhibit A-4, to the defendants stating they were ready to take delivery of the 25 bales due in August as per the above contract and asking the defendants to make the delivery order for the said 25 bales to them and receive the amount due as per the contract. The defendants kept quiet, probably because they were angry at the plaintiffs not going to the defendants and paying the money and

demanding delivery as required expressly by the contract, and probably also because they were glad to get rid of the obligation to deliver, taking advantage of the breach of the contract terms by the plaintiffs, because the prices of gunnies were rising. The plaintiffs sent another notice, Exhibit A-5, to the defendants on 27th September, 1947, expressing their readiness to take delivery of the other 25 bales due in September 1947 after paying the amount due and requesting the defendants once more to go to them and deliver the same and receive the amount due. The defendants, as before, kept quiet, obviously for the two reasons mentioned above. The plaintiffs sent a notice, Exhibit A-6, on 1st September, 1947, to the defendants claiming damages for breach of contract regarding the 25 bales not delivered by that date. The defendants did not reply to this, obviously relying on the strength of their case should it go to Court, owing to the weakness in the plaintiffs' claim due to their breach of the terms of the contract. The plaintiffs sent another notice, Exhibit A-8, on 2nd October, 1947, to the defendants claiming damages regarding the non-delivery of the 25 bales due by 1st October, 1947. The defendants did not keep quiet this time, but sent a reply, Exhibit A-9 on 16th October, 1947, stating that the plaintiffs had not observed the terms of the contract and were demanding delivery of goods without paying the amount, and that the defendants were not bound to go to the plaintiffs and deliver the goods, and that the plaintiffs had to go to the defendants and pay the full amount and then demand delivery and had not done so and could not claim any damages. In spite of this notice the plaintiffs rushed to Court and filed a suit.

2. The learned Additional Subordinate Judge remarked in the course of his judgment,

The exact letter of the condition in the suit contract, *prima facie*, may lend itself to the interpretation that payment must be made and delivery order taken. Each party orally alleges that he was ready to perform his part; but, it is conceded that neither side made any tender through post.

The obvious thing, therefore, for him was to dismiss the suit without costs, as the plaintiffs were bound to prove their contention that the defendants had broken the contract before they could get a pie as damages. Breach of contract has, of course, to be proved before any enquiry can be

conducted into the quantum of damages, just as marriage must be proved before maintenance can be given to a woman claiming it as a wife.

Unfortunately, the learned Sub-Judge considered the surrounding circumstances and decided the case against the defendants largely because the

price of gunnies had risen and the defendants would have profited by not delivering the bales. On this conclusion, he held the defendants liable for

breach, as they had a motive to commit a breach, and awarded damages of Rs. 631-4-0 against them on the difference in price between the

market rate on the delivery dates and the agreed contract rates. It is obvious that he erred in doing so. Motive, by itself, will not do in law, Civil or

Criminal. Many a man who has a strong motive to commit a murder may not commit it, and cannot be convicted of murder merely because he had

a motive to commit it. So too, a man having merely a motive to commit a breach of contract cannot be mulcted in damages if he is not proved to

have committed a breach. The Court has first to concentrate on the law, and then only on the results of its findings on law. In this case,

unfortunately, the learned Sub-Judge, after having observed at first practically that it was impossible to say as to who had committed the breach of

contract (which amounts to saying that it was not proved that the defendants had committed the breach) went into the question as to who had

profited by the contracts not having been carried out, and decided ("the case on that fragile consideration, overlooking the fact that the plaintiffs had

not themselves observed a material term in the contract. It follows that the judgment and decree of the lower Court must be set aside. It is hereby

set aside, and the suit dismissed. But, in the circumstances, and in the light of the various facts found in the evidence, I direct all the parties to bear

their own costs throughout.