

(1935) 05 MAD CK 0007
In the Madras High Court

Sait Madan Gopal

APPELLANT

Vs

Upadhayula Kameswara Rao and Others

RESPONDENT

Date of Decision : 03-05-1935

Acts Referred:

Citation : AIR 1936 Mad 25 : 159 Ind. Cas. 872 : (1935) 42 LW 795 : (1935) 69 MLJ 716

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—Defendant 1 in this case sent a consignment of Cocoanuts by rail on the 6th October, 1930 from East Godavari to Jalna, a station

on the Nizam's Railway. The railway receipt was made out to the consignor himself, but it was intended that Defendant 3 a merchant of Jalna

should receive the goods. A hundi was drawn against Defendant 2 a merchant in Bombay to the debit of the account of Defendant 3 to provide for

payment. On the 8th October Defendant 1 assigned the hundi and railway receipt to the plaintiff. Sometime after this-the exact date is not available

from the records--Defendant 1 sent a telegram to the Jalna Railway Station to deliver the Cocoanuts to Defendant 3 and the Cocoanuts were duly

delivered to him although he did not produce the railway receipt which was of course in the hands of Plaintiff. The hundi was dishonoured and the

plaintiff brought the present suit against Defendants 1 to 3 and the Railway Company to recover the costs of the goods. The suit was decreed

against Defendants 1 to 3 after allowing for a part payment but the Railway Company was held not liable and in the present petition Plaintiff and

the Railway Company are the only parties.

2. In dismissing the suit against the Railway Company, the learned Subordinate Judge relied upon certain observations in The Madras and

Southern Mahratta Railway Company Ltd. Vs. Haridoss Banmali Doss, in which it was held that a Railway Company was not under a duty never

to deliver goods except to the holder of the Railway receipt : and also upon the fact that at the time the delivery was made the company had no

notice of Plaintiff's claim. But the Subordinate Judge has not discussed the facts of The Madras and Southern Mahratta Railway Company Ltd.

Vs. Haridoss Banmali Doss, or apparently perceived the very vital difference between the positions of the claimant there and the plaintiff here. In

The Madras and Southern Mahratta Railway Company Ltd. Vs. Haridoss Banmali Doss, goods were consigned by one Gurunathan to his own

order and were intended to be delivered to one Swaminatha Reddi. The receipts were pledged to the Bank of Madras to whom Swaminatha

Reddi was to make payment for the value of the goods. Swaminatha Reddi obtained the goods before he did this but two or three days later he

duly paid the Bank and obtained possession of the receipts. Instead however of handing them in at the Railway Station he pledged them with the

claimant who thereupon sued the Railway Company. It was held first that as soon as Swaminatha Reddi paid the Bank the contract with the

Railway Company was completed and the Bank as holders of the receipt could have no claim. The delivery of the goods to Swaminatha Reddi

was thus rightful and the company could not be liable for the result of subsequent fraud on Swaminatha Reddi's part. It was then argued for the

claimant that although in fact the goods were delivered to the person rightfully entitled to them the company was under a duty never in any

circumstances to deliver the goods except against the actual receipts relating to them, and it was to refute that argument that the observations in

question were made.

3. Now what are the facts in the present case? The cocoanuts were delivered to the person who was not entitled to receive them. The person who

was entitled was the plaintiff. The primary duty of the Railway Company it cannot be denied-was to deliver the goods to the rightful owner. They

have not done so. Prima facie their liability is clear and the question is whether any facts have been proved which would absolve them from that

liability. The mere fact that Defendant 3 did not produce the railway receipt may not itself be conclusive against the company but it still remains to examine the other facts.

4. No evidence was offered on behalf of the company and the only facts we have are that the company which did not know of plaintiff's claim,

delivered the goods to, Defendant 3 upon the authority of a telegram sent by Defendant 1 who was the actual consignee. In these circumstances

the action of the company may well have been bona fide but seems to me to be clearly negligent. It is well known that railway receipts do pass

from hand to hand and that in general railway receipts are regarded as practically equivalent to documents of title. To deliver goods without the

production of such a receipt on the mere authority of an unconfirmed telegram and without apparently the slightest explanation for the non-

production seems to me a clear breach of duty. It follows that the company in this case have not proved any facts sufficient to absolve them from

liability. This petition must be allowed and Plaintiff's suit decreed as against the Railway Company for Rs. 590-7-0, i.e., Rs. 817 less Rs. 226-9-0

with costs throughout and with interest at 6 per. cent, from the date of the plaint.