

(1927) 10 MAD CK 0029
In the Madras High Court

Secretary of State

APPELLANT

Vs

S. Rangaswami and Co.

RESPONDENT

Date of Decision : 19-10-1927

Acts Referred:

Contract Act, 1872 — Section 70

Citation : AIR 1928 Mad 198

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This is an application to revise the decree of the Subordinate Judge of Rajahmundry dismissing a suit by the Secretary of

State for a sum of money said to be due by the respondent to the petitioner. The main contention urged by Mr. Venkataramana Rao, the learned

Government Pleader, is that the respondent did not pay the freight for the coal supplied and the petitioner is entitled to recover it from the

respondent. The facts are, the respondents Ranga-swami & Co. Madras, entered into a contract with the Executive Engineer of Godaveri for the

supply of a certain quantity of coal. The coal was consigned from a colliery in Bengal and the contract was that the coal should be supplied free on

rails at Rajahmundry. Two consignments of coal were received under freight system under which the consignee was to pay the freight. No freight

was paid at the time the coal was taken delivery of, but after some months the railway administration wrote to the Government of Madras to pay

the amount of freight. After some correspondence the amount was paid by the Government. This suit is brought for the purpose of recovering the

amount of freight paid by the Government to the railway administration from the respondent. The question is, whether the Secretary of State is

entitled to recover this amount from the respondent.

2. Mr. Venkataramana Rao strongly contends that his case comes within Section 69 or Section 70, Contract Act, that the respondent was bound

to pay the freight and inasmuch as he did not pay the freight, he is bound to make good the amount to the plaintiff. The finding of the Subordinate

Judge is that the amount of freight was not paid by the respondent to the railway administration. The question is not whether the respondent paid

the freight to the railway administration or not, but whether he is liable to the plaintiff for the freight. Under the contract the respondent was to

deliver the coal free on rails, that is to say, without Government having to pay anything for freight. When the coal was brought to Rajahmundry

without paying the freight, it was open to the Executive Engineer to have rejected the coal, as under the terms of the contract the delivery was to be

free of charges at Rajahmundry. Not having done that, he is not entitled to claim from the respondent the amount of freight which he paid, for his

right extended only to rejecting the coal and not to claim any charges that he chose to pay to a third person, namely, the railway administration.

Section 69, Contract Act, says that a. person who is interested in the payment of money which another is bound by law to pay, and who,

therefore, pays it, is entitled to be reimbursed by the other. The contention of Mr. Venkataramana Rao is that the Executive Engineer was

interested in paying the amount which the defendant was bound to pay to the railway administration.

3. I am unable to accept this contention. The Executive Engineer or the Secretary of State was in no way interested in-paying the freight on behalf

of the defendant, because under the contract the defendant was to pay the freight and deliver the coal free on rails at Rajahmundry. If he did not

choose to do so, the Secretary of State was in no way interested in seeing that the amount was paid. Therefore, Section 69 has no application to

the present case and Section 70 cannot apply as it cannot be said that the plaintiff did anything lawfully for the defendant and the defendant had the

benefit of it. As I said the right of the plaintiff was to have rejected the coal when it was delivered free on rails. All this trouble has arisen owing to

the fact that at the time of delivery the Executive Engineer or the person responsible for it overlooked the fact that freight was payable. The mere

fact that owing to oversight or carelessness of the plaintiff's officers certain amount of money was collected from him is no ground for making the respondent liable for the amount. At best the plaintiff was only a volunteer so far as this payment is concerned and, therefore, is not entitled to recover it from the respondent. There is no other point in the case. The Civil Revision Petition is dismissed with costs.