(1970) 06 GAU CK 0007

In the Gauhati High Court

Case No : Second Appeal No. 75 of 1966

Shree Shyam Stores — APPELLANT

Vs

The Union of India (UOI) — RESPONDENT

Date of Decision : 17-06-1970

Acts Referred:

Bills of Lading Act, 1856 — Section 1
Sales of Goods Act, 1930 — Section 2(4), 30, 36(3), 53(1)

Citation : (1970) 06 GAU CK 0007

Hon'ble Judges : P.K. Goswami, C.J;M.C. Pathak, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and S.N. Medhi, for the Appellant; B.K. Goswami and D.C. Goswami, for the Respondent

Judgement

Goswami, C.J.—This second appeal is directed against the judgment and decree of the learned Subordinate Judge, Tezpur, reversing those earlier of the learned Munsiff.

2. The material facts which are necessary for the purpose of deciding this second appeal are as follows: Messrs Sarita Oil Mills booked a consignment of one tank linseed oil at Indore station of Western Railway under Railway Receipt No. 77904 dated 30/31-3-52 (Ext. 1) for carriage and delivery to self at Tezpur. The railway receipt was first endorsed to Messrs Bhojumal Sons who again endorsed, the same in favour of Messrs Hiranand Rajaram. Messrs Hiranand Rajaram endorsed it in favour of the Bank of Bikaner who again endorsed it in favour of the State Bank of India and the State Bank of India endorsed it in favour of the Plaintiff, Messrs Shree Shyam Stores. Messrs Hiranand Rajaram issued a demand draft (Hundi. Ext. 2) on the Plaintiff for the sum of Rs. 2C5v\\77.25 being the value of the R. R. No. 77904 through the State Bank of Bikaner to be paid on demand to the order of the State Bank of Bikaner and the Plaintiff released the R.R. by paying the said amount plus other, bank charges from the State Bank of India, Tezpur, in whose favour the State Bank of Bikaner endorsed the R. R. The

Plaintiff took delivery of the consignment which arrived in damaged condition at Tezpur sometime in May 1962 and he received 803 Kgs. linseed oil short as per certificate of shortage dated 9-6-62 (Ext. 4), It appears that the consignment from the original tank wagon, which was found damaged at Katihar due to mechanical defects, was transshipped into another tank wagon in which it arrived at the destination station.

3. The Plaintiff claims in the suit a sum of Rs. 1700/- as compensation for short delivery of the oil. The trial court decreed the suit, but the learned Subordinate Judge dismissed it on three grounds: firstly, that the Plaintiff being a firm has not proved the Certificate of Registration - a point which has not been pressed here by the Respondent as indeed a Certificate of Registration was filed in the trial court; secondly, and this is the main ground, that the Plaintiff has no right to sue as he has not established that the consignor has endorsed the R.R. for valuable consideration to him or to any of the endorsees from whom he has claimed: thirdly, the Plaintiff has not proved the short delivery. The third ground may not be of importance if the Plaintiff fails on the second ground We will, therefore, take this first.

4. The question "that arises for consideration is whether the Plaintiff, who is not admittedly the endorsee of the consignor, is entitled to bring his action against the Defendant. There is conflict of decisions of the various High Courts on this point. The learned Counsel for the Appellant laid great stress on a decision of the Nagpur High Court in AIR 1957 Nag 31, Mulji Deoji v. Union of India, where Hidayatullaji, C.J., as he then was, with whom Tambe, J. agreed, differing from Rao, J., held in the following terms:

It is, in my opinion, not correct to say that .the endorsement is always merely a right to obtain delivery. In cases of sale of goods with delivery to the buyer through a carrier the railway receipt is not a mere record of the terms on which goods is being carried but represents the goods themselves. The fact that the endorsement has to be written on the document of title to goods clearly shows that all the rights in the goods together with all the benefits arising from any contract in respect of those goods are transferred to the endorsee. There is nothing further to it than the maxim "assign atusutitur jure auctoris" (an assignee is clothed with the right of his principal). In my judgment, the endorsement carries with it not only the title to the goods but also any right or interest in the carriage of those goods, together with the remedies available in respect of those goods against the carrier.

Tambe, J. agreeing with the above view also held as follows:

X X X X

...In my judgment, an unqualified endorsement on a railway receipt has the effect of not only transferring to the endorsee the property in the goods covered by the railway receipt but also" of transferring to him the right and benefit of the contract of carriage evidenced by the railway receipt. He has, therefore, a right to maintain an action to enforce its performance in his own name, or to sue to recover damages occasioned by failure to perform the contract.

5. The above view was influenced largely on some observations of the Privy Council in AIR 1916 PC 7, Ramdas Vithal-das v. Amarchand and Co. This will be apparent from the following observations of Hidayatullah, C.J. in the Nagpur decision AIR 1957 Nag 31 (supra):

Whenever a new document is used to base a suit, the question arises and the Courts try to find out (a) if it is a document of title in goods, i.e. a negotiable document, or (b) whether in the ordinary course of business it is regarded as so negotiable in ILR 40 Bom 630 : AIR 1916 PC 7 the document was held negotiable on custom....

X X X X X X X X

In my opinion, the matter has become so settled that even if it was necessary to prove a custom that a railway receipt is a negotiable document, it is not necessary to prove such a custom today. After the Privy Council case where it was recognized that a railway receipt is used ''in the ordinary course of business'' to represent the goods, the law must be settled."

On the other hand, Rao, J., in agreement with Bhagwati, J. in AIR 1947 169 (Bom.) Shamji Bhanji and Co. v. North Western Railway Co. quoted with approval the following observations in the Bombay decision:

....an endorsement, by itself is not enough to constitute the endorsee either a bona fide pledgee for value or a bona fide transferee for value of the goods represented by the railway receipt. Without anything more, it only constitutes the endorsee the agent of the consignee for the purposes of taking delivery of the goods represented by the railway receipt from the railway company.

X X X X

There are no rights created merely by reason of the endorsement between the endorsee and the railway company which has issued the railway receipt to the consignee the only remedy of the endorsee being against the endorser.

X X X X X X X X

The contract would remain all the same between the consignor and the railway company, and in the event of loss, destruction or deterioration of the goods represented by the railway receipt, the consignor would be the only person entitled to sue the railway company for compensation for the same.

The above view of the Nagpur High Court receives support in. a Division Bench decision of the Allahabad High Court in Sheo Prasad Vs. Dominion of India, Sheo Prasad v. Dominion of India. In the above decision, Malik, C.J., speaking for the Court, observed as follows:

A railway receipt being a mercantile document of title to goods, it is possible to transfer the title in the goods, to the endorsee by mere endorsement. It is, therefore, not possible to accept the contention that a mere endorsement of a railway receipt is not by itself enough to transfer the property in the goods represented by the receipt and the endorsee has to prove aliunde that he is the owner of the goods covered by the railway receipt endorsed in his favour.

6. The High Courts of Bombay, Calcutta and Gujarat to a contrary view on the point. We have already referred to Bhagwati, J.S view in the Bombay decision. There is a Division Bench decision of the Bombay High Court in The Union of India (UOI) Vs. Taherali Isaji, The Union of India v. Taherali Isaji, where Shah, J., speaking for the Court, held as follows:

An endorsee of a railway receipt Is entitled to file a suit for damages against the railway administration relying upon his ownership or interest in the goods covered by the railway receipt. The, property in the goods covered by a railway receipt is not necessarily transferred merely by an endorsement on the railway receipt. The endorsement is in form only an authority by the consignor or by his endorsee to a named person to ask for delivery of the goods represented by the receipt from the railway administration. By the request endorsed on the railway receipt to deliver goods to the endorsee, the endorsee does not become a transferee of the goods represented thereby. But a railway receipt being a document of title to goods, the property in the goods may be transferred by mere delivery of the receipt. In each case, the question is not whether an endorsement effects a transfer of the goods but whether the endorsement of the railway receipt and the delivery thereof is made with the intention of transferring the goods to the endorsee. If the delivery of the railway receipt with an endorsement is made with the intention of transferring the goods, the holder of the railway receipt would be entitled, as owner of the goods, to file a suit against the railway administration for loss or damage thereof.

Referring to the decision of Bhagwati. J., in AIR 1947 169 (Bom.) Shah, J., observed as follows:

X X X X

In AIR 1947 169 (Bom.) it was clear on the evidence that the title in the goods remained with the Plaintiffs even after the consignment was dispatched and S had only a right to collect the goods. In other words, the railway receipt was endorsed only for authorising the endorsee to take delivery of the goods. The Plaintiffs in that case as owners of the goods and also as parties who contracted with the railway administration, were held entitled to file a suit for compensation for loss or destruction of the consignment. Again the Plaintiffs in that case were the ultimate endorsees of the railway receipt and. even as ultimate endorsees they were entitled to file the suit. The Court in that case was not called upon to decide whether an endorsee to whom property in goods was transferred was entitled to maintain a suit for compensation for loss of the goods against the railway administration. The case is, therefore, not an authority for the proposition that an endorsee of a railway receipt, who is also an owner of the goods covered thereby cannot maintain a suit for compensation for loss of the goods against the railway administration.

In AIR 1947 169 (Bom.) the Plaintiffs being the consignors and consignees as well and having themselves entered into a contract with the railway administration and also being the ultimate endorsees, were on any view entitled to file a suit for compensation.

The Calcutta High Court also Commissioners for the Port of Calcutta Vs. General Trading Corporation Ltd. and Another, Commissioners for the Port of Calcutta v. General Trading Corporation Ltd.,) did not accept the view of the Nagpur High Court AIR 1957 Nag 31 (Supra). Bhachawat, J., in that case made some pregnant observations thus:

I was inclined to hold, if I could, that every consignee named in the railway receipt as also every endorsee of it by the named consignee are entitled to sue the railway administration concerned for loss or injury to the goods. The existing commercial practice favours such a right of suit and I was inclined to uphold the practice, if I could. But on the authorities, and on principle, I am compelled to hold otherwise. I regret this conclusion, because it will encourage technical defence by the railway administration. In the interest of commerce, the Legislature should intervene and sanction the existing commercial practice.

Similarly the Gujarat High Court also in Ibrahim Isaphai Vs. Union of India (UOI) and Another, Ibrahim Isaphai v. Union of India was not inclined to follow the views of the Nagpur High Court in the above cited decision supra. The Gujarat High Court, referring to the definition u/s 2 (4) of the Indian Sale of Goods Act, observed as follows:

By the definition, a railway receipt has, in terms, been stated to be an enlacement of title to goods. The adoption- of the aforesaid definition given by the Privy Council clearly shows that the Legislature did not intend to use the term "title" in the expression "document of title to goods" in the wider sense of the ownership of goods. The term "title" is used in the limited sense of a right to receive or take delivery of goods. It is in this limited sense that a railway receipt is a document of title and, in view of the fact that there is no provision in the Indian Sale of Goods Act which either expressly or impliedly states that an endorsement on or a delivery of the railway receipt passes title to the goods represented thereby, the proposition cannot be subscribed to that such an endorsement and delivery would pass title to the goods.

Even the Privy Council has observed in AIR 1916 PC 7; (supra) at page 9 as follows:

It remains to consider the Appellant''s argument, so far as it is based on the use of the expression "instrument" instead of "document" of title. In the first place it is to be observed that "title" in both expressions can relate only to the right to receive delivery of the goods to which the instrument or document relates. I can have nothing to do with ownership.

Being faced with the situation as has been portrayed under the law as well as under the custom noticed by his Lordship, Hidayatullah, C.J., did not choose to, have the reservation which Bachawat, J., indicated in the Calcutta case and at para 63 of, the Nagpur decision AIR 1957 Nag 31 (supra), his Lordship made the following observation:

I may point out that the trading community is sometimes ahead of the law and tries to invest with negotiability other and new documents. How they achieve this is noted in Pollock on Contracts (13th Edition) at page 182 as follows:

"The complete solution of the problem, for which the ordinary law of contract is inadequate, is attained by the law merchant in the following manner:

(i) The absolute benefit of the contract is attached to the ownership of the document which according to ordinary rules would be only evidence of the contract.

(ii) The proof of ownership is then facilitated by prescribing a mode of transfer which makes the instrument itself an authentic record of the successive transfer: this is the case with instruments transferable by endorsement.

(iii) Finally the proof is dispensed with by presuming the bona fide possessor of the instrument to be the true owner: this is the case with instruments transferable by delivery, which are negotiable in the fullest sense of the word."

Further, his Lordship observed at paragraph 65:

of course, nobody is claiming for a document of title to goods negotiability on a par with that attaching to a bill of exchange. The document of title to goods represents title to the goods or the goods themselves.;

His Lordship quoted from the decision of 1899 1 QB 643 at page 660, Cahn v. Pockett''s Bristol Channel Steam Packet Co., where Collins, L. J. observed:

The Legislature has deliberately chosen to alter the common law.. and has step by step enlarged the class of persons who, having possession, may give a better title than they have themselves got, and has relaxed the conditions under which they may do so, and I think it would be a backward step to subject the title of the purchaser from such persons to speculations such as the argument of the Defendant suggests.

In the Nagpur case AIR 1957 Nag 31 (supra) Hidayatullah, C. J., further dealing with endorsees held:

...the last endorsee can sue in his own name without proving that he is a holder for value, since that will be presumed unless rebutted. He can give a valid discharge to the carrier and can thus sue and is not required to prove that all intervening transactions were bona fide and for value.

7. Let us now look at the position from the decisions of the Supreme Court. Bhagwati, J., speaking for the Court in Duni Chand Rataria Vs. Bhuwalka Brothers Ltd., Duni Chand v. Bhuwalka Brothers Ltd., in para 17 observed :

...it is unnecessary to consider the argument which was submitted before us based upon the definition of "documents of title" in Section 2 (4) and the provisions of Section 30, proviso to Section 36 (3) and the proviso to Section 53 (1) of the Sale of Goods Act that all the documents of title enumerated in Section 2 (4) were assimilated to bill of lading and a mere transfer of the documents of title in favour of a buyer was tantamount to a transfer of possession of the goods represented thereby.

In The Commissioner of Income Tax, Madhya Pradesh and Bhopal, Nagpur Vs. Bhopal Textiles Ltd., Bhopal, Commissioner of Income Tax v. Bhopal Textiles Ltd., Hidayatullah, J., (as he then was) speaking for the Court (S.K. Das and Shah. JJ., agreeing) observed at para 5 as follows:

A railway receipt is a document of title to goods, and, for all purposes, represents the goods. When the railway receipt is handed over to the consignee on payment, the property in the goods is transferred. In this case, it is a matter of considerable doubt whether the property in the goods can be said to have passed to the buyers by the mere fact of the railway receipts being in the name of the consignees, as has been held by the High Court. Since we are not deciding the question of accrual, we do not elaborate the point.

In The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI), (Morvi Mercantile Bank v. Union of India) which is a majority decision given by Subba Rao, J. (as he then was) (Raghubar Dayal and Bachawat, JJ., agreeing) observed as follows:

The Indian decisions cited at the Bar do not deal with the question whether a valid pledge of goods can be effected by transfer of documents of title, such as a railway receipt, representing the goods; they were mainly concerned with the question whether an endorsee of a railway receipt for consideration could maintain an action on the basis of the contract embodied in the said receipt : See Firm of Dolatram Dwarka-das v. Bombay Baroda and Central India Railway Co. ILR 38 Bom 659 : AIR 1914 Bom 178; AIR 1957 Nag 31 ; Commissioners for the Port of Calcutta Vs. General Trading Corporation Ltd. and Another, These raise a larger question on which there is a conflict of opinion. In the view we have taken on the question of pledge, it is not necessary to express our opinion thereon in these appeals.

In Union of India (UOI) Vs. West Punjab Factories Ltd., Union of India v. W. P. Factories, Wanchoo, J. (as he then was) speaking for the Court (Gajendra-gadkar, C.J., Hidayatullah, J. (as he then was), Shah and Sikri, JJ. agreeing) observed at para 10 as follows:

It is true that railway receipt is a document of title to goods covered by it, but from that alone it does not follow where the consignor and consignee are different, that the consignee is necessarily the owner of goods and the consignor in such circumstances can never be the owner of the goods. The mere fact that the consignee is different from the consignor does not necessarily pass title to the goods from the consignor to the consignee, and the question whether title to goods has passed to the consignee will have to be decided on other evidence.

X X X X As we have said, already, ordinarily, the consignor is the person who has contracted with the railway for the carriage of goods and he can sue; and it is only where title to the goods has passed that the consignee may be able to sue. Whether title to goods has passed from the consignor to the consignee will depend upon the facts of each case and so we have to look at the evidence produced... X X X X We have noted above the conflict of judicial authority regarding negotiability of a railway receipt.

8. In our opinion, the railway receipt is not negotiable in the sense that the bill of lading is under the Indian Bills of Lading Act, 1856, or a negotiable instrument is under the provisions of the ''Negotiable Instruments Act, 1881, according to the rules of the Law Merchant. The railway receipt cannot, therefore, confer'' on the endorsee such rights as are available under the provisions of the above two Acts. We may in passing note the provisions of Section 1 of the Indian Bills of Lading Act, which read as follows:

