
(1960) 09 AP CK 0018
In the Andhra Pradesh High Court
Case No : C.R.P. No. 745 of 1959

Singamsetti Ramarao

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 22-09-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Railways Act, 1890 — Section 80

Citation : AIR 1961 AP 282

Hon'ble Judges : Srinivasachari, J

Bench : Single Bench

Advocate : K. Mangachari, for the Appellant; K. Krishna Murthy, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasachari, J.—The petitioner in this case is the plaintiff who filed a suit to recover a sum of Rs. 1.300/- being the value of goods damaged and short delivered. The plaintiff alleged that he booked a consignment of 200 bags of gram-dall under Invoice No. 20 dt. 16th July, 1958 from Sirs! on the Northern Railway for delivery at Pendurti on the South Eastern Railway. The Railway Receipt was endorsed by the consignor in favour of the plaintiff at Kakinada for valuable consideration.

The petitioner alleges that on account of negligence and misconduct of the Railway administration the consignment was damaged and became unfit for human consumption. On the application made for open delivery the Railway authorities examined and assessed the damage, and the shrot delivery of the stock. The plaintiff therefore sued the Railway, in this case the Union of India, for compensation and damages.

The defendant resisted the suit on the ground firstly, that the court had no jurisdiction and secondly, that the suit claim was excessive. The lower court considered the question of jurisdiction of the court as a preliminary issue and

disposed of the case by holding that the court had no jurisdiction to entertain the suit and" directed the plaint to be presented to the proper court. It is this order that is challenged in the revision petition.

2. It is urged on behalf of the learned counsel for the petitioner that the endorsement of the Railway receipt in favour of the plaintiff being part of the cause of action would entitle him to sue at the place where the endorsement took place. This is urged on the analogy of the right to sue at the place where a negotiable instrument is endorsed which would be a part of the cause of action, and for this purpose the learned counsel invited my attention to a decision of the Calcutta High Court in *Alliance Assurance Co. Ltd. Vs. Union of India (UOI)*, . In this case, no doubt, the learned Judge observed

"Where a suit is filed by the assignee of the right, title and interest of the assignor in the goods despatched by Railways and where the Railway Receipt is transferred to the assignee, such assignment is a part of the cause of action and the court! within whose jurisdiction the assignment took place was competent to entertain and try the suit."

In coming to this conclusion the learned Judge relied upon the fact that the principle that an endorsement would constitute a part of the cause of action and would apply only to a negotiable instrument was not correct. According to the learned Judge it was not restricted to endorsements of negotiable Instruments.

Even in cases of assignment of a debt where there was no question of negotiability, the assignment had been regarded as furnishing a cause of action. This case was subsequently considered in a later decision of the Calcutta High Court in *Fushraj Thanmull Vs. Union of India (UOI)*, , Hero also the question arose as to the effect of the endorsement of a Railway Receipt by the consignor in favour of the plaintiff.

In considering the position the learned Judge A.N. Ray, J. adverted to the previous decision of the Calcutta High Court already referred to and stated that on the facts of that particular case, Mukherji, J., took the view that it would furnish a cause of action. In order to determine as to whether the endorsement of a Railway Receipt would furnish cause of action In a suit as against the Railway it is necessary to consider as to what allegations or what circumstances would entitle the consignor or. his assignee to file a suit against the Railway for damages.

When the plaintiff files a suit in such a case, he fcas to allege and establish that the goods were entrusted to the Railway for carriage under a contract between himself and the Railway with respect to Hie delivery of the goods at the destination and further fact has also to be alleged that there had been a breach of the contract by reason of the goods not waving been delivered or there having been a short delivery.

These two allegations would furnish a plaintiff in a suit against the Railway for

damages in a breach of contract, a cause of action to claim the damages. It may also be stated that the Indian Railways Act while dealing with the liability of the Railways as carriers speaks of the liability of the different Railways where the goods are booked at the place of one Railway and the damage occurs within the jurisdiction of another Railway. This is covered by Section 80 of the Railways Act. It says:

"Notwithstanding anything in any agreement purporting to limit the liability of the railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss, destruction or deterioration of goods were booked through over the railways of two to more railway administrations may be brought either against the railway administration to which the goods were delivered by the consignor Or against the railway administration on whose railway the loss, Injury, destruction or deterioration occurred."

This would signify that it would be open to a plaintiff suing for compensation for loss or damage to sue at the place where he consigned the goods or at the place where the damage occurred or where short delivery was made. As stated above, the bundle of facts that have to be alleged to entitle the plaintiff, for relief as against the Railway authorities is the entrustment of the goods to the Railway for carriage and the damage caused by reason of deterioration or loss, and naturally the two places viz. the place of entrustment of the goods and the place where the damage occurred or the short delivery was made, could be regarded as the places, which would have jurisdiction to try the suit. Railway Receipts are not treated as negotiable instruments. I may with advantage also refer to the question in Halsbury's Laws of England at page 143, Vol. 29, Paragraph 179 dealing with railway receipts and bills of lading :

"Such documents although they may purport to be, or may commonly be treated as, transferable are not negotiable instruments, unless there be a trade usage to that effect."

Therefore I am not sure if the observations of the learned Judge in Alliance Assurance Co. Ltd. Vs. Union of India (UOI), -- to say that the principle relating to the endorsement of a negotiable instrument as furnishing a cause of action, could be applied also to Railway Receipts endorsed in favour of third parties. The right that the endorsee gets on transfer or assignment of the Railway Receipt is only a right to take possession of the goods.

The right to sue the Railway administration would be only governed by the contract as between the original consignor and the Railway, and if under the contract between the consignor and the Railway the places where the cause of action could be said to have arisen could only be a place where the goods were consigned or where the short delivery was made or damage occurred, that alone could furnish a cause of action.

In this connection an old decision of the Madras High Court in Mohd, Abdul Kadar

v. East India Ry. Co., ILR 1 Mad 375 may also be referred to. There the plaintiffs contracted at Kanpur with the East India Railway Company to deliver goods in, Madras. The Railway Company made default in the delivery of the goods and the plaintiffs sued them in the Madras High Court.

In that case the learned Judges held that inasmuch as the breach of contract had taken place at Madras, the cause of action must be deemed to have wholly arisen within the jurisdiction of that court, and therefore the Madras High Court had jurisdiction. That is an instance of a case where it was held! that the breach of contract would furnish a cause of action. I might also say in passing that if the argument advanced by the learned counsel for the petitioner were to be given effect to, it would lead to disastrous results.

That is to say, if a Railway Receipt has been endorsed in favour of five persons consecutively, it would amount to this that the five endorsees would be in a position to file a suit at any of the places where the previous endorsements took place or at the places where the goods were consigned or the breach of contract occurred. Obviously that is not the policy of the Act as envisaged by Section 80 of the Railways Act. For all these reasons I am inclined to adopt the view taken by the Calcutta High Court and the view adopted in the case of Union of India v. Adam Hajee, AIR 1954 Trav-Co. 362. In the result this C.R.P. is dismissed with costs.