

(1927) 11 BOM CK 0014
In the Bombay High Court

Sukdevdoss Ramprasad

APPELLANT

Vs

Govindoss Chathurbhujadoss and Co.

RESPONDENT

Date of Decision : 17-11-1927

Acts Referred:

Citation : (1928) 30 BOMLR 238

Hon'ble Judges : Darling, J;Chancellor, J;Cave, J;Carson, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Darling, J.—This is an appeal against a decree of the High Court of Judicature at Madras, dated April 29, 1925, varying a decree of the same Court on the Original Side made by Mr. Justice Coutts-Trotter on October 4, 1923.

2. In the original suit the plaintiffs (the present appellants) claimed the sum of Rs. 65,255, the price of goods sold and delivered by the appellants to the respondents.

3. In answer to this claim, the respondents pleaded as follows :?

The plaintiffs, defendants and certain other merchants formed a group, and it was agreed by and between the merchants of the group that the transactions had among them should take place on the footing that no deliveries should be intended or asked for, that patta pattis or delivery orders should be issued to the respective purchasers, that after the delivery orders were sent round and the same ultimately reached the hands of the original vendors, the patta pattis should be exchanged and Havala Chita issued, that accounts should be taken thereafter on the footing of the exchange of patta paltit or delivery orders, and that the respective vendors should be entitled to the difference in prices from the respective purchasers.

4. The respondents also pleaded that there was no actual delivery of the goods of which the price was sued for, that appellants never were in a position to

deliver them, and that it never was intended that delivery should take place, The respondents further pleaded that the contracts were void as being wagering contracts for the payment of differences only.

5. It was proved or conceded that as regards the goods in question no delivery took place, but that documents purporting to be delivery orders were made which passed through several hands, and that within one week all the goods?so far as any ever existed?were in the hands of the appellants, which, indeed, they had never left.

6. This resulted from the fact that in respect to each re-sale what is described as patta patti was made?a process which resulted in 1927 differences merely, according to the fluctuations of the market, being recoverable, instead of the goods or their price.

7. The trial Judge held that the documents which purported to be orders for delivery were so in fact, and were equivalent to Lord Darling delivery of the goods themselves. He rejected the contention that these dealings were wagering contracts merely, and he gave judgment in favour of the appellants for Rs. 65,255 and interest. This judgment was set aside by the Court of appeal, the Judges holding that the contracts were entirely wagering ones incapable of giving any right of action. Judgment in regard to them was therefore entered for respondents.

8. To succeed in this action for the price of goods it is necessary for appellants to prove that the goods were actually delivered?and this was never contended?or else that some document of title was given to the respondents which would oblige the custodian of the goods to hand them over to the holder of it.

9. On the Madras market were several merchants who bought and sold amongst themselves such goods as those to which this suit relates?and it was proved that the very goods here in question had first been sold by the appellants to the respondents. No delivery of the goods was then made, but they were sold by the respondents, and resold by the purchasers again and again?no delivery of goods ever being made?until at last the goods were repurchased by the appellants themselves, who now claim against the respondents the full price, as for goods sold and delivered.

10. It was proved that whenever one of these particular sales was made a document was given to the purchaser. Many of these documents were exhibited in this case, notably the one now to be set out.

Exhibit III. Delivery order given to Govindoss Chathurbujadoss.

Dated 27-11-1922.

No. 784.

Delivery order.

Sukdevadoss Ramprasad,
Bankers, Importers, Yam Merchants and Commission Agents,
101, Mint Street, Georgetown, Madras,
To
Govindoss Chathurbujadoss.

Description. Bales, Bundles. No. 40s. Japan. 25 1,000 November vaida. Received 23 bales of 40s. Japan patta patti with M, Amritlal. (Signed; Trimbaklal, for B.G.C. & Co. 27-11-1922.

11. It will be observed that this document is headed "delivery 1927 order"?and for the appellants it was contended that this entitled the holder of it to demand the actual delivery of the goods.

12. But it was replied that, however that might have been originally, the words "received 25 bales of 40s. Japan patta patti with M. Amritlal" showed that it is not now a document of title giving its holder a right to demand delivery of the goods, but simply a link in a chain or series of notes showing that no actual transfer of goods was contemplated, but merely a final payment of differences resulting from the making?and non-performance?of a, number of contracts of sale.

13. A good deal of evidence was given as to the meaning of the words "patta patti with" and it appears certain that when once patta patti is made the buyer has no longer a right to demand the goods themselves, nor is the seller obliged to deliver them, but the matter should be settled by the payment and acceptance of the difference resulting from the sale and re-sale of the goods.

14. This being so, it was contended on behalf of the respondents that the contract in question was a wagering contract. There can be no doubt that these various contracts were in character highly speculative; but, as was pointed out by the trial Judge and by the Judges on appeal, that is insufficient in itself to render them void as wagering contracts. The authorities cited show that to produce that result there must be proof that the contracts were entered into upon the terms that performance of the contracts should not be demanded, but that differences only should become payable.

15. Now, in the present case no such definite agreement or understanding was proved; in some instances of other sales between these parties there was no patta patti and delivery was given and taken, and so here, unless and until patta patti was made, delivery might always have been insisted on. There can be little doubt, however, that to have made such a demand would, among these merchants, have been considered bad form. Gamblers have their own code of honour, and expect its observance, although they cannot ensure it; and we know that "even the wild outlaw in his forest walk keeps yet some touch of civil government." But the law does not affect to enforce mere courtesies.

16. The trial Judge held that notwithstanding the fact that patta patti had been made or agreed in the contracts relating to these goods, the appellants were still entitled to recover the price of them, since the documents which passed between the parties were valid delivery orders on presentation of which the good might be demanded. This was evidently not the view taken by the Judges in the Court of appeal; but they did not go at length into this matter, because they held that the contracts represented nothing but wagering transactions?and therefore gave the appellants no rights whatever.

17. In the opinion of their Lordships the contracts relied on were Lord Darling not bad on the ground of wagering, and that for the reasons given by the trial Judge. They therefore do not concur in the judgments appealed from in so far as wagering is concened. But from those judgments it appears that the Judges of the Court of appeal were prepared to hold that the appellants were not in a position to deliver the goods they had sold, and also that the respondents had not agreed to accept what are called delivery orders, directed to third persons, as something equivalent to delivery so as to exonerate the appellants from liability to deliver the goods, and to entitle them to sue for the price.

18. In the opinion of their Lordships this view is correct. The making of the patta patti resulted in an agreement that the obligation to deliver the goods should not remain effective, that the price of them should neither be demanded nor paid, but merely the resulting differences. These differences have been paid or tendered and nothing is due in regard to them. Their Lordships will, therefore, humbly advise His Majesty that this appeal should be dismissed, with costs, including those of the petition by the appellants for the admission of further documents which is also dismissed.