

(1982) 12 CAL CK 0019

In the Calcutta High Court

Case No : A.F.O.D. No. 137 of 1969 (in Suit No. 1837 of 1962)

The Great India Trading Co. Pvt. Ltd.

APPELLANT

Vs

Nowrangrai Ramniwas and Another

RESPONDENT

Date of Decision : 14-12-1982

Acts Referred:

Carriers Act, 1865 — Section 8
Evidence Act, 1872 — Section 110
Sales of Goods Act, 1930 — Section 23, 25

Citation : AIR 1983 Cal 237

Hon'ble Judges : S.C. Ghose, C.J;R.N. Pyne, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Ghose, C.J.—This appeal is directed against a judgment and decree passed by Ramendra Mohan Datta, J. on January 29, 1968. By the said judgment and decree, the learned trial Judge directed payment of the sum of Rs. 16,500/- in favour of the respondents. The claim of the respondent No. 1 was for non-delivery of goods in the following circumstances:

The respondent No. 2 was the insurer of the said goods and paid the respondent No. 1 the value of the goods insured against. The appellant, inter alia, carries on business under the name and style of the Great India Boating Company inter alia as carrier of goods and was at all material times and still is a common carrier of goods for hire by inland navigation. On or about October 3, 1961, the appellant as such common carrier received and accepted at Gauhati 125 bales of raw jute each bale weighing 150 kilograms the property of the respondent No. 1 on board the appellant's barge bearing No. A/5214 to be safely lowed by Steamer and securely carried to Calcutta and there to be delivered to the respondent No. 1 or order. By way and as evidence of the said contract of carriage, the appellant duly issued a bill of lading bearing No. R/7211 dated October 3, 1961. The said goods subsequently were ordered to be delivered to Shri Hanuman Jute Mills at

Calcutta. At all material times, the respondent No. 1 was the owner of the said goods. In breach of its duties as such common carrier and/or in its duties as carrier for reward the appellant failed and neglected, safely or securely or at all, to carry the said goods or to deliver the same as directed. The appellant alleges that the said goods have been lost due to the sinking of the said barge at Khulna in East Pakistan. By reason of the premises the respondent No. 1 has been deprived of the said goods and suffered damages in the sum of Rs. 18,725/- being the value of the said goods. The appellant did not pay the value of the said goods and hence the suit was filed.

2. The case of the appellant in its written statement was that the goods were carried on basis of goods forwarding note and the bill of lading at owner's risk and expressly stipulated that the appellant will not be responsible for loss or damage to goods arising from Act of God, strandbags, groundings, collision, snags or any accident or dangers of the rivers, canals, locks or navigation. No claim in respect of the said contract shall be valid unless in writing and delivered at the office of the defendant in Calcutta within 4 weeks from date of any default, loss or damages in respect of which such claim arises. The said forwarding note also provided that in the event of any of the terms of the forwarding note conflicting or appearing to conflict with the terms of any other agreement between the shippers and the service (that is the appellant), the terms of this forwarding note of such agreement shall prevail at the option of the service (that is the appellant). The appellant informed Shri Hanuman Jute Mills that the barge carrying the consignment of 125 bales met with an accident and sank near Khulna and that the consignment was a total loss. On 13th October, 1961, the respondent No. 1 made a claim with the respondent No. 2. On 21st October, 1961, the respondent No. 1 sent a letter written by the appellant and addressed to Shri Hanuman Jute Mills to the respondent No. 1. The respondent No. 2 thereupon paid the full amount namely Rs. 18,725/- for which the said consignment was insured in favour of the respondent No. 1 and the respondent No. 1 on receipt of the said sum executed a letter of subrogation dated 22nd November, 1961 whereby the respondent No. 2 became subrogated to all the rights and remedies in respect of the subject matter insured. It appears from the correspondence that on about 22nd March, 1962 Shri Hanuman Jute Mills made a claim against the appellant for delivery of the said consignment and claim a sum of Rs. 17,330.65 p. at the rate of Rs. 92.43 p. per quintal as damages for nondelivery. On receipt of the said letter, the appellant informed Shri Hanuman Jute Mills that the barge carrying the said consignment of jute bales met with an accident and the consignment was a total loss as a result, thereof. The appellant further informed that all necessary documents were sent to the respondent No. 1, on 8th November, 1961. On 27th April, 1962 Shri Hanuman Jute Mills gave a further reminder to the appellant company and demanded payment. In reply the appellant on 28th April, 1962 requested Shri Hanuman Jute Mills to refer the matter to the shipper or the insurance company. Thereafter after exchange of letters by Solicitors, the suit was filed by the

respondent No. 1 and the respondent 2 against the appellant. Various issues were raised and settled in the suit. The main contentions raised on behalf of the appellant were that the respondent No. 1 had no interest in the goods and the property in the goods had passed on to Shri Hanuman Jute Mills and as such the notice contemplated by the forwarding note or by the bill of lading by the owner of the goods not having been sent, the liability, if any, of the appellant was absolved. It is the common case of the parties that the respondent No. 1 was the owner of the goods when the same was despatched on board the barge bearing No. A/5214 in tow of ship M. V. Rampuria belonging to the appellant. On 3rd October, 1961 bill of lading was issued which shows that the respondent No. 1 consigned the goods to self or to its agent at Calcutta. The respondent No. 1 thereby retained the possession and reserved the right of disposal of the goods till the completion of the voyage. By reason of the premises, the burden of proving that the respondent No. 1 was not the owner of the goods is on the appellant. (See Section 110 of the Evidence Act. Sukul Brothers v. H. K. Kavrana AIR 1958 Cal 730; Commissioners for the Port of Calcutta Vs. General Trading Corporation Ltd. and Another, .

3. On 3rd October, 1961 the respondent No. 1 entered into a contract with Messrs. Hanuman Jute Mill for sale of 89 bates of mid. 121 bales of Bot and 10 bales of B bottom quality of jute and the terms of payment of the said contract was 100% cash against document. The appellant contends that the respondent No. 1 under the said contract by shipment of 125 bales of jute and by the purported endorsement and delivery of the bill of lading transferred the property in the goods during transit to the said Shri Hanuman Jute Mills. The contentions of the appellant are not acceptable to us.

4. The respondent No. 1 shipped the goods and by the bill of lading the good were deliverable to self or to the respondent No. I's agent. The respondent No. 1 low prima facie (is) deemed to have reserved the right of disposal of the goods. (Section 25 of the Sale of Goods Act).

5. The respondent No. 1 having reserved the right of disposal in the bill of lading no property in the goods could pass unless there had been a valid endorsement and delivery of the bill of lading to the purchaser for valuable consideration and the endorsement having been made with the intention of passing the property. (See Carona Sahu Co. Ltd. Vs. State Maharashtra, ; Smyth v. Bailey, 1940 (3) ER 60; The Ford Automobiles India Ltd. Vs. The Delhi Motor and Engineering Co., ; In Re: Cargo ex S.S. Rappenfels,).

6. In the instant case there has been no endorsement of the bill of lading (paper Books pages 127 to 132) by the respondent No. 1. The purported endorsement was made by the Managing Director of the appellant. Words of the alleged endorsement are not sufficient to pass the property. (Kali-das Chakraborty question 75, page 41, Questions 149-150, page 50). The appellant's case is that the respondent No. 1 sent the bill of lading through the letter (Ext. C page 87) to the appellant for the purpose of the same being endorsed by the appellant on

behalf of the respondent No. 1 and further instructed them to send it back to respondent No. 1. This case seems to be untenable as the respondent No. 1 could very well have endorsed the bill of lading itself. It appears that the respondent No. 1 instructed through the appellant to the Master of the vessel for diversion of the cargo to another landing that and the bill of lading was sent to the appellant to get confirmation of the diversion instruction on the bill of lading. The bill of lading and the bill were sent through the Union Bank of India to D. L. Miller and Company who were the agents of the respondent No. 1. Possession of the bill of lading was retained by the said agent to the plaintiff No. 1. The agents were to part with the said documents only when the payment was received. No payment was received from M/s. Shri Hanuman Jute Mills (See Kalidag Chakraborty questions 97 to 105, questions 125 to 138 pages 43-44, 47-48). The observations of Lord Bramwell in the case of *Sewell v. Burdick* (1884) 10 AC 74 are not against the respondent No. 1. *Sewell v. Burdick* is a case where the shippers endorsed the bill of lading and pledged it with a bank and the shipping company sued the bank for freight. The House of Lords held that in spite of endorsement of the bill of lading by the agent, the property in the goods remained with the shippers and only special property passed to the bank and in the premises the bank was not liable to the shipping company. Referring to the Bill of Lading Act an endorsement on bill of lading, Lord Bramwell observed at page 105 "The property does not pass by endorsement but by contract in pursuance of which the endorsement is made. "In the instant case there was a contract between the respondent No. 1 and M/s. Shri Hanuman Jute Mills for sale of unascertained goods of diverse quality. Unless and until the goods in suit were unconditionally appropriated to the contract, property in the goods could not pass. The said goods could only have so appropriated, if there had been a valid endorsement and delivery of the bill of lading to Shri Hanuman Jute Mills and for valuable consideration. The endorsement must have been made with the intention of passing property in the goods. In the instant case the freight was paid by the respondent No. 1. Insurance was taken out and from time to time was paid by the respondent No. 1 and during transit the goods were sent on the risk of respondent No. 1. All these things prove that the property in the goods never passed to M/s. Shri Hanuman Jute Mills, but at all material times remained vested in the respondent No. 1.

7. On the question of the weight, quality, description and value of the 125 bales of raw jute, the evidence was adduced on behalf of the respondent No. 1 by Shri Ramchand Pandey. Pandey checked up the weights because after the receipt of the forwarding notes he used to supervise the carriage of the goods by the lorry to the that and he used to have the goods loaded on the barge. In the godown of the respondent No. 1 there were scales for weighment and before the goods could be loaded on the lorry for carriage to the that one or two bales would be weighed. That was how the weight of the bales used to be checked up. The witness also stated that in the godown of the respondent No. 1 loose jute would be sorted out in accordance with quality and thus such jute would be weighed for

being packed into bales, each bale having weight of 150 kilo grams that is 4 maunds. The protest note by S. R. Hakim who was the special Boatman of the said barge corroborated the oral evidence of Shri Pandey. That is an admitted document. In the premises, it is evident that each bale of jute having weight of 150 kilo grams which was equivalent of 4 maunds is respect of the said consignment. As regards the quality, the witness has stated that different quality of jute used to be stacked at different places in the godown. The goods were marked and the goods forwarding note was prepared on the basis of the said mark ing. The rate prevalent in the market for bottom quality jute had been charged and claimed in this suit. There was evidence by Fandey that the bottom quality of jute was the lowest quality of jute in the market. There was no evidence to the contrary. The correspondence and the document corroborated the said oral testimony of the witness. Description of jute in the bill of lading was 1961-62 Raha NN bottom quality. Raha was the place where such quality of jute was grown. The value of the said jute on the basis of the evidence of value prevailing on the date when the said loss occurred namely on 10th Oct., 1961 was Rs. 33/- per maund, as was evidenced in the other case. On that basis, the value of the goods was Rupees 16,500/-. As has been held in the other, appeal, the appellant was a common carrier and failed to disprove negligence. Thus the appellant was liable for committing the breach of duty to carry the consignment as common carrier and deliver the same to the respondent No. 1 and/or its agent. It has already been held that clause 16 of the goods forwarding note cannot stand in the way of the respondent No. 1. As held in the other case we are of the opinion that the appellant was negligent and due to negligence of the appellant goods had been lost and the appel lant is liable to make good the loss. The loss occurred in this case also on the 10th Oct., 1961. On 13th Oct., 1961 the appellant informed M/s. Shri Hanuman Jute Mills admitting the accident in respect of the goods covered by bill of lading No. R/7211 per barge A/5214 in tow of M. V. Rampuria. On 27th Oct., 1961 the respondent No. 1 in formed the appellant that though it received their letter dated 13th Oct., 1961 through M/s. D. L. Miller and Co. Pvt. Ltd. address- ed to Shri Hanuman Jute Mills and lodged a claim for the full value of the goods (sic). Thus the claim was lodged within 4 weeks from the date of the loss of the goods in terms of clause 16 of the said goods forward ing note. In no effect clause 16 of the said goods forwarding note as has already been held to be invalid (sic). In any event due notice was actually given within 6 months from the date of the loss. .

8. For all the reasons stated hereinbefore and in the Appeal No. 197 of 1967 this appeal fails and is dismissed with costs.

R.N. Pyne, J.

9. I agree.