
(1970) 02 BOM CK 0020

In the Bombay High Court

Case No : Civil Revision Application No. 332 of 1965

Union of India

APPELLANT

Vs

Ramprasad Mulchand Agarwal

RESPONDENT

Date of Decision : 20-02-1970

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1), 12(3), 13(1)
Civil Procedure Code, 1908 (CPC) — Section 115, 28(1), 29(1), 29(2), 9
Railways Act, 1890 — Section 72, 77C
Sales of Goods Act, 1930 — Section 2(4)

Citation : AIR 1971 Bom 52 : (1972) 74 BOMLR 577 : (1971) ILR (Bom) 1307 : (1971) MhLj 167

Hon'ble Judges : Bhole, J

Bench : Single Bench

Advocate : V.R. Padhye, for the Appellant; Shankar Anand, for the Respondent

Judgement

1. The original defendant Union of India owning South Eastern Railway Administration has filed this application being aggrieved by the judgment and decree of the Court of the learned District Judge who has allowed the appeal and set aside the decree passed by the trial Court.

2. The plaintiff had filed a suit against the defendant for the recovery of a sum of Rs. 860/- as compensation for short delivery in a consignment of 200 tons of mustard oil booked on 26-6-1962 from Bankura to Gondia. The plaintiff claimed as an owner of the firm running under the name and style of "Mulchand Ramprasad" and as an assignee of the railway receipt. The defendant denied the title of the plaintiff and his right to sue. It has also denied the shortage and further pleaded that the shortage if any was due to defective packing of the consignment and not due to any act of negligence or misconduct on the part of the railway administration or its servants and, therefore, the defendant was not liable for the plaintiff's claim.

3. The trial Court held that having failed to prove that he paid any consideration

for the railway receipt or the consignment, the plaintiff had no right to sue. It further held that the goods consigned were not packed according to packing rules and the shortage may have been due to that reason and that having failed to prove negligence or misconduct on the part of the railway administration, the plaintiff could not recover compensation for the shortage. The plaintiff's suit therefore was dismissed. In an appeal by the plaintiff, the learned District Judge also held that he had failed to prove that he had paid any consideration for the consignment for the railway receipt or that he had established that he was a mere endorsee of the railway receipt. According to the learned District Judge even as an endorsee, he was entitled to sue. The District Judge also held that the packing of the consignment did not conform to the packing conditions prescribed in the Indian Railways Act and although under such circumstances the burden of proving negligence or misconduct of the railway was on the plaintiff as the railway administration did not disclose how it dealt with the consignment, negligence or misconduct had to be presumed. On these findings, therefore, the learned District Judge set aside the judgment and decree of the trial Court and decreed the suit. Against this judgment and decree of the learned District Judge, the railway administration has come here in revision.

4. The trial Court has framed a number of issues and one of the issues was whether the plaintiff was the owner and assignee of the suit consignment. He came to the conclusion that he is neither an owner nor an assignee but an endorsee. In a similar way, the learned District Judge has after framing an issue has come to the conclusion that the plaintiff is an endorsee of the railway receipt and that he is not an assignee. In other words, both the Courts have come to a finding that the plaintiff has not established that he is the owner of the suit consignment but it was established that he was merely an endorsee. On the point of packing the trial Court also has framed an issue whether the suit consignment was not packed and forwarded in compliance with the packing rules and come to the conclusion that it was not properly packed. In a similar way, the learned District Judge also came to a finding that the consignment was not properly packed. The learned advocate for the applicant contends here that the finding of the learned District Judge that an endorsee of the railway receipt could file a suit for the recovery of a sum on grounds of damages for short delivery is not correct proposition of law. According to him, therefore, the judgment and decree passed by the learned District Judge are illegal. On the other hand, it is contended by the learned advocate for the opponent that the applicant has filed a revision application and u/s 115 of the CPC such an argument is untenable. According to him, the High Court can entertain revisions u/s 115 only if the subordinate Court appears to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity. It is, therefore, contended by him that the points raised in this revision application by the applicant cannot be entertained u/s 115 of the Civil Procedure Code. We will, therefore, have to examine whether the application, on the ground that the

appellate Court erred in holding that as a mere endorsee, the plaintiff could sue without proving his title, is tenable or is not tenable.

5. It is argued by the learned advocate for the applicant that the learned District Judge has erred in holding that as a mere endorsee the plaintiff could sue without proving his title. According to him, this is a wrong proposition of law. He invites my attention to *Chhangamal v. Dominion of India* AIR 1957 Born 276 as well as *Union of India (UOI) Vs. West Punjab Factories Ltd.*, . The Division Bench in the Bombay case has held that either a consignor can recover compensation on the basis of his contract with the railway administration or an owner of goods can sue on the basis of his title. This Court has observed in para 12 of that judgment as follows:--

"The right of action to recover compensation for loss or damage to the goods ordinarily vests in the consignor, where the goods lost or damaged in transit are the subject-matter of a contract of sale, the owner of the goods may in the absence of a contract to the contrary sue the railway administration. Therefore a consignee who is in possession of a railway receipt duly endorsed by the consignor may maintain an action for compensation for loss of the goods covered thereby, but he can do so not because he is the consignee but because he is the owner of the goods. A consignor may sue for compensation for loss relying upon the breach of contract of consignment. An owner of goods covered by a railway receipt may sue for compensation relying upon his title, and the loss of goods by misconduct of the railway administration. But a bare consignee who is not a party to the contract of consignment and who is not the owner of the goods, cannot maintain a suit for compensation for loss or damage to the goods. He has no cause of action *ex contractu*, nor *ex delicto*."

6. The Supreme Court in the above cited case *Union of India (UOI) Vs. West Punjab Factories Ltd.*, was also of the view that the question whether title to goods has passed to the consignee or has not passed to him has to be decided and it is only the owner of the goods who could file a suit for the recovery of damages. It was argued before the Supreme Court on behalf of the appellant that the railway receipt is a document of title to goods u/s 2(4) of the Indian Sale of Goods Act and as such it is the consignee who has title to the goods where the consignor and the consignee are different. But this argument was repelled by the following observations:--

".....It is true that a 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."

Unless, according to the Supreme Court, the endorsee is also shown to be the

owner of the goods, he cannot file a suit. Therefore, the law as laid down is that an endorsee cannot file a suit unless he has been shown to be the owner of the goods. But, in our case, both the trial Court as well as the learned District Judge came to the conclusion that the plaintiff is merely an endorsee and not the owner of the goods. The learned District Judge, however, was of the view relying on a decision of the Nagpur High Court in *Mulji Deoji v. Union of India* AIR 1957 Nag 31, that an endorsee could file a suit. We have seen that our own High Court as well as the Supreme Court have ruled that only an owner of the consignment can file a suit. An endorsee can file a suit only when he is shown to be the owner of the consignment. Evidently, therefore, the learned District Judge has erred and has not followed the law as laid down by this Court as well as by the Supreme Court.

7. Now, therefore, this application will have to be considered in the context of the point raised by the learned advocate for the applicant and the law as laid down by this Court as well as by the Supreme Court. The learned advocate for the opponent invites my attention to *Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others*, , as well as other cases in the same volume on page 1341 as well as 1676 and argues that this application cannot be entertained u/s 115 of the Civil Procedure Code. The case on page 1336 involved a question of limitation. It is observed in para 8 that the proposition that an erroneous decision on a question of limitation involves the question of jurisdiction, applies to cases in which the law definitely ousts the jurisdiction of the Court to try certain dispute between the parties and not to cases in which there is no such ouster of jurisdiction under the provisions of any law where it is left to the Court itself to determine certain matters, as a result of which determination the Court has to pass certain order and may, if necessary, proceed to decide the dispute between the parties. The distinction between the two classes of cases is that in one, the Court decides a question of law pertaining to jurisdiction. In the other, it decides a question within its jurisdiction. In the case on page 1341 *Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai*,), the Supreme Court were considering certain decision of the District Court. They observed that where the District Court on an erroneous view of Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, held that the requirements of that provision were complied with by the defendant, but it also held that having regard to the circumstances, the readiness and willingness contemplated by Sub-section (1) was otherwise established, the High Court had in exercise of its powers u/s 115, Code of Civil Procedure, no authority to set aside the order merely because it was of the opinion that the judgment of the District Court was assailable on the ground of error of fact or even of law. Jurisdiction to try the suit was conferred upon the Subordinate Judge by Section 28(1)(b) of the said Rent Act, and the decree or order passed by the Subordinate Judge was by Section 29(1)(b) subject to appeal to the District Court of the District in which he functioned, but all further appeals were by Sub-section (2) of Section 29, prohibited. According to the Supreme Court, the power of the High

Court u/s 115, CPC is not thereby excluded, but the exercise of that power is, by the terms of the statute investing it, severely restricted. It was further observed that the decision of the District Court that the tenant established or failed to establish his readiness and willingness to pay the standard rent did not affect the jurisdiction of the Court conferred by law upon it and by wrongly deciding that the tenant was or was not entitled to protection the Court did not assume to itself jurisdiction which was not vested in it by law nor refused to exercise jurisdiction which was vested in it by law. Nor did the Court by arriving at an erroneous conclusion on the plea of the tenant as to his readiness and willingness act illegally or with material irregularity in the exercise of its jurisdiction. The case on page 1676 *Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth*, is also under the Bombay Rent Control Act of 1947. The question arose u/s 13(1)(g) of the said Act and it was observed that where the question was whether a decree in ejectment should be passed on the ground of personal requirement u/s 13(1)(g) of the Bombay Act and where it was proved that the landlord wanted to pull down the premises and build another and then occupy it, or whether in such a case he had to proceed under Clause (hh) of Section 13(1) the question was one of interpretation of these two clauses and the trial court having full jurisdiction to entertain the suit u/s 28 of the Act, had jurisdiction to interpret whether Clause (g) of Section 13(1) would apply to the case. According to the Supreme Court, the appellate Court also had jurisdiction to hear the appeal and, the High Court could not, therefore, entertain and interfere in revision with the decision of the appellate Court even if it had gone wrong on facts or law.

8. Now, therefore, the above authorities and also other authorities show that a Court which has indisputable jurisdiction to hear a cause has jurisdiction to come to a decision, wrong as well as right, and the decision is not open to revision. But where the question is one on the decision of which the jurisdiction of the Court depends, the Court cannot by an erroneous finding confer on itself a jurisdiction which it does not possess and its order therefore is liable to be modified by the High Court. On this principle revision has been entertained in some cases and revision has not been entertained in the other cases. In so far as our case is concerned, the learned District Judge appears to have committed an error in coming to the conclusion that an endorsee could file a suit for damages, whereas the law laid down by this Court and by the Supreme Court is that only an owner of the suit consignment can file a suit. Therefore, this is a case where there is a disregard or violation by a Judge of a rule of law laid down by this Court as well as the Supreme Court. In other words, he acted in the exercise of his jurisdiction but illegally or with material irregularity. The mistake in this case, in my view, is gross and palpable and it was due to the exercise of jurisdiction illegally or with material irregularity. Therefore, if a decision which is complained of here by the learned advocate for the applicant is vitiated by this gross and palpable error, that decision has to be revised u/s 115 of the Civil Procedure Code. If that is so, then this order is liable to be revised by this Court.

9. Admittedly, both the Courts below have held that the plaintiff is an endorsee and he is not the owner of the goods. In my view, therefore, the endorsee plaintiff could not have filed this suit at all. His suit therefore is untenable.

10. The learned advocate for the applicant has also raised a point about the packing. It was urged by him that the consignment was not properly packed. But it is common ground that the defective packing was not mentioned in the forwarding note at all. The forwarding note was in the possession of the railway administration, and the railway administration has not produced the same. u/s 77-C of the Indian Railways Act, the responsibility of a railway administration for damages of goods in defective condition or defectively packed condition is laid down. When any goods tendered to a railway administration are in a defective condition as a consequence of which they are liable to damage, the fact of such condition or improper packing has to be recorded by the consignor or his agent in its forwarding note. Therefore, in the absence of any forwarding note or in the absence of any mention of defects or improper packing in the forwarding note, it will be the responsibility of the railway administration for damages. The railway administration therefore cannot in the absence of this proof say that the packing was not proper. This finding, however, will be of no help to the plaintiff, because I have held that the plaintiff's suit is not tenable because he has not established himself to be the owner of the consignment.

11. This revision application will have therefore to be allowed. The opponent-plaintiff's suit therefore will have to be dismissed. His suit is dismissed. In view of the circumstances of the case, there will be no order as to costs throughout. Revision allowed.