

(1972) 02 PAT CK 0008
In the Patna High Court
Case No : A.F.A.D. No. 199 of 1967

Union of India (UOI)

APPELLANT

Vs

Garbhu Sao and Another

RESPONDENT

Date of Decision : 01-02-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 107, 96

Citation : AIR 1972 Patna 341

Hon'ble Judges : Shiveshwar Prasad Sinha, J;Shambhu Prasad Singh, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; R.S. Chaterji and H.R. Das, for the Respondent

Final Decision : Allowed

Judgement

Shambhu Prasad Singh, J.—This appeal by the Union of India as owner, the Eastern Railway and Northern Railway administrations, defendant first party to the suit, is directed against a money decree for compensation for nondelivery of 11 bags of yellow mustard seeds weighing 925 kilograms (it is so mentioned in the railway receipt, Ext. 1, and wrongly stated as 9.25 kilograms both in the plaint as well as in the judgments of the Courts below) booked from Bindki Town Out Agency to Patna City by defendant No. 3 and consigned to self. The case of the plaintiff-respondent was the defendant No. 3 consigned the said 11 bags of mustard seeds for sale in, plaintiffs gaddi and endorsed the railway receipt in Favour of the plaintiffs concern. The plaintiff paid Rs. 708.72 paise including miscellaneous expenses to Allahabad Bank, Patna, and got the railway receipt, though the value of the consignment was Rs. 991-64 P. per bijak, the rest being payable after sale of the commodity to defendant No. 3. The said consignment was not delivered to the plaintiff in spite of correspondence and notices u/s 77 of the Indian Railways Act and Section 80 of the Code of Civil Procedure. The appellant failed to disclose the whereabouts of the consignment and Eastern Railway administration merely gave a reply that it was not liable. It was further

averred in paragraph 10 of the plaint that to avoid all objections and future trouble the plaintiff as advised was impleading defendant No. 3 also in the suit. The main relief claimed was "that a decree for Rs. 1106-94 NP. be passed in favour of the plaintiff against the defendants or such other defendants who may be held liable".

2. Defendant No. 3 did not contest the suit. Only defendant first party, i.e., the appellant contested it. The main defence was that defendant No. 3 fraudulently obtained the railway receipt from Bindki Town Out Agency in collusion with its staff without actually delivering possession of the alleged goods to the Out Agency at Bindki town for carriage and, therefore, the railway administration was not liable to pay any compensation; the action of the Out Agency staff being illegal and beyond the scope of its duty. Any negligence or misconduct on the part of the railway administration and their staff was also denied. It was further pleaded that the claim was excess, unjust and untenable.

3. The trial Court dismissed the suit against defendant first party on a finding that goods were not delivered to the Out Agency and that the case was covered by illustration (b) of Section 238 of the Indian Contract Act. It, however, decreed the suit as against defendant No. 3 for Rs. 708.72 P. which the plaintiff had paid to Allahabad Bank. The plaintiff appealed. The lower appellate Court has not recorded any clear finding on the question whether the Bindki Town Out Agency did really receive the goods or not from defendant No. 3. On the basis of Ext. 1 it was inclined to think that Bindki town railway station did not receive the consignment in question from Bindki Town Out Agency, but, as in its opinion, the railway receipt is a mercantile document, it has held that illustrations (b) of Section 238 of the Indian Contract Act has no application and decreed the suit against defendant first party as well, but only for the amount decreed by the trial Court.

4. Mr. P.K. Bose, learned counsel for the appellant, firstly urged that no appeal in respect of Rs. 708.72 P. for a decree against the appellant was maintainable in the Court below at the instance of the plaintiff inasmuch as the plaintiff claimed a decree against all the defendants or any one of them. According to Mr. Bose, the plaintiff could not be said to be aggrieved by the decree of the trial Court in respect of the amount for which the suit had been decreed. He contended that where a person claims alternative reliefs and one of them is granted to him, he cannot appeal for getting the other relief. In support of his contention he relied on the decision of the Calcutta High Court in Reajuddin Patwari and Others Vs. Syed Abdul Jobbar, and an unreported decision of a learned Single Judge of this Court D/- 14-1-1941 in Second Appeal No. 191 of 1940 (Pat), Mst. Panchani v. Mst. Rikhia. In the former case, the plaintiff of that suit brought a suit for ejectment of defendants 1 and 2 from certain lands on the allegation that he was entitled to possession of those lands by virtue of his ijara lease obtained from the eight annas proprietor, the defendants being dar ijaradaar, and their lease terminating some time in the year 1910. In the alternative, he also made a

prayer for assessment of fair and equitable rent u/s 157 of the Bengal Tenancy Act. The main defence of the defendants was that they were entitled to hold the lands as raiyats. They also pleaded that the plaintiff had no title. The trial Court declared the plaintiffs right to get rent of the lands, but dismissed the suit in respect of the relief for ejectment. Both parties appealed and their appeals were dismissed by the lower appellate Court. The defendants again appealed to the High Court and the plaintiff preferred a cross objection. While dismissing the cross objection it was observed by their Lordships of the Calcutta High Court that the alternative relief having been granted to the plaintiff, he could not be allowed to say that he did not want that relief but other relief. In the case of Mst. Panchani, Agarwala, J. (as he then was) followed the aforesaid decision of the Calcutta High Court. The plaintiff of that suit, a mortgagee in possession, wanted to recover possession of the house from defendants 1 and 2. In the alternative, she also asked for recovery of the mortgage debt from the mortgagor defendant No. 3. The Courts below dismissed the suit as against defendants 1 and 2, but decreed it for the mortgage money as against defendant No. 3. On second appeal, though this Court held that the suit was wrongly dismissed as against defendants 1 and 2, the appeal could not be allowed as the plaintiff had been granted the alternative relief prayed for by him.

5. In reply to the aforesaid contention of Mr. Bose, learned counsel for the plaintiff-respondent submitted that prayer for an alternative relief was no bar to the granting of the main relief. He relied on the decisions in *Amir Mahton and Others Vs. Sheopujan Missir and Another*, *Bariar Singh Vs. Durga Gir and Others*, and *Adi Pheroazshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, . The Supreme Court in the case referred to above has discussed in detail what is the meaning of the expression a "person aggrieved". The discussion was with reference to whether Advocate-General of the State could fall within the expression a "person aggrieved" and prefer an appeal u/s 37 of the Advocates Act, 1961 against the orders of the Committee of the Bar Council of the State holding a particular advocate not guilty of professional or other misconduct. The majority held that Advocate-General was not a person aggrieved. The discussions, if I may say so with respect, are exhaustive and learned, but not of much assistance for deciding the case before us. In *Bariar Singh's* case, Rai, J. sitting singly, held that in a suit for redemption even if the plaintiff prayed for an alternative relief for damages and was granted one, he was not stopped from filing an appeal for getting a decree for redemption. The learned judge relied on the Bench decision in *Amir Mahton's* case. The decision in *Amir Mahton's* case, however, is not an authority that where alternative reliefs are claimed and one of them is granted, in all cases the plaintiff can appeal. In that case two alternative reliefs were claimed, but the decree did not grant either of the reliefs. It granted some other relief and it was held that the plaintiff could appeal against such a decree. S.K. Das, J. (as he then was) referring to the decisions in the cases of *Musammatt Panchani* and *Raajuddin Patwari* observed that it was doubtful whether a general rule could be laid down

that in all cases where an alternative relief had been granted, the plaintiff had no right of appeal for getting a decree for other relief which he had claimed in the plaint. He distinguished the aforesaid decisions on facts. Manohar Lal, J. agreeing with Das, J. observed that on the facts found it was not necessary to consider the correctness of the view expressed in some cases that the plaintiff could not in appeal be granted the second alternative relief claimed by him. With due respect to the learned Judge, who decided Bariar Singh's case, I think he failed to appreciate correctly the decision in Amir Mahton's case.

6. In my opinion, the question whether a plaintiff who claims alternative relief and is granted one of them can appeal for getting the other relief is to be decided on the averments in the plaint of the case concerned. If the plaint read as a whole discloses that the plaintiff will be satisfied with either of the reliefs claimed by him, he cannot be allowed to appeal, if one of the reliefs is granted. One who gets what he wants cannot be said to be a "person aggrieved". On the other hand, if the plaint read as a whole gives an impression that of the alternative reliefs claimed one is the main relief and the other one is claimed only if it is found that the main relief cannot possibly be granted and the main relief is refused, it is open to the plaintiff to appeal and urge that on the facts and in law he is entitled to the main relief and should have been granted that. In such circumstances claiming alternative reliefs is no bar to appeal by the plaintiff. Though in his plaint the plaintiff of the case before us while claiming relief stated that a decree for the amount claimed might be passed against the defendants or any of the defendants held liable, reading the plaint as a whole, I find that his main relief was against the appellant. He claimed a relief against defendant No. 3 only in case it was not found possible to grant the relief prayed for against the appellant. Though it was not stated in so many words that only in case it was not found possible to grant a decree against the appellant, a decree may be passed against defendant No. 3, but that was the intention of the plaintiff. It is apparent from paragraph 10 of the plaint that defendant No. 3 was being impleaded only to avoid all objection and future trouble. Thus, on the facts of the case I find no substance in the first contention of Mr. Bose.

7. Mr. Bose secondly contended that as the goods were lost before the railway receipt was consigned to the plaintiff, he could get no title in them and the suit by him for compensation was not maintainable. Learned counsel for the respondent, in reply to this argument, submitted that it was not specifically pleaded in the written statement that the goods were lost before the endorsement of the railway receipt in favour of the plaintiff. Had this been pleaded, the plaintiff would have shown that the goods were not in fact lost on that date. True it is, as contended by learned counsel for the appellant, that a suit for compensation for nondelivery u/s 73 of the Indian Railways Act is maintainable only on the assumption that the goods have been lost. But from that it cannot be inferred that the goods were lost before title in them could have passed to the plaintiff. Mr. Bose in this connection pointed out that the Court of appeal below has observed that Bindki Town railway station did not receive the

consignment in question from Bindki Town Out Agency. The observation is not unequivocal, rather, it merely assumes something in favour of the appellant. Further, Bindki Town Out Agency is supposed to receive the goods as an agent of the appellant. In case it did receive the goods, then in order to deprive the plaintiff of his right to sue it was necessary for the appellant to prove that the goods were lost before title in them could pass to the plaintiff. Mere non-reaching of the goods from Bindki Town Out Agency to Bindki Town railway station is not sufficient. The goods might have been kept at Bindki Town Out Agency till after the endorsement of the railway receipt in favour of the plaintiff. The trial Court on a consideration of the oral and documentary evidence held that railway receipt was granted by the staff of Bindki Town Out Agency without actually getting possession over the goods in question. If that be so, then it was right in holding that illustration (b) of Section 238 of the Indian Contract Act was applicable to the facts of the case. The lower appellate Court has not considered the oral evidence on the record. It has assumed merely on the basis of the railway receipt, which is a mercantile document, according to it, that goods must have been delivered possession of to the Railway Out Agency before it was granted. Whether the goods were in fact delivered or not to Bindki Town Out Agency is a question of fact and in recording a finding on that question, rather in upsetting the finding, on that question, of the trial Court, the Court of appeal below ought to have considered the entire evidence on the record specially that relied on by the trial Court in support of its finding. The lower appellate Court having not done so, its finding is vitiated in law and cannot be maintained.

8. In the result, the appeal is allowed, the judgment and decree of the Court of appeal below are set aside and the case is sent back for rehearing of the appeal before it in accordance with law and in the light of observations made in the proceeding paragraphs. The cost of this Court will abide the result after remand of the appeal before the lower appellate Court.

S.P. Sinha, J.

9. I agree.