
(1999) 07 AP CK 0178

In the Andhra Pradesh High Court

Case No : Appeal No. 1323 of 1988 and Cross-Objections

United India Assurance Co. Ltd.

APPELLANT

Vs

Sri Satyanarayana Ghee Trading Co.

RESPONDENT

Date of Decision : 26-07-1999

Acts Referred:

Evidence Act, 1872 — Section 114, 34

Citation : (2000) 2 ACC 115 : (1999) 6 ALT 502 : (2000) 1 CivCC 352

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : M. Ramaiah, for the Appellant; M.S.R. Subrahmanyam, for the Respondent

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—The unsuccessful defendant is the appellant. The respondent herein is the plaintiff. The plaintiff filed the suit for recovery of an amount of Rs. 86,713/0 with subsequent interest and costs being the amount of loss sustained by the plaintiff on account of the fire accident, in which the godown bearing Door No. 15/39 of the plaintiff containing 500 bags of chillies and 588 gunny bags had been damaged, in the fire.

2. Briefly stated the facts are that the plaintiff is a registered firm carrying on business in Ghee and red-chillies by exporting the same to different places in the country. The godown bearing Door No. 15/39 situated at Mantralavari Street in Gollaprolu village in East Godavari District was taken on lease by the plaintiff for keeping the stock. The plaintiff had been purchasing the chillies on his own account and also as a commission merchant for other. The stock thus purchased from various ryots upto 5-6-1981 was to the tune of Rs. 66,270/-. On 5-6-1981 the plaintiff purchased the chillies worth Rs. 17,581-50 Ps. in the name of one Suresh Kumar Agarwal. The entire stock was in the godown along with the empty gunny bags worth Rs. 2,861-50 Ps. The stock in the godown was insured with the defendant-insurer under Policy No. 14000/01 /02472 for the period between

7-4-1981 to 7-6-1981 for an amount of Rs. 1,00,000/-. On the intervening night of 5/6-6-1981 at 10.00 p.m. the godown caught fire. The entire stock in the godown was damaged in the fire accident. The plaintiff wrote a letter informing the defendant-insurer about the fire accident. A Surveyor who had been deputed by the insurer visited the godown and inspected the same and also the records. Since the defendant failed to reimburse the loss, after exchange of notices, the plaintiff filed the suit.

3. The defendant resisted the suit by filing its written statement mentioning inter alia that there was not so much of stock in the godown on the date of the accident, and there were no empty gunny bags at all and that the claim for gunny bags was not covered by the insurance policy and as the plaintiff failed to give the particulars of the amount claimed he was not entitled to claim the suit amount. Thus, the insurer denied every averment made in the plaint.

4. Basing on the pleadings, the Court below framed the following issues at the settlement of issues:

1. Whether the suit is validly filed?

2. Whether the plaintiff is entitled to the suit claim?

3. To what relief?

5. At the time of the trial 16 witnesses were examined on the side of the plaintiff and documents Exs.A-1 to A-44 were got marked. The Surveyor who visited the suit godown was examined on the side of the defendant as D.W.1. besides marking Exs.B-1 to B-9.

6. Upon considering the evidence, oral and documentary, the Court below decreed the suit in part for an amount of Rs. 66,271 /- with subsequent interest at 18% per annum and rejected the rest of the claim of the plaintiff. The rejected claim pertains to the stock belonging to one Agarwal to the tune of Rs. 17,581 /- and the cost of the gunny bags to the tune of Rs. 2,861 /-. Aggrieved by the said judgment, the defendant-insurer filed the present Appeal, as aforesaid, and for the claim rejected the plaintiff filed the Cross-Objections.

7. Now in the Appeal, the learned Counsel for the appellant submitted that the plaintiff failed to prove the existence of the stock on the date of the fire accident. It is his further contention that the plaintiff failed to maintain proper accounts, and indeed had not produced the same before the Surveyor at the time of his inspection, and therefore, the estimation of damages as done by the Surveyor was correct. The learned Counsel for the respondent and Cross-objector submitted, on the other hand, that the accounts of the plaintiff firm were maintained in due course of business and they were proved by examining P.Ws.1 and 14, the partners of the firm, and the entries made therein amply proved the claim of the Cross-objector. It is the further contention of the learned Counsel that the claim for the stock pertaining to Mr. Agarwal and for the gunny bags has erroneously been rejected.

8. In view of the respective contentions, the points that arise for my determination in this Appeal and the Cross-objections are:

(1) What was the stock in existence on the date of the fire accident i.e., on 5/6-6-1981?

(2) To what amount the respondent firm is entitled towards compensation or damages?

9. The respondent firm is admittedly a registered firm. Even otherwise, Ex.A-1 amply proves the same. The firm has been carrying on business in Ghee and red-chillies is not in dispute. Admittedly the stock in the godown of the firm has been insured under a valid insurance policy for the period in between 7-4-1981 to 7-6-1981 for an amount of Rs. 1,00,000/-, Ex.A-24-Policy marked in this case amply proves the same even otherwise; That there was a fire accident on the intervening night of 5/6-6-1981 is an undisputed fact. The most contentious facts in between the parties are about the existence of the stock on the date of the accident and its quantum and to what extent the accident resulted in damages.

10. In proof of its claim, the respondent firm examined P.Ws.1 to 16, of which P.Ws.1 and 14 are the partners of the firm, P.Ws.2 to 10 are the various ryots from whom the stock of chillies is said to have been purchased under various vouchers P.Ws.11 and 13 are the commission agents through whom the firm purchased the stock pertaining to the other ryots. P.W.15 is a witness to the fire accident, and P.W.6 is the Village Munsiff of Gollaprolu village who has submitted his report to the Tahsildar informing inter alia the fire accident. Exs. A-3 to A-13, A-17 to A-20, A-31 and A-32 are the vouchers under which the stock has been purchased from the individual ryots and the Commission Agents. Exs.A-15, A-16, A-22, A-29, A-33, A-35, A-36 and A-37 are the entries in the day-book relating to the stock. Exs.A-14, 21, 23, 27, 28 and A-30 are the entries in the ledger. Although the stock register itself has not been marked separately, the entry therein has been marked as Ex.A-30.

11. On the side of the appellant-insurer the relevant documents among others are Ex.B-7, the report of the Surveyor who has visited the suit godown and Ex.B-8, the Photostat copy of the letter sent by the respondent firm to the insurer. The other documents being the photos of the godown which have been burnt in the fire accident and the statement of P.W.14 recorded by the Surveyor.

12. At the out set it may be mentioned here that in Ex.B-7 report of the Surveyor, he assessed the damage at Rs. 14,876-40 Ps. The respondent firm has been seriously disputing the report of the Surveyor. In proof of its claim, the firm produced the day-book, the ledger and the stock register, the accounts of the firm and the vouchers under which the firm is said to have purchased the stock. Some of the ryots, out of the total 18 ryots whose names have been furnished in a separate statement appended to the plaint have alone been examined in this case. However, it is the case of the respondent firm that P.W.11 and P.W.13 are the Commission Agents who purchased the stock from the other ryots on behalf

of the firm and they have been examined therefore to prove the rest of the claim. The various entries made in the accounts of the business of the firm pertain to the day-book, the ledger and the stock register. P.W.1 who is one of the partners of the respondent firm in his evidence deposed that these accounts had been maintained in due course of business. The entries in these three registers admittedly are not in the handwriting of either P.W.1 or P.W.14, the other partner. In ordinary course, the person who has actually made the entries ought to have been examined to prove the same. It is contended by the learned Counsel for the respondent firm, at this juncture, that the other partner of the firm who is no other than the brother of P.Ws.1 and 14 is the author of the entries. But the said contention is not based upon any evidence on record. The Surveyor who has been examined in this case as D.W.1. verified the entries and under Ex.A-43 entry he appended his signature in token thereof in the stock register. Proof of the individual entries apart the evidence of P.W.1 clearly discloses that these accounts have been maintained in due course of business. To that extent it is sufficient to make these accounts relevant u/s 34 of the Indian Evidence Act is the question. Section 34 of the Evidence Act reads as follows:

"34. Entries in books of account when relevant.- Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability."

13. The proof required as can be seen from the section is that the accounts shall be kept regularly in the course of business so as to make them relevant. Therefore, in view of the evidence of P.W.1 the day-book, ledger and the stock register have been proved to have been kept in regular course of business. What probative value that can be attached to these entries is an altogether different aspect. Merely because the accounts are kept in regular course of business and entries have been made therein, they cannot have any binding nature vis-a-vis the insurer against whom the plaintiff is making now the claim. In other words, the respondent firm has to prove the entries separately by independent evidence apart from the proof required u/s 34 of the Indian evidence Act to the effect that the accounts have been kept in regular course of business inasmuch as, the element of interestedness cannot be ruled out. The distinction between the relevancy and proof of the entries and the probative value thereof cannot be lost sight of. The Apex Court in Central Bureau of Investigation Vs. v.C. Shukla and Others, (known as Jain Hawala case) held as follows:

"Since, an element of self interest and partisanship of the entrant to make a person - behind whose back and without whose knowledge the entry is made - liable cannot be ruled out, the additional safeguard of insistence upon other independent evidence to fasten him with such liability, has been provided for in Section 34 by incorporating the words "such statements shall not alone be sufficient to charge any person with liability". Even correct and authentic entries in books of account cannot without independent evidence of their

trustworthiness, fix a liability upon a person."

14. Now coming to the proof of the entries as made in the day-book, ledger and the stock register the various purchases said to have been made by the respondent-firm have been sought to be proved by examining the ryots in this case as P.Ws.2 to 10 and by examining the Commission Agents as P.Ws.11 and 13. The oral evidence of these witnesses would support the case of the respondent-firm on the point. At page 92 under Ex.A-2 the entries have been marked showing the purchases from the persons whose names have been mentioned in the statement appended to the plaint. As can be seen from Ex.A-2 not all the names of the ryots whose names have been mentioned in the statement have been mentioned. The learned Counsel for the respondent-firm has invited my attention to page 91 of the day-book wherein the rest of the names of the ryots have been mentioned. But these entries have not been specifically marked as an exhibit. It is the contention of the learned Counsel for the appellant that they cannot be considered. It cannot be said that there is no force in the said contention of the learned Counsel. The relevant entries shall have to be brought on record by marking them separately. It may be mentioned here that the regular procedure in marking the accounts and the entries made therein has not been strictly adhered to. The learned Counsel for the appellant at this stage submitted that the Court has to see the cumulative effect of the entire evidence adduced on record in the interest of justice, although there have been some lapses in not getting the relevant evidence on record. Certainly it is not a case where there have been no entries duly made in the account book. It is a case where there has been lapses on the part of the Counsel in bringing the relevant evidence on record. The proper procedure should be that in the first instance the account books shall be brought on record separately and the individual entries in the account books shall have to be brought on record independently by giving different exhibit marks and that would give the necessary clarity and avoid any amount of confusion. Corresponding entries in the ledger have also been made in this case. Thus, the entries in the day-book and ledger shows the relevant purchases that have been made from the ryots prior to 5-6-1981. The stock register has not been marked specifically in this case. Ex.A-43 is the signature appended by the Surveyor in token of having verified the register. Some of the pages contain the names of the ryots from whom the stock is said to have been purchased by the respondent-firm. Under Ex.A-30 in the stock register an entry dated 6-6-1981 has been made showing the stock that has been burnt in the fire accident as 500 quintals of chillies. This entry in Ex.A-30 having been made on 6-6-1981, a day subsequent to the date of accident cannot be said to be a contemporaneous entry made in the account kept in due course of business. Ex facie Ex.A-30 entry is an entry post litem motem which is not relevant. The entries which are ante litem motem alone are relevant and shall receive due consideration provided the proof and probative value of those entries have been taken care of. The Supreme Court in Central Bureau of Investigation's case (1 supra) held as follows:

"To ascertain whether a book of account has been regularly kept the nature of occupation is an eminent factor for weighment. The test of regularity of keeping accounts by a shopkeeper who has daily transactions cannot be the same as that of a broker in real estates. Not only their systems of maintaining books of account will differ but also the yardstick of contemporaneity in making entries therein. Therefore, it would not be correct to say that an entry must necessarily be made in the book of account at or about the time the related transaction takes place so as to enable the book to pass the test of "regularly kept".

In my view, therefore, Ex.A-30 entry cannot lend any support to the case of the respondent. At this juncture, the learned Counsel for the respondent-firm submitted that the purchase of the stock by 3-5-1981 has been proved in this case. In fact, the Court below has accepted the evidence adduced on the side of the respondent-firm in regard to the purchase of the stock. As discussed by me supra, accounts day-book and ledger, and the entries made therein have been proved to have been kept in regular course of business. The oral evidence of P.Ws.1 to 11, 13 and 14 and the purchase vouchers marked in this case as Exs.A-3 to A-13, A-17 to A-20, A-31 and A-32 amply prove the entries made in the day-book and ledger. Therefore, there are no compelling reasons for me to differ with the conclusions arrived at by the learned Subordinate Judge.

15. The crucial question as to whether the stock purchased upto 3-6-1981 was in existence on the date of the accident and eventually have been burnt in the said accident. The learned Counsel for the respondent contended that since the stock had been proved to be in existence by 3-6-1981 and as the fire accident occurred on the intervening night of 5/6-6-1981 the presumption can be drawn u/s 114(d) of the Evidence Act about the continuance of the things as existed on 3-6-1981. There is every force in the contention of the learned Counsel. Illustration (d) to Section 114 of the Evidence Act says that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence. Since the period interregnum between the last date of purchase and the date of fire accident is shorter, the illustration (d) to Section 114 of the Evidence Act can be invoked in this case. A presumption of continuity can therefore be drawn. As against this evidence, as afore discussed, there are Exs.B-7 and B-8 on the side of the respondent. In Ex.B-8 statement, which has been given by P.W.14, it has been clearly mentioned at the end that the loss sustained on account of the accident was slightly more than Rs. 40,000/- and that by the time the fire force has arrived at the spot the flames have been extinguished and the remaining bags of chillies in the godown have been segregated. This statement no doubt shows that apart from the bags that have been damaged in the fire accident the remaining bags have been segregated and the loss has been estimated at about Rs. 40,000/-. This document is some what against the case of the respondent-firm. As against this Ex.B-7 is the report of the Surveyor-D.W.1. This document shows that the entire stock in the godown was badly burnt and damaged without leaving any salvage of commercial value

and thus resulting in a total loss. There is no reason to disbelieve that statement of the Surveyor who has been examined in this case as D.W.1. The statement in Ex.B-8 made by P.W.14 cannot be accurate and has been made at the time when there was an agony and anguish on account of the loss of property in the fire accident. The same is not the case in respect of Ex.B-7. In the wake of Ex.B-7 the recitals mentioned in Ex.B-8 to the effect that the remaining bags have been segregated cannot be given much credence and weight. It is obvious from Ex.B-7 report being relied upon by the appellant-insurer that it is a case of total damage and the eventual loss.

16. In view of the fact that the godown containing the stock has been insured under a valid policy with the appellant, and in view of the fact that the entire stock in the godown has been damaged in the fire accident, and in view of the fact that the respondent has been able to establish the existence of the stock by 3-6-1981, although it has not been accurately proved that the stock which was in existence by 3-6-1981 was in existence at the relevant time of the fire accident, taking into consideration the totality of the circumstances emanating from the record, I am inclined to accept the view expressed by the trial Court that the stock that has been purchased by the respondent firm has been damaged in the accident. Therefore, the case of the appellant must fail.

17. Coming to the cross-objections, it pertains to the claim of the respondent in respect of the gunny bags and in respect of the bags of chillies pertaining to one Mr. Ramesh Agarwal, The Court below has rejected the claim of the respondent on the premise that the existence of the stock pertaining to the said Agarwal has not been shown in the stock register. Although the other relevant records prove the purchase of the stock, that is not the criterion and the criterion on the other hand is the existence of the stock on the date of the accident. Since there is total absence of proof in regard thereto, I have no compelling reason to differ with the finding of the trial Court arrived at on an appreciation of oral and documentary evidence. Obviously, there has been no insurance coverage in respect of the gunny bags. Therefore, the respondent-Cross-objector cannot validly make any claim in respect of these two items. The Judgment of the Court below in so far as this claim is concerned, is well founded and there are no compelling reasons for me to differ with the same. The Cross-objections filed by the Cross-objector Respondent must also fail. The rate of interest as granted by the trial Court is 18% which was not the prevailing rate of interest even in regard to the commercial transactions. The usual rate being allowed by the Courts of law is 12% and therefore, interest is to be reduced from 18% to 12% and with that modification the appeal shall be disposed of.

18. In the result,, the Appeal fails and it is accordingly dismissed as indicated above in the judgment. The Cross-objections also fail and they are dismissed. Under the circumstances, I direct both parties to bear their respective costs.