
(1939) 12 MAD CK 0029
In the Madras High Court

Yarlagadda Venkatasubbayya

APPELLANT

Vs

Gajjala Satyanarayanamurthy and Others

RESPONDENT

Date of Decision : 08-12-1939

Acts Referred:

Citation : AIR 1940 Mad 489 : (1940) 51 LW 644 : (1940) 1 MLJ 465

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—These two connected second appeals arise out of a suit and a cross-suit brought in the District Munsif's Court, Masulipatam. O.S. No. 17 of 1934 was a suit by the appellant for an account of dealings in groundnut with the respondents, a firm of Commission Agents and O.S. No. 81 of 1934 was by the Commission Agents against the appellant for recovery of Rs. 856-7-0 said to be due to them on those dealings. The question for determination in both the suits being the same, they were heard and disposed of together by a common judgment in both the Courts below. Both the suits having been decided against the appellant in the lower appellate Court, he has preferred these appeals. As the first respondent has been the principal contesting party throughout, he is hereinafter referred to as the respondent.

2. The facts of the case may be briefly stated. The appellant who is a groundnut merchant entered into an agreement in October, 1932, with the respondent whereby he was to purchase groundnuts and sell the same as per instructions of the appellant, stocking them in the meanwhile in godowns which he rented for the purpose. The appellant advanced Rs. 1,000 as cover against any possible loss that might result from the transaction. The respondent was to purchase the groundnuts in the market advancing the purchase money himself or making himself personally responsible for the purchase money to the vendors. When the goods were sold, the respondent was to deduct the purchase money paid by him less the advance received with interest as well as godown rents and commission at the agreed rate and pay the balance of the proceeds, if any, to the appellant.

Purchases were made in pursuance of this agreement in November and December, 1932 and the goods were stocked in a godown. On 1st March, 1933, however, owing to financial embarrassment, the respondent pledged these goods as well as other goods with the Andhra Bank, Ltd., at Masulipatam and obtained a loan. This loan was repaid and the pledge redeemed some time in May, 1933. It is in evidence - and it was not disputed - that the market began to decline from January, 1933. The appellant did not send any instructions to the respondent to sell the goods till September, 1933, when the respondent wrote Ex. III to the appellant calling upon him to pay the amounts due to him and take the goods. As there was no reply, he wrote another letter (Ex. III-A) to the same effect on 19th October, 1933. To this letter, the appellant sent a reply (Ex. X) dated 20th October, 1933 in which he stated that on coming to know of the pledge of the goods by the respondent, he had raised objection and that the respondent had then agreed to take the groundnuts himself and settle the account by paying the appellant Rs. 3-2-0 a bag. The appellant thus repudiated the claim made by the respondent in Ex. III and III-A and, in turn, called upon him to pay the amount due to the appellant at Rs. 3-2-0 a bag in accordance with the settlement referred to above. The respondent treated this letter as a breach of the contract by the appellant and sold the goods and after giving credit to the sale proceeds and the original advance received, claimed a sum of Rs. 856-7-0 as due to him in O.S. No. 81 of 1934 while the appellant claimed in his suit O.S. No. 17 of 1934 an account of the dealings on the basis of the agreement which he put forward in his letter (Ex. X). The lower appellate Court found that the agreement put forward by the appellant was not true and, as stated" above, rejected his claim and decreed that of the respondent.

3. The appellant's learned Counsel did not contest - as indeed he could not in second appeal - the finding of the lower appellate Court that there was no settlement between the parties in March, 1933, as alleged by the appellant. But the learned Counsel argued as a matter of law that the respondent's pledge of the goods purchased by him on account of the appellant without the latter's authority amounted to a conversion of the goods and that the respondent was therefore liable to pay damages for conversion according to the rates prevailing in the market at the time of the pledge. This contention cannot be accepted for two reasons, first, the respondent having himself advanced the purchase money in respect of the goods purchased by him on account of the appellant, the property in the goods cannot be said to have passed to the appellant until the amount advanced by the respondent for the purchase of the goods is paid to him. The law is thus stated in *Bowstead on Agency*:

Where an agent, by contracting personally renders himself personally liable for the price of goods bought on behalf of his principal, the property in the goods, as between the principal and agent, vests in the agent, and does not pass to the principal until he pays for the goods, or the agent intends that it shall pass, and the agent has the same rights with regard to the disposal of the goods, and with regard to stopping them in transitu as he would have had if the relation between

him and his principal had been that of seller and buyer" (Article 76).

4. In this view, the correctness of which has not been disputed, the very foundation of the appellant's contention fails, as obviously, there could be no question of conversion by the respondent in respect of property title to which still remained vested in him.

5. Secondly, it is well established that to entitle a person to claim relief on ground of conversion or trover, he must show "not only title to the property concerned but also a right to the present possession thereof. But one who has not paid the purchase money in respect of goods purchased by him has no right to claim possession of the goods before paying the whole of the purchase money due as the seller has a lien on the goods for the unpaid purchase money. It has thus been held in *Lord v. Price* (1874) L.R. 9 Ex. Cas. 54, that a purchaser of goods which continued in the possession of the vendor subject to his lien for unpaid purchase money cannot sue a third person for a conversion of the goods. The plaintiff there purchased two lots of cotton at an auction sale but paid only the deposit required and so had to leave the cotton in the field where the auction had been held. One of the lots was removed by mistake by the defendant who had also bought some lots at the sale and the plaintiff brought the action for damages for conversion. The Court of Exchequer held that the plaintiff not having paid the residue of the purchase money had no right of present possession in respect of the goods purchased by him, such right being still in the vendor by virtue of his lien and that therefore the plaintiff was not entitled to maintain an action for the tortious removal of the goods. Now, according to the authority cited above, the respondent by reason of his having purchased the goods on his own responsibility, though on account of the appellant was, vis a vis the latter, in the position of an unpaid vendor with a right to retain the goods until payment of the balance of the purchase money. The appellant was not therefore entitled to possession of the goods even if the respondent, notwithstanding the nonpayment of the balance of the purchase money, had intended that the property in the goods should pass to the appellant of which, however, there is absolutely no evidence in the case.

6. The learned Counsel for the respondent also contended that the respondent must be deemed to be a tacit pledgee, having paid the purchase money for the goods out of his own pocket, and was therefore entitled to repledge the goods and relied upon *Bar Dukan v. Gopal Singh* AIR 1928 Lah. 747, while the learned Counsel for the appellant challenged that position on the authority of, *Firm Tejpal Jamna Das v. David* 32 C.W.N. 1146 : 28 L.W. 204 . It is unnecessary however, to consider this point as the appeals fail on the other grounds indicated above.

7. Both the appeals are therefore dismissed. The appellant will pay the costs of the first respondent in S.A. No. 602 of 1936. No order as to costs in S.A. No. 603 of 1936.

8. Leave refused.