Deo Raj and Another Vs Munshi Ram and Another

Court: Allahabad High Court

Date of Decision: May 12, 1926

Acts Referred: Contract Act, 1872 â€" Section 83

Citation: AIR 1926 All 679

Final Decision: Disposed Of

Judgement

1. The facts of the case are that the defendants who are commission agents purchased for the plaintiffs 25 tons of Java sugar in Calcutta. The

defendants despatched 12Ã¯Â¿Â½ tons of sugar to the plaintiffs, according to their subsequent instructions, to Dehra Dun. The defendants had not been

paid the full price of the sugar, therefore they sent the railway receipt to their own agents in Dehra Dun with instructions to make it over to the

plaintiffs on payment of Rs. 5,000, which was the balance of the price due. The plaintiffs obtained the railway receipt from the defendants'' agent

on payment of Rs. 5,000, and took delivery of the consignment. It was found that there was a shortage of 55 maunds and 33 seers in this

consignment. The whole question which we have to consider in second appeal is whether plaintiffs, or the defendants, are to be held responsible

for this loss of 55 maunds and 33 seers which occurred during transit. The first Court found that the defendants were not liable for the shortage.

2. The lower appellate Court took the contrary view, finding that the defendants remained the owners of the sugar during its despatch by rail to

Dehra Dun, and so they were liable for the loss in transit. The Court held that they acted as principals in selling the sugar to the plaintiffs and they

reserved the right of disposal of the consignment during the transit, since it was consigned to their own agents and not to the plaintiffs at Dehra Dun.

The first question to be considered is whether the defendants were acting merely as the plaintiffs'' agents in despatching the sugar, or whether they

should be regarded as sellers of the sugar to the plaintiffs.

3. The plaintiffs'' own case, as shown in the plaint, was that the defendants purchased the sugar for the plaintiffs, and they held the defendants liable

for the loss because they had not sent the goods at ""Railway risk"" in spite of instructions. The plaintiffs did not set up the case that the defendants

were acting as principals who sold the sugar to them. On the contrary, it is clearly stated that the defendants purchased the sugar for them. It has

been found by both the Courts below that it has not been proved that the plaintiffs instructed the defendants to send the goods at ""railway risk"" or

that they were negligent is the manner of sending the consignment. It appears to us, therefore, that as soon as the defendants delivered the sugar to

the Railway Company for despatch to the plaintiffs, the defendants could not be held liable for any loss during transit, because the sugar did not

belong to the defendants and had only been purchased by them for the plaintiffs. Even if it be held that defendants were not acting merely as agents

for the purpose of buying and despatching the sugar, but were in the position of sellers, we think they were still not liable for the shortage.

4. It has been argued for the respondents that the lower appellate Court has found as a fact that the defendants were not acting as mere

commission agents, but were acting as principals. It is true that the lower appellate Court stated in the judgment that it appeared from a certain fact

that the defendants were acting as principals as far as the plaintiffs were concerned, but this is a legal inference and it cannot be taken as a clear

finding that the defendants stood in relation to the plaintiffs as sellers to buyers, and not as agents to their principals. Regarding the defendants, for

the sake of argument as principals, i.e., as sellers, we think that the property in the consignment passed to the plaintiffs as soon as the sugar was

delivered to the Railway Company for despatch to the plaintiffs. u/s 83 of the Contract Act, when the goods were appropriated by the defendants

for the purpose of the agreement and the appropriation was assented to by the plaintiffs, then the goods had been ascertained and the sale was

complete. The delivery of the goods for despatch was appropriation for the purpose of the agreement and as the goods were delivered for

despatch in accordance with the plaintiffs" instructions, it must be held that the appropriation was assented to by the plaintiffs. The sale was

complete, therefore, before the plaintiffs actually took delivery. The respondents rely on Section 91 as showing that delivery to the Railway

Company does not render the plaintiffs liable for the price of goods which did not reach them, since the delivery to the Railway Company was not

so made as to enable the plaintiffs to hold the Railway Company responsible for the sale, custody or delivery of the goods. The goods were not

despatched at ""railway risk,"" but at ""owner,s risk."" In the present case, however, it appears that delivery was not necessary to the completion of

the sale, and we consider that the sale was complete, in accordance with the provisions of Section 83 as soon as the goods bad been delivered to

the Railway Company for despatch. The lower appellate Court considers that the goods were not appropriated for the purpose of the agreement

so long as the defendants retained a right of disposal which they did in the present case. The learned District Judge has applied rules of English law

regulating the rights of disposal which have no application in India where the case has to be decided in accordance with the provisions of the Indian

Contract Act.

5. On these findings we accept the appeal and restore the decree of the Court of first instance. The appeal is allowed with costs including fees in

this Court on the higher scale.