

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM :

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

S.A.No.1185 of 2000

1. M/s. Siva Trading Company
Rep. by its Managing Director
K.S.Easwaran,
S/o. Subbanna Mudaliar @ Subramanian
N.F.168, Periyar Nagar,
Erode - 638 004.
 2. K.S.Easwaran
 3. E.Rukmani ... Appellants/Plaintiffs
- Vs.
1. M.Murthy
 2. T.A.Subramaniam
 3. Velliangiri ... Respondents/Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the II Additional District Judge, Erode made in A.S.No.241 of 1996 dated 10.08.1998 reversing the Judgment and Decree of the Principal Subordinate Judge, Erode made in O.S.No.767 of 1994, dated 31.07.1996.

For Appellants : Mr.V.Raghavachari

For respondents : Mr.M.Guruprasad

JUDGMENT

The plaintiff who lost before the lower Appellate Court is the appellant in the suit filed for damages.

2. The appeal has been filed with the following Substantial Question of Law :

"Whether the lower appellate court is right in dismissing the suit, when the entrustment of the property by the plaintiffs to the defendants stand established and in the absence of proof of the goods having been delivered to the consignee ?"

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3. The plaintiff is the consignor. The respondent is the carrier. The plaintiffs goods have been consigned through the

carriers of the respondents with destination of the consignment at Hyderabad. According to the plaintiffs, the goods have not reached the destination and therefore, the respondents are liable for the value along with interest.

4. The defence taken by the defendants is that the goods were returned by the consignee on the ground of inferior quality and thereafter at the instructions of the plaintiffs, it was taken to the place of Defendant No.4 in whose place there was a fire accident and therefore, suit will have to be dismissed.

5. The trial court decreed the suit which has been reversed by the lower appellate court.

6. Learned counsel appearing for the appellants submits that as per Section 9 of the Carriage Act, onus is on the carrier to disprove that it is not bound to pay the damages. Reliance has been made on the following decisions :

1. Kerala Transport Company v. National Insurance Co., Ltd., 2006 (2) CTC 483
2. Vasundhara Lorry Service v. D.Nagendas Foolchand, 1997 (I) CTC 393

7. Learned counsel appearing for the respondents as defendants submits that the lower appellate court has considered the evidence of the second plaintiff (P.W.1) along with D.W.3 and D.W.4 and thus dismissed the suit as the issues are pertaining to questions governing the facts and no interference is required.

8. The second plaintiff as P.W.1 has admitted two facts. The first fact is that the goods have been taken in a lorry by the defendants to the destination of the consignee on 19.12.1994. Ex.P.2 says that the goods have been declined to be received on the ground of inferior quality. Secondly P.W.1 has stated that thereafter he went to Hyderabad to the place of consignee and he stayed there for four days. He also met the Driver of the vehicle. Therefore, the lower appellate court found credence to the goods of the defendants that it is only on his instructions, it was taken to the godown of D.W.4, in which place the accident has taken place. An inference has been drawn by the lower appellate court that the plaintiffs was in possession of Ex.P.2 and Ex.P.3. These two documents speaks about the inferior quality of the goods that are being returned.

9. The Lower Appellate Court has also taken into consideration the evidence of D.W.4, a independent witness, who is the owner of the godown speaks about the goods was in whose custody for two days in which place the accident occurred. Considering the aforesaid evidence, the Lower Appellate Court has found that the suit is liable to be dismissed.

10. This Court does not find any perversity in the findings of the lower appellate court. Section 9 has no real application to the case on hand, since the fact would reveal that goods were taken to the destination place of the consignee and thereafter,

diverted to the place of D.W.4, as per the instructions of the plaintiffs. When once P.W.1 admits Ex.P.2 and Ex.P.3, the onus is on him to substantiate his case. It is not as if the goods have not been taken to the place of consignee. Therefore, from the evidence of P.W.1 himself coupled with the fact that he has admitted that he went to Hyderabad after execution of Ex.P.2 and Ex.P.3, the lower appellate court has correctly held that the plaintiffs are not entitled for the relief.

In such view of the matter, this Court does not find any substantial question of law involved in this appeal, warranting interference. Accordingly, the second appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The II Additional District Judge
Erode.
2. The Principal Subordinate Judge
Erode.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.5339
+lcc to Mr.M.Guruprasad, Advocate, S.R.No.5555

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