

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on	Delivered on
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CORAM:

THE HONOURABLE MRS. JUSTICE V.PARTHIBAN

S.A.No.676 of 2007

1. Deepak Transport Agency,
Raghavan Ratna Towers,
Chirag Ali land adidas,
Hyderabad-500 001.

2. Deepak Transport Agency Limited,
Raghavan Ratna Towers,
Chirag Ali land adidas,
Hyderabad-500 001. ... Appellants/Respondent/Defendants

vs.

1. The Madras Pharmaceuticals,
rep. By Subrogee/Power Agent,
Office at No.4, Thiru Moorthy Street,
T.Nagar, Chennai-17.

2. The Oriental Insurance Co.Ltd.,
rep. By its Principal Officer,
Sr.Division Manager,
No.115, Prakasam Salai (Broadway),
Chennai-108. ... Respondents/Appellants/Plaintiffs

Second Appeal filed under Section 100 of CPC against the judgement and decree dated 17.04.2006 in A.S.No.163 of 2005 on the file of the Fast Track Court II cum Additional District Judge, Chennai reversing the judgment and decree dated 04.02.2004 passed in O.S.No.5293 of 2000 by the XII Asst.Judge, City Civil Court, Chennai.

For Appellants :: Mr.V.Raghavachari

For respondent :: Mr.Guruswaminathan for
M/s.Nageswaran & Narichania

JUDGMENT

This Appeal has been preferred against the judgement and decree dated 17.04.2006 in A.S.No.163 of 2005 on the file of the Fast Track Court cum Additional District Judge, Chennai

reversing the judgment and decree dated 04.02.2004 in O.S.No.5293 of 2000 on the file of XII Asst.Judge, City Civil Court, Chennai.

2. The appellants herein are the defendants in the suit and the respondents herein are the plaintiffs. For the sake of convenience, the parties are hereafter referred to 'the plaintiffs and the defendants'.

3. The case of the first plaintiff was that being manufacturer of Pharmaceutical products, despatched certain products under various Invoices bearing Nos.MS 404 and 405 dated 17.12.1998 valued at Rs.3,56,928/- and MS 406 & 407 dated 17.12.1998 valued at Rs.1,21,420/- & 63,138.40 respectively and MS 406 dated 18.12.1998 valued at Rs.1,05,656/- to M/s.Rallis India Ltd., Pharamaceutical Division, Mumbai. According to the first plaintiff, the said consignment packed to withstand transit risks were entrusted to the first defendant/common carrier for safe carriage and delivery to the consignee at Mumbai. In acknowledgment of such entrustment, the Carrier issued consignment notes bearing Nos.6065281 and 60605282. Having accepted the entrustment, the defendants failed to discharge their duty as ultimately, they short delivered the consignment to the consignee. According to the first plaintiff, short delivery of the consignment resulted pecuniary loss to the consignor, namely, the first plaintiff and it was due to the negligence of the defendants Carrier and therefore, having insured the consignment with the second defendant Insurance Company, the first plaintiff made a claim. The second plaintiff, which undertook the transit risk policy and as per the terms of the said policy, the second plaintiff has settled the claim for Rs.2,20,887/- of the first plaintiff and upon such settlement of the claim, the first plaintiff executed a letter of subrogation and special power of attorney in favour of the second plaintiff on 15.06.1999. By virtue of such execution of letter of subrogation, the second plaintiff was entitled to maintain the suit for recovery of the sum settled in favour of the first plaintiff from the defendants Carrier. In the said circumstances, the suit was filed for recovery of a sum of Rs.2,20,887/- for short delivery of consignment due to the negligent act of the defendants Carrier.

4. The suit was resisted by the defendants Carrier, the appellants herein, by filing a Written Statement, inter alia stating that the first plaintiff was not entitled to maintain the suit on the ground that the consignment was already sold to the consignee M/s.Rallis India Ltd., and once the sale was effected, the first plaintiff was not entitled to maintain the suit. According to the defendants Carrier, Invoices of the consignment Nos.MS 404 & 405 dated 17.12.1998 and 406 & 407 dated 18.12.1998 made in the name of the consignee only showed that the consignment was already sold by the consignor. It was further stated in the Written Statement that the sales tax

was paid on the goods and once the sales tax was paid, the title of the goods passed in favour of the purchaser, i.e. Consignee. Therefore, the first plaintiff had no right to sue and consequently the first plaintiff has no locus standi to sue the defendants Carrier. According to them, both the plaintiffs have no lawful right to sue the defendants as they seized to be the owners of the goods. In the Written Statement, it is further averred that there was a theft which happened during the transit for which, the defendants could not be held liable for their negligence and a complaint was also lodged in the Police Station regarding the same and since in the absence of negligence, the suit for recovery of amount cannot be entertained even otherwise.

5. The trial Court which went into the issues, has found that the averments and contentions raised by the defendants Carrier were valid and held that the consignment having been sold to the consignee, the plaintiffs did not have any hold over the goods and therefore, they cannot lawfully sue the defendants Carrier and having effected the sale in favour of the consignee, the first plaintiff has lost their right to sue the defendants Carrier for short delivery as they could not be said to have suffered any loss as they received entire sale consideration and once the first plaintiff had no lawful right to sue the defendants Carrier much less, by the second plaintiff who had stepped into the shoes of the first plaintiff by letter of subrogation.

6. The trial Court has held on the basis of the evidence that since the central excise duty was paid by the parties and stamped in the documents indicating that the consignee is the owner of the goods, it must be construed that the sale had taken place and hence, the plaintiffs could not maintain the suit and on such clear finding, the trial Court ultimately dismissed the suit.

7. As against the dismissal of the suit, the plaintiffs filed an appeal before the lower appellate Court in A.S.No.163 of 2005.

8. The lower appellate Court has reversed the judgment of the trial Court and held that it is always the duty of the Carrier to account for the consignment entrusted, to the person who entrusted the consignment for a consideration, namely, freight to be billed upon them. According to the appellate Court, the Carrier was accountable to the first plaintiff which was evidenced by Exs.A2 to A5 where the original endorsement of the consignee dated 20.01.1999 was found reflecting the quantum of short delivery. According to the lower appellate Court, Exs.A2 to A5 certificates issued to the first plaintiff was in compliance with certain regulations of the Central Excise which documents cannot be construed as the proof of sale taken place between consignor and consignee. The lower appellate Court went on elaborately that merely because certain delivery notices, invoices and payment of

excise duty and sales tax, have been produced as material evidence to show the proof of sale, the same are only meant to be statutory compliance which cannot be a conclusive proof in regard to 'effect of sale in favour of the consignee' and completion of the transaction. In any case, the lower appellate Court has held that the Carrier is always liable to pay the consignor if there was any short delivery of consignment since the Carrier which in fact, entered into with contract only with the consignor. In the said circumstances, the lower appellate Court reversed the findings and conclusion of the trial Court and held that the defendants Carrier were liable to pay the amount as claimed by the plaintiffs in the suit.

9. As against the judgment and decree of the lower appellate Court dated 17.4.2006 in A.S.No.163 of 2005, the present Second Appeal has been preferred by the defendants Carrier.

10. Mr.V.Raghavachari, learned counsel appearing for the defendants/appellants would strenuously contend that the sale has been completed and the factum of sale was clearly established by the various documents, viz., Exs.A2 to A5 and other documents which came up for consideration before the Courts below. As per Section 8 of the Carriers Act, 1965, the owner of the goods only can sue the Carrier. He would submit that the trial Court has appreciated the legal position and found that the invoices demonstrated that the consignee was the purchaser and once the consideration has been paid as per Section 8 of the Carriers Act, the consignor loses the right to sue against the Carrier.

11. The learned counsel would also submit that PW.1, during his cross-examination, has clearly admitted that the entire sale consideration has been paid by the consignee which meant that the sale was complete in all respects. Once the sale was complete and concluded, the first plaintiff cannot retain its ownership over the goods and therefore, the right of the plaintiffs to sue the Carrier for short delivery was lost and barred under Section 8 of the Carriers Act. According to the learned counsel, the reasons which were adopted by the lower appellate Court that those documents, namely, invoices, delivery notices and transit notices issued by the Carrier were mere compliance to certain statutory regulations of Central Excise as well as Sales tax etc., cannot be said to be valid, but those documents are intended to convey the character of the goods. In fact, the learned counsel would also refer to the invoices which clearly established that the goods have been sold. According to him, those documents are self-explanatory and do not require corroboration in order to confirm the title of the goods which passed on to the consignee. Therefore, the appellate Court completely fell into error in construing those documents as mere compliance of the statutory requirements. Those

documents were not empty formality, but were intended to convey ownership of the goods and unfortunately, the trial Court has completely misdirected itself by wrongly appreciating the import and importance of the documents. On the other hand, the trial Court appreciated the documents in proper perspective as well as the evidence of witnesses and correctly held in favour of the defendants Carrier and dismissed the suit.

12. Per contra, the learned counsel appearing for the plaintiffs would vehemently contend that there was no sale at all to the consignee and it was a consistent case of the first plaintiff that they were the owners of the goods and they had entered into the contract with the second plaintiff and obtained risk coverage for transit of the goods. The first plaintiff having entrusted the goods to the Carriers and admittedly as there was a short delivery of consignment to the consignee, the person who entrusted the goods was entitled to be paid compensation by the common Carrier, namely, the defendants in the suit. As rightly held by the lower appellate Court that the first plaintiff had entered into contract with the second plaintiff and the second plaintiff having settled the amount of loss sustained by the first plaintiff, had entered into understanding of subrogation and stepped into the shoes of the first plaintiff and therefore, the plaintiffs have locus standi to maintain the suit.

13. The learned counsel would also submit that the lower appellate Court has correctly appreciated Exs.A2 to A5 and found those documents were in compliance of statutory formalities which cannot be construed as documents of title. The learned counsel would also submit that Exs.A2 to A5 were dispatch invoices which need not be attached undue importance in order to decide the title of the goods. The learned counsel would refer Ex.A19 communication written by the defendants Carrier, as they agreed to settle the claim of the plaintiff at 10% which conduct of the defendants would show that they were liable to pay the compensation to the first plaintiff. The learned counsel would also refer Ex.A29 which shows that the first plaintiff retained the ownership and sale was not complete.

14. The learned counsel for the plaintiffs also submit that as per Section 19 of the Sale of Goods Act, 1930, the conduct of the parties must be taken into consideration before deciding the factum of sale of goods. Section 19 is extracted hereunder:

"19. Property passes when intended to pass.—

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

15. According to the learned counsel, in this case, the conduct of the parties would show that there was no sale concluded, but there was only an agreement and that was the reason the first plaintiff had taken a policy by paying huge premium to the second plaintiff Insurance company. Having paid huge premium, the first plaintiff was entitled to be compensated for the admitted short delivery of the consignment and therefore, they made original claim by enforcing the terms of the policy and in the said circumstances, the second plaintiff having compensated the first plaintiff, was entitled to maintain the suit on behalf of the first plaintiff. In fact, according to him, the lower appellate Court has appreciated the relationship in proper perspective and held that once the first plaintiff had taken policy from the second plaintiff by paying premium, whatever may be the circumstances, they were entitled to maintain the suit as the first plaintiff cannot be denied the factum of being a party who had entrusted the goods to the defendants Carrier. Once the entrustment was made by the first plaintiff and there was short delivery of the consignment, the first plaintiff had every right to sue the defendants Carrier for short delivery of the consignment to the consignee. According to the learned counsel, the lower appellate Court has clearly found that the payment of sales tax and excise duty by M/s.Rallis India Ltd., the consignee, on account of such payment, the sale by the first plaintiff in favour of the consignee was complete was averse to the material on record. According to the lower appellate Court, Exs.A2 to A5 would only certify the value of the goods and no more, which according to the learned counsel, is the correct appreciation of the stand of the plaintiff.

16. By way of reply, the learned counsel for the defendants, Mr.V.Raghavachari would submit that even on merits, the lower appellate Court has not referred about the negligence on the part of the defendants Carrier and in the absence of negligence, the question of payment of any compensation did not arise at all. Nowhere in the judgment, the lower appellate Court has referred to that aspect of negligence at all. He would therefore submit that the judgment and decree of the appellate Court have to be interfered with both on the ground of maintainability and on merits as well.

17. By way of rejoinder, the learned counsel for the plaintiffs would submit that as far as the negligence aspect is concerned, the plaintiff was not called upon to prove the negligence arising under Carriers Act. He would refer to Section 9 of the Carriers Act, which reads as under:

"9. Plaintiffs, in suits for loss, damage, or non-delivery, not required to prove negligence or criminal act.--In any suit brought against a common carrier for the loss, damage or non-delivery of 4 [goods including container, pallets or similar article of transport used to consolidate goods) entrusted] to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents."

18. He would submit that as far as the presumption of loss and shortage, the burden is on the Carriers to prove the absence of negligence, not on the plaintiff who sues for compensation for negligence. Therefore, he would submit that the lower appellate Court was not called upon to delve into the aspect of the negligence since short delivery note was issued by the Carriers themselves and no attempt was made by the Carrier to prove the absence of negligence on their part. According to the learned counsel, the so-called FIR lodged for the theft of goods was also not marked in the proceedings.

19. Besides the above submission, the learned counsel for the plaintiffs would also rely upon the following decisions, viz.,

i) "AIR 1966 SC 395 (Union Of India (UoI) vs West Punjab Factories Ltd.)". In this case, the Hon'ble Supreme Court was dealing with the issue of title to the goods and held in the factual matrix of that case that the consignor can sue if there is damage to the consignment, for the contract of carriage is between the consignor and the Carrier therein.

ii. "AIR 1957 Bombay 276" wherein, the Bombay High Court has held that when the goods were delivered to the Carrier and there was no proper delivery, the proper person to sue was a person with whom the Carrier had contracted. According to the Bombay High Court, the risk remains with the consignor and the consignor shall sue and not the consignee.

iii. 1983 AIR Calcutta. In this case, the Calcutta High Court held that the burden of proving the ownership of the goods was with the Carrier which asserted the fact.

iv. "1982 AIR Andhra Pradesh 203". The Andhra Pradesh High Court has held that the right to sue for damages was not restricted to the owner of the goods. In this case, the High Court has held in the context of one Carrier, entrusting the goods to another Carrier for transport. Therefore, the Andhra Pradesh High Court has held that the Carrier which entrusted

to the another Carrier is entitled to seek damages.

v. "1988-1- Law Weekly 580 (DB) Mad. (H.C)". A Division Bench of this Court has dealt with about the presumption in favour of the plaintiff about the act of negligence on the part of the Carrier. According to the Division Bench, it was held that Section 9 of the Carriers Act would put the onus of proving the absence of negligence on the part of the common Carrier.

20. Drawing cue from the above decisions of the various High Courts and the Hon'ble Supreme Court, the learned counsel would submit that the lower appellate Court was right in reversing the judgment of the trial Court and consignor entered into the contract with the Carrier and therefore, the plaintiffs are entitled to maintain the suit and precisely that is what has been rightly appreciated by the lower appellate Court and therefore, the judgment of the lower appellate Court does not call for any interference by this Court.

21. Considered the submissions of the learned counsel for the defendants/appellants and also the learned counsel for the plaintiffs/respondents. The issues which are placed for consideration before this Court in this appeal are three fold, viz.,

1. Whether the first plaintiff has right to sue the Carriers when the goods/consignment was said to have been sold to 3rd party consignee and whether the right to sue is lost in view of Section 8 of the Carriers Act, 1865?
2. Whether the first plaintiff has the right to sue the Carriers as a party to the contract, having entrusted the goods to the Carriers, de hors the ownership of the goods?
3. Whether it is incumbent upon the plaintiff who sued the defendant for compensation to prove negligence or whether such presumption to be drawn in favour of the plaintiff's claim in terms of Section 9 of the Carriers Act (or) as a corollary to the above, whether the Carrier has established its case of absence of negligence to refute the claim of compensation made by the plaintiff notwithstanding the maintainability of the suit?

Issue No.1:

Whether the first plaintiff has right to sue the Carriers when the goods/consignment was said to have been sold to 3rd party consignee and whether the right to sue is lost in view of Section 8 of the Carriers Act, 1865?

22. As per Section 8 of the Carriers Act, 1865 in respect of short delivery of consignment, a common Carrier shall be liable to the owner for loss of or damage arising from the negligence of the Carrier or any of his agents or servants.

Section 8 reads as under:

"8. Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.--Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any 3 [property including container, pallet or similar article of transport used to consolidate goods) delivered] to such carrier to be carried where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or servants and shall also be liable to the owner for loss or damage to any such property other than property to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants."

As per the above provision, the Carrier becomes liable for the loss or damage of the goods of the owner which would mean liability towards the owner of the goods. Therefore, the Section unequivocally confines relief to be asked for by the owner of the goods. Whether the Section places an embargo on the right of the first plaintiff to sue the Carrier after the goods were transferred to the consignee and after receipt of full consideration is the point of engagement of this Court in its quest for a resolution of the dispute between the parties. In this case, admittedly, the documents Exs.A2 to A5 being invoices dated 17.12.1998 and 18.12.1998 would show that the consideration in full has been received and the goods have been sold to the consignee. According to the case of the first plaintiff, the invoices were prepared in compliance of certain Central Excise Rules/Regulations and therefore, these documents were not indicative of sale of the goods. In fact, the lower appellate Court in extenso has extracted the contentions of the first plaintiff and held in the judgment while reversing the trial Court judgment that the preparation and execution of Exs.A2 and A5 were in due compliance of Section 173 (c) of Central Excise Rules. These documents were therefore filled up in order to satisfy certain requirement under Central Excise Rules and therefore, the documents were indicative of sale in favour of consignee as construed by the trial Court was misconceived and incorrect was what the lower appellate Court ruled while reversing the findings of the trial Court.

23. The reasons adopted by the lower appellate Court that the sale of goods was complete which is reflected clearly by documents Exs.A2 to A5 which are invoices and consignment notices cannot be construed as mere documents showing compliance to certain legal requirements, viz., consignment

with certain provisions of Central Excise Rules alone. The lower appellate Court has lost sight of the fact that the documents established the factum of the ownership of the goods in law. Unfortunately, the trial Court has completely misdirected by itself to construe the same as mere compliance of the legal requirements without truly appreciating the import of the execution of such documents. The lower appellate Court has erred in overturning the findings of the trial Court on this aspect when such documents like Exs.A2 to A5 were clearly relied upon by the parties in order to establish the title to the goods when the same were transported. Therefore, the trial Court has held that in the absence of ownership on the part of the first plaintiff, he cannot maintain the suit and in the absence of any right on the part of the first plaintiff to maintain the suit, the second plaintiff who has stepped into the shoes of the first plaintiff as subrogee cannot maintain the suit as well. In the considered opinion of this Court, the trial Court findings on this aspect is perfectly in order in the line with the established legal principles and also in enforcing the provisions particularly Section 8 of the Carriers Act.

24. Moreover, the evidence of PW.1 who was examined on behalf of the plaintiffs was clear and unequivocal that the entire consideration was received and the ownership has been passed on to the consignee in respect of the goods transported by the defendants Carrier. In the face of admission of PW.1 and also coupled with the support of Exs.A2 to A5, it did not lie in the mouth of the plaintiffs to assert that the sale had not taken place at all in favour of the consignee. The assertion on the part of the plaintiffs was contrary to the evidence and therefore, this Court is of the opinion that the first plaintiff would not have suffered any loss at all for short delivery of the goods since the sale consideration of the goods entrusted to the Carrier had been received in full. In the said circumstances, the contention of the second plaintiff about the first plaintiff being compensated for the short delivery of the goods cannot give rise any right to the second plaintiff to maintain the suit since the enforcement of the contract between the first and second plaintiff was entirely the matter between them and they have to sort it out and any payment or non-payment of compensation in respect of the contract between first and second plaintiff cannot clothe either the first or second plaintiff any right to maintain the suit as against the Carrier in view of the application of Section 8 of the Carriers Act. The most important factor to be established by the plaintiff in a situation like this is to establish the factum of ownership of the goods and the claim of the title over the goods transported must be without any defect or doubt. In this case, from the evidence placed on record, this Court can come to an absolveable conclusion that the goods had been sold and the sale was complete in favour of the consignee before the consignment was transported and in such situation, Section 8 of the Carriers Act was to be

pressed into service and rightly, the trial Court has appreciated the legal position and discountenanced the claim of the plaintiffs. In the circumstances, the Issue No.1 framed by this Court is answered in favour of the defendants Carrier, the appellants herein.

Issue No.2:

"Whether the first plaintiff has the right to sue the Carriers as a party to the contract, having entrusted the goods to the Carriers, de hors the ownership of the goods?"

25. As regards this issue, one of the grounds taken in this appeal was that the plaintiffs were even otherwise are entitled to sue the defendants Carrier in view of the fact that there was a contract between the first plaintiff and the second plaintiff wherein, the policy was taken for the safe transport of the goods to be transported by the defendants Carrier. In fact, the learned appellate Court has held that having paid the huge premium towards safe transportation of the goods, the first plaintiff was entitled to be compensated by the second plaintiff if there was any loss or damage to the consignment. Having entrusted the consignment by the first plaintiff to the defendants Carrier and by the power of subrogation, the second plaintiff having compensated the first plaintiff, has stepped into the shoes of the plaintiff and laid the suit. Although the approach of the lower appellate Court appears to be in order at first blush, but if the issue is little more critically examined, this Court finds that mere entrustment of the goods to the Carrier, cannot give rise to any right to sue at the instance of the first plaintiff in view of the application of Section 8 of the Carriers Act. Once the sale of the goods had been complete which was evidenced by unimpeachable documents like Exs.A2 to A5 and also clear evidence of PW.1 supporting the case of the Carrier that the goods were sold to the consignee in all respects, the first plaintiff has lost its lawful right to sue the Carrier only on the ground that the plaintiff has entrusted the goods to the Carrier. Once the sale of goods had taken place in full as indicated from the crucial documents, viz., Exs.A2 to A5, the first plaintiff cannot said to have suffered any loss at all due to any short of delivery of the goods. The fact that the first plaintiff entered into policy arrangement with the second plaintiff in regard to the goods entrusted to the defendants Carrier, cannot have the legal basis for laying the suit against the defendants Carrier when the issue of locus standi of the plaintiff to maintain the suit need to be addressed by the Courts below. In this case, the trial Court has correctly appreciated the legal position and discountenanced the claim of the plaintiffs as they did not have any locus standi to maintain the suit. Unfortunately, the lower appellate Court has overlooked the correct appreciation of the legal provisions of the trial Court and held it in favour of the plaintiffs and decreed the suit in favour of the plaintiffs.

26. In the circumstances, this Court is of the considered view that mere entrustment of the goods to the defendants Carrier in the face of complete sale of the goods to the consignee gave rise to the plaintiffs to sue the defendants Carrier as such right stood eclipsed by application of Section 8 of the Carriers Act.

27. As far as 'negligence' aspect is concerned, although the learned counsel for the defendants/appellants argued at length about the lower appellate Court's judgment which has not referred to the aspect of negligence at all and in the absence such reference, the lower appellate Court's judgment and decree even otherwise not in order. On merits of the inter se claim, the learned counsel appearing for the plaintiffs would submit that as per Section 9 of the Carriers Act, there is a presumption of negligence in favour of the claimant, namely, the plaintiffs and its burden of proving the absence of negligence is on the Carrier of the goods.

28. As far as the contentions raised on the aspect of negligence, the burden of proving the negligence is not cast upon the claimants, namely, the plaintiffs in view of operation of Section 9 of the Carriers Act which is extracted supra. Section 9 is very clear as to how the presumption would be drawn by the Courts in case of loss of damage to the goods transported by the Carrier. Once short delivery was noticed and in this case, it has been acknowledged by the Carriers themselves, the plaintiffs were entitled to succeed, unless the absence of negligence on the part of the Carrier was established by the defendants. Therefore, this Court holds that the negligence aspect on the part of the defendants Carrier need not be proved by the plaintiffs at all in view of the Section 9 of the Carriers Act. Therefore, on this ground, the arguments advanced on behalf of the defendants Carrier by Mr.V.Raghavachari are to be rejected without any merit.

29. Be that as it may, as regards other issue regarding whether the defendants Carrier has established absence of negligence on their part is concerned, according to the defendants Carrier, there was short delivery of goods because of theft happened during the time of transit of the goods. According to the defendants Carrier, an FIR was lodged before the police concerned about the theft taken place during the transit. However, it was also admitted fact that the FIR was not marked in the proceedings before the Courts below. In the absence of FIR being part of the records before the Court below, this Court cannot come to any conclusion either way and the factum of absence of negligence on the part of the defendants carrier would not have said to be established at all. The Courts below did not have any occasion to deal with the aspect of absence of negligence since mere contention placed on behalf of the defendants Carrier cannot provide a

scope for the lower Courts to render a finding on this aspect in the absence of any specific issue on such aspect. In the absence of these factors, this Court is unable to give any finding regarding the absence or otherwise of the negligence on the part of the defendants Carrier. In any case, as far as the present case on hand is concerned, the locus standi of the plaintiffs was questioned successfully by the defendants Carrier before the trial Court and the trial Court on the basis of proper appreciation of law and factual aspects, has rightly dismissed the suit. In the opinion of this Court, the finding of the trial Court is on the basis of proper appreciation of the averments, evidence and the supporting materials placed on record, but unfortunately, the judgment and decree of the trial Court were erroneously reversed by the lower appellate Court by allowing the suit in favour of the plaintiffs. This Court, therefore, de hors the issue whether there was any negligence on the part of the defendants Carrier or defendants Carrier established the absence of negligence on their part, is of the view that the suit was not maintainable at all in view of the application of Section 8 of the Carriers Act. Although the learned counsel appearing for the plaintiffs cited as many as five decisions, this Court is of the view that those decisions of the Hon'ble Apex Court and other High Courts cannot be applied to the factual matrix of the present case.

30. As far as the decision reported in "AIR 1966 SC 395" cited supra is concerned, it was the finding of the fact regarding title of the goods. In this case, the finding is that the title of the goods vests with the consignee. Therefore, the said ratio laid down based on the factual matrix of the case therein by the Hon'ble Supreme Court of India, cannot be applied to the present case.

31. The decision reported in "AIR 1957 Bombay 276" cited supra is concerned, in this case, the issue of title to the goods was not the subject of discussion and the application of Section 8 was not part of the discussion and therefore, the ratio laid down by the Bombay High Court cannot be applied to the present case.

32. The decision reported in "AIR 1983 Calcutta 237" is concerned, the issue that came for consideration before the Calcutta High Court is whether the burden to prove that who was the owner of the goods was on the person who asserted the factum of ownership. In this case, this Court has held that the sale was complete in favour of assignee and therefore, the first plaintiff, consignor is not entitled to maintain the suit. Therefore, the Calcutta High Court judgment need not be taken into account by this Court as the issues which came up for consideration are not the same.

33. As regards the decision reported in AIR 1982 AP 203 is concerned, in this case, the Andhra Pradesh High Court was dealing with a case where one Carrier entrusted the goods to another Carrier for transport, the Court has held that a party privy to the contract can sue the Carrier for damages arising out of short delivery. With due regards to the learned Judge, this Court is afraid to toe the line of the legal finding for the reason that once a suit is filed within the frame work of the Carriers Act, the ultimate decision of the Courts must be within the four corners of the statute. Section 8 by necessary implication confers the right on the owners to sue. No doubt, it is a different matter if the suit is filed by invoking common law remedy, in which event, the suit may witness a different approach by the Courts. The case of the defendants Carrier was that the first plaintiff being the original owner of the goods had lost the right to sue the defendants Carrier in view of complete sale of the goods in favour of the second plaintiff which were transported by the defendants Carrier in view of Section 8 of the Carriers Act. Therefore, the decision of the Andhra Pradesh cannot be pitchforked into the facts and circumstances of the case on hand.

34. As regards the decision reported in 1988-1 LW 580 (Mad.) is concerned, this is a case regarding the application of Section 9 of the Carriers Act about the Carrier's burden to prove the absence of negligence. This Court in the concluding paragraph, has held that there is a presumption of negligence on the part of the Carrier in favour of the plaintiffs' claim as per Section 9 of the Carriers Act and the burden is always on the Carrier to establish the absence of negligence. Since the issue of negligence in this case has not been gone into, the decision therefore, cited by the learned counsel for the plaintiffs does not help to advance the case of the plaintiffs against the defendant Carrier.

35. This Court wishes to add that the present decision is rendered in the context of provisions of Carriers Act, 1865 particularly Section 8. The trial Court has itself framed a specific issue as to the applicability of Section 8 in deciding the fate of the suit.

36. On the whole, this Court finds that the appellants/defendants have made out a case to grant the relief as sought for and therefore, the judgment and decree of the lower appellate Court are liable to be set aside since the same cannot be discountenanced both in law and on facts. Accordingly, the substantial questions of law framed by this Court are answered in favour of the defendants/appellants.

37. In view of the above, the Second Appeal is allowed and the decree and judgment of the lower Appellate Court in A.S.No.163 of 2005 dated 17.04.2006 is set aside. The parties shall bear their own costs.

Sd/-
Assistant Registrar(CS-III MDU)

//True copy//

Sub Assistant Registrar

Suk

To

1. The Additional District Judge,
Fast Track Court II,
Chennai.

2. The XII Assistant Judge,
City Civil Court, Chennai

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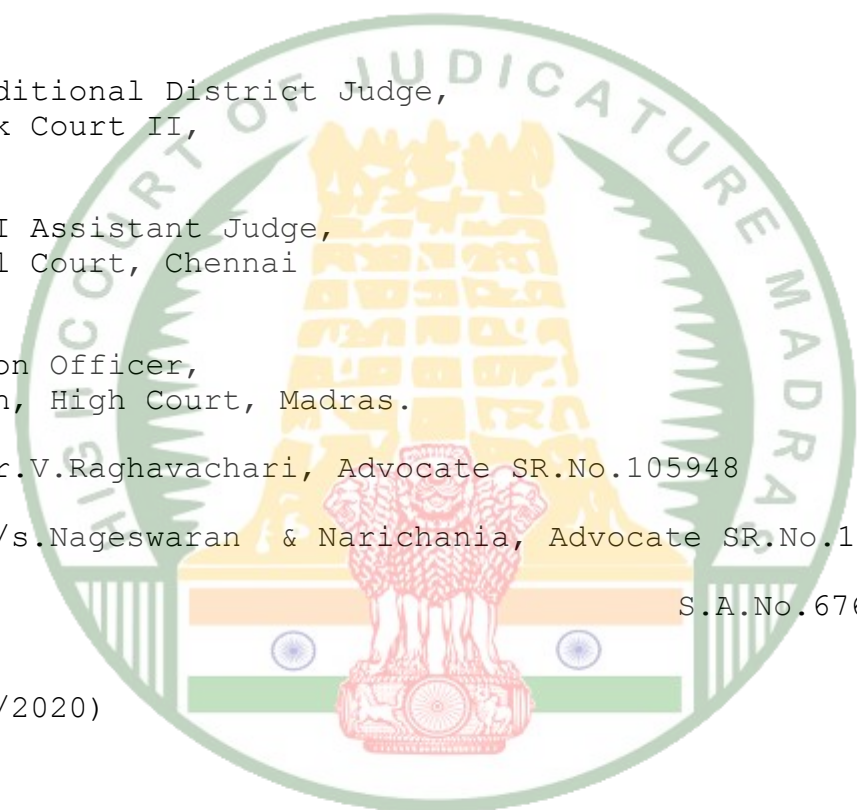
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No.105948

+1cc to M/s.Nageswaran & Narichania, Advocate SR.No.105993

S.A.No.676 of 2007

GP(CO)
GMY(25/08/2020)

The seal of the Madras High Court is a circular emblem. It features a central golden temple gopuram (tower) with a red lion capital of Ashoka at its base. The gopuram is set against a background of a green and white striped field. The words "HONORABLE JUDICATURE MADRAS" are inscribed in a green circle around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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