



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2021

PRONOUNCED ON : 26.02.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1584 of 2008

1. M/s. L.R.N. Parcel Services Pvt. Ltd.

Rep. by its Managing Director

5/259-A, Junction Main Road

Five Roads, Salem 636 004

2. The Manager

L.R.N. Parcel Services Pvt. Ltd.

12-A, Dr. Alagappa Chettiar Road,

Chennai 600 084

...Appellants

Vs.

1. M/s. Madharsha and Sons Trust

Rep by its Trustee, M.S. Akbar Ali

No.208 , Purasawakkam High Road

Chennai 600 007

2. M/s. Kumar Textiles

Rep. by its Executive, P.P. Thangavelu

Old No.6th Ward No.38, New Street 1,

Taramangalam

New Address: No.50, 9th Street

(10th Ward), Taramangalam,

Salem

... Respondents

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree dated 07.01.2005 made in O.S.No.5172 of 1999 by the learned XVI Asst. Judge, City Civil Court, Chennai and confirmed by a judgment and decree dated 29.02.2008 made in A.S.No.648 of 2005 on the file of Addl. District Judge, Fast Track Court II, Chennai.

For Appellants : Mr. K.V. Sundarrajan

For Respondents : No appearance. Set exparte vide order dated 18.02.2021.



JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 29.02.2008 passed in A.S.No.648 of 2005 on the file of the Addl. District Judge, Fast Track Court II, Chennai, confirming the judgment and decree dated 07.01.2005 passed in O.S.No.5172 of 1999 on the file of the XVI Asst. Judge, City Civil Court, Chennai..

2.For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendants 1 and 2 in O.S.No.5172 of 1999 are the appellants in the Second Appeal.

4. Suit for recovery of money.

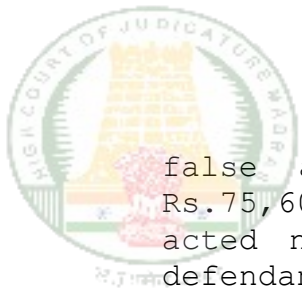
5. The case of the plaintiff, in brief, is that the plaintiff re-booked two gunny bundles containing textiles of value Rs.75,600/- for carriage to the third defendant vide L.R. No.81486 dated 28.04.1999 issued by the second defendant and sent the original lorry receipt to the consignee for taking delivery of the consignment from the first defendant. The third defendant called on the first defendant for taking delivery of the consignment. The first defendant informed the third defendant that the consignment relating to the lorry receipt No. 81486 dated 28.04.1999 has already been delivered. The third defendant is holding the original lorry receipt. Thus, it is found that the first defendant had delivered the consignment to some third party. The third defendant sent a letter on 06.05.99 to the second defendant calling upon them to deliver the consignment. The plaintiff also sent a letter on 06.05.1999 to the second defendant to deliver the consignment to the third defendant. The first defendant sent a reply dated 10.05.1999 containing false allegation. The value stated in the lorry receipt is Rs.80,000/- and the second defendant had written the value of the consignment in the lorry receipt in such a manner that the numbers could be read as either Rs.20,000/- or Rs.80,000/-, which is misleading and the plaintiff also at the time of booking of the consignment delivered the copy of the debit note and the memo depicting the value of the two gunny bundles as Rs.75,600/-. The defendants 1 and 2 having delivered the goods to some third party, instead of the third defendant, are liable to pay the plaintiff the value of the goods consigned and hence the suit.

6. The defendants 1 and 2 resisted the plaintiff's suit



contending that the suit is not maintainable either in law or on facts and admitted that the plaintiff has booked two gunny bundles containing textiles through the second defendant at Chennai vide Lorry Receipt No.81486 dated 28.04.1999 to deliver the same to the third defendant at Salem. The value of the goods is only Rs.20,000/- and not Rs.75,000/- as alleged in the plaint. It is false to state that the consignment was not delivered to the third defendant. The consignment was duly delivered on 30.04.1999 to the third defendant against the production of the consignee copy of the lorry receipt and after seeing the signature and seal of the third defendant in the consignee copy. As per the terms and conditions mentioned in the lorry receipt, it is the duty of the carrier to deliver the consignment to the person, who produces the consignee copy containing the signature of the consignee. Since then the consignee copy is in the custody of the first defendant and therefore, it is false to state that the third defendant is holding the consignee copy. The defendants used to issue the consignee copy in rose colour and the consignor copy in white colour and the same has been mentioned in the lorry receipt. The first defendant, on receipt of the letter sent by the plaintiff, confirmed that the delivery of the consignment was duly effected on 30.04.1999 itself. The letter sent by the third defendant was properly replied and it is false to state that the second defendant had wrongly written the value of the consignment as Rs.20,000/- instead of Rs.80,000/- and it is false to state that the plaintiff had delivered the copy of the debit note and memo at the time of rebooking of the gunny bundles. Inasmuch as the consignment had been duly delivered to the third defendant on the production of the consignee copy, the plaintiff has no locus standi to file the suit and the action taken by the third defendant before the District Forum at Salem is still pending and accordingly prayed for the dismissal of the plaintiff's suit.

7. The third defendant resisted the plaintiff's suit contending that the consignment booked by the plaintiff to be delivered to the third defendant had not been delivered by the defendants 1 and 2. The plaintiff's had sent only the consignor copy to the third defendant instead of the consignee copy with some ulterior motive . The plaintiff sent the lorry receipt along with consignor copy only on 03.05.1999. Therefore, the claim of the plaintiff that the third defendant is holding the consignee copy is incorrect. The third defendant, having not received the consignment, sent a letter to the first defendant calling upon them to deliver the consignment with a copy marked to the plaintiff. The first defendant sent a reply containing



false allegations. The value of the goods consigned is Rs.75,600/- and the plaintiff and the defendants 1 and 2 had acted negligently in delivering the consignment to the third defendant and hence, the third defendant filed a consumer petition in the District Consumer Forum seeking for necessary reliefs and therefore, prayed for the dismissal of the plaintiff's suit.

8. In support of the plaintiff's case P.W.1 was examined and Exs.A1 to A13 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and Exs. B1 and B2 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties, the courts below were pleased to decree the suit in favour of the plaintiff against the defendants 1 and 2 and dismissed the plaintiff's suit against the third defendant. Impugning the judgment and decree of the courts below, the second appeal has been preferred by the defendants 1 and 2.

10. At the time of the admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) Whether the plaintiff/1st respondent has locus standi to file the suit because the consignment belongs to the second respondent herein?
- 2) Whether the courts below were correct in putting the burden on the appellants inspite of production of original consignee copy,, namely, Ex.B1?
- 3) Whether the courts below were correct in allowing the claim of the first respondent in spite of clear admission by P.W.1 and D.W.1 that the consignment will be delivered on production of Ex.B1?
- 4) Whether the findings of the courts below that the burden is on the appellant to prove the signature in Ex.B1 is in consonance with the provisions of the Indian Evidence Act?"

11. From the pleas and materials placed on record, it is found that the parties are not at dispute that vide Lorry Receipt No.81486 dated 28.04.1999 the plaintiff had re-booked two gunny bundles containing textiles of value Rs.75,600/- for carriage to the third defendant through the Defendants 1 and 2. Now according to the plaintiff, the original lorry receipt had been sent to the consignee, namely, the third defendant, for taking delivery of the consignment from the first defendant. It



is the grievance of the plaintiff as well as the third defendant that the consignment had not been delivered to the third defendant and accordingly put forth the case that the defendants 1 and 2 had delivered the consignment to some third party and therefore, liable to pay the value of the goods consigned and as the defendants 1 and 2 had repudiated the claim of the plaintiff as well as the third defendant, according to the plaintiff, the suit has come to be laid for necessary relief.

12. It is the specific case of the defendants 1 and 2 that the consignment had been delivered to the third defendant and it is false to state that the consignment had not been delivered. From the lorry receipt produced in the matter, it is found that the consignee copy is issued in rose colour and the consignor copy is issued in white colour. Further it is also seen that as per the terms and conditions mentioned in the lorry receipt, it is the duty of the carrier, namely, the first defendant to deliver the consignment to the person who produces the consignee copy containing the signature of the consignee. Now according to the defendants 1 and 2, they had delivered the consignment to the consignee, namely, the third defendant, on the production of the consignee copy. The consignee copy has been produced only by the defendants 1 and 2 marked as Ex.B1. If according to the plaintiff or the third defendant, as the case may be, after rebooking of the consignment, the plaintiff, as the consignor, had forwarded the consignee copy to the third defendant for taking delivery and if according to their case, the defendants 1 and 2 had not delivered the consignment to the third defendant, it is only the third defendant who would be having the custody of the consignee copy and on the other hand, when it is found that the consignee copy marked as Ex.B1 had been produced only by the defendants 1 and 2, despite the abovesaid position, the conclusion of the courts below that the defendants 1 and 2 had not delivered the consignment to the consignee, as such, cannot be accepted in any manner. When the evidence had been adduced in the matter that the goods should be delivered on the production of the consignee copy and when the consignee copy has been produced only by the carrier, namely, the defendants 1 and 2, the only conclusion that could be arrived at is that, on the delivery of the consignment to the third defendant, the defendants 1 and 2 had secured the consignee copy from the third defendant.

13. However, it is noted that the during the course of trial, the third defendant would dispute the signature and seal found in the consignee copy marked as Ex.B1. However, when the consignee copy has been produced by the defendants 1 and 2 and



despite the same, the third defendant or as the case may be, the plaintiff is disputing the genuineness of the same, it is for the third defendant or the plaintiff to establish the said version by adducing acceptable and reliable materials. Nothing prevented them from subjecting Ex.B1 to the scrutiny of expert in the manner known to law. On the other hand, the courts below are found to have shifted the burden on the carriers, namely, the defendants 1 and 2 to establish the validity of Ex.B1. When as per the normal trade practice, the defendants 1 and 2 are to entrust the consignment to the consignee on the production of the consignee copy, and when the consignee copy is emanating only from the custody of the defendants 1 and 2, namely, the carrier and not from the third defendant, despite the abovesaid position, to say that the consignment had not been delivered to the third defendant as held by the courts below, as such, cannot be countenanced in any manner.

14. The third defendant would put forth the blame on the plaintiff as if the plaintiff had not sent the consignee copy to it. Per contra, according to the plaintiff, the consignor copy had been sent to the third defendant. Therefore, it is seen that the plaintiff has not followed the proper procedure. The plaintiff should have forwarded the consignee copy to the third defendant for taking delivery of the consignment. In any event, if the plaintiff had not sent the consignee copy to the third defendant, as put forth by the third defendant, the inevitable conclusion is that the consignee copy would have been only in the custody of the plaintiff. If the plaintiff, in fact, had forwarded the consignee copy to the third defendant, the same would be only in the custody of the third defendant till the consignment is delivered. Now, when it is the specific case of the defendants 1 and 2 that they had secured the consignee copy after delivering the consignment to the third defendant and only the defendants 1 and 2 have come forward with the consignment copy marked as Ex.B1, the case of the plaintiff and the third defendant, as the case may be, contending that Ex.B1 is not the genuine consignee copy, as such, cannot be accepted. When they have taken such a stand, it is for them to establish the said plea in accordance with law and as rightly contended by the counsel appearing for the defendants 1 and 2 it is not the duty of carrier to verify and authenticate the signature of the consignee in the consignee copy. Therefore, as rightly contended by him, the production of the consignee copy marked as Ex.B1 itself is sufficient to prove the delivery of the consignment to the third defendant. The courts below had erroneously shifted the burden upon the defendants 1 and 2 to establish the authenticity of Ex.B1 and further erred in



decreeing the suit in favour of the plaintiff despite the clear admission of P.W.1 and D.W.1 that the consignment would be delivered on the production of the consignee copy i.e. Ex.B1.

15. The defendants 1 and 2 would also put forth the case that since the consignment is intended for the consignee, namely, the third defendant, after the booking of the consignment, the plaintiff has no locus standi to file the suit. However, when the plaintiff as the consignor has the duty to ensure that the consignment sent by it reaches the consignee, in such view of the matter, the question of locus standi of the plaintiff to file the case as sought to be canvassed by the defendants 1 and 2, as such, cannot be entertained and therefore, it is found that the plaintiff also has the locus standi to file the suit as the consignment in question had been only booked by the plaintiff for delivery to the consignee.

16. For the reasons aforestated, the substantial questions of law 2 to 4 are answered against the plaintiff and the third defendant and in favour of the defendants 1 and 2 and the substantial question of law number 1 is answered against the defendants 1 and 2 and in favour of the plaintiff.

17. For the reasons aforestated, the judgment and decree dated 29.02.2008 passed in A.S.No.648 of 2005 on the file of the Addl. District Judge, Fast Track Court II, Chennai, confirming the judgment and decree dated 07.01.2005 passed in O.S.No.5172 of 1999 on the file of the XVI Asst. Judge, City Civil Court, Chennai, are set aside and resultantly, the suit laid by the plaintiff in O.S.No.5172 of 1999 is dismissed with costs. Consequently, the second appeal is allowed with costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

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



2. The XVI Asst. Judge,
City Civil Court, Chennai,

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

+1cc to Mr.K.V.Sundararajan, Advocate, S.R.No.12304

S.A.No.1584 of 2008

AD(CO)
GN(29/03/2022)