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Court : Chennai

Decided On : Nov-15-1901

Reported in : (1902)12MLJ375

Appellant : Chelapathi and ors.

Respondent : Surayya

Judgement :

1. In this case the finding of the District Judge that the contract between the parties was one of pledge cannot be supported. The District Judge's view was that if the contract was not one of pledge from the beginning, it became one as from the time when the plaintiff began to make advances in compliance with the 1st defendant's letter of July 17th 1897 (B5). There are no doubt expressions in the defendant's letters of July 15th and 17th which, taken by themselves, may be said to support the view that the goods in question were pledged by the defendant to the plaintiff as security for money advanced. In the letter of July 15th (B4) he writes, 'Therefore we mean to deposit these bales with you for sale and get money.' In the letter of July 17th he writes, 'Therefore we mean to send you one hundred or two hundred bales to be held in deposit. We require money also upon those goods.' But taking the evidence and the correspondence as a whole, we feel no doubt that the relation between the parties was that of principal and agent for sale on commission, and not that of pledgor and pledgee. Advances were made by the plaintiff before any cotton was sent by the defendant. Moreover, all the advances were repayable on demand. The agreement was that commission

should be charged on the goods sold, and the course of business as described by the plaintiff in his plaint shows beyond all doubt that the goods were consigned by the defendant to the plaintiff for sale by the plaintiff on defendant's behalf for the benefit of both parties and not by way of pledge. The plaintiff had alien on the goods consigned, but this lien carried with it no right of sale. The authority given to the plaintiff to sell on the defendant's behalf, according to the contract as disclosed in the correspondence, was an authority to sell on the express directions of the defendant, the principal, and not otherwise. For instance, on July 17th, 1897 defendant writes, 'We shall wait up to the month of Sravana in respect of the said cotton. If prices rise up we shall sell them then only.' On July 26th the plaintiff writes 'When you write to sell we shall do so.' On July 31st he writes, 'Write when to sell? The price at present is Rs. 114.' On August 16th he writes, 'We shall wait till (i.e., as long as) you ask us to wait.' On September 21st, defendant writes, 'Do not sell without our orders.' Until January 1898 there is no suggestion on the part of the plaintiff that he had any right to sell except under the defendant's directions. On January 24th he threatens to sell according to price unless the defendant makes him a remittance. In answer to this threat the defendant writes on January 26th, 1898, 'Do not sell the cotton at this low price without our order.' On April 4th defendant authorized the plaintiff to sell 100 candies (out of the 176 consigned) if the price reached Rs. 100 a candy. (The price at that time was considerably below Rs. 100 and does not appear to have reached Rs. 100 until the latter part of 1899.) After an interval of some four months, on August 2nd, 1898, the plaintiff renewed his threat to sell at current rates, and on August 15th, the defendant again directs him not to sell and repeats these directions on August 22nd and on September 27th. In October the plaintiff sold 98 bales and the defendant writes on October 80th, that he will hold the plaintiff responsible for the loss. The remaining bales were sold by the plaintiff in January 1899.

2. In view of these letters Mr. Krishnasami conceded and properly conceded that unless the contract could be regarded as a contract of pledge, the sale by the plaintiff of the defendant's goods in contravention of the defendant's directions was wrongful. He contended however that the defendant was only entitled to nominal damages inasmuch as the defendant could have made good his loss by buying fresh cotton at the low prices which prevailed when the sales were made and

replacing the goods which had been wrongfully sold by the plaintiff. Our attention was called to a Bombay case *Manchubai Navalchand v. John H. Tod* I.L.R. 20 B. 633 in which the facts were similar to those in the present case, and in which it was held that the plaintiff was only entitled to nominal damages. In that case, however, it was held that, on the facts, the plaintiff had failed to prove any damages. In the present case, the defendant's object in his transactions with the plaintiff was to get certain consignments of cotton resold at a profit. The plaintiff (the agent), acted in contravention of the directions which he had received from the defendant (the principal) with the result that it became impossible that these consignments could be sold at a profit. In these circumstances, it seems to us that the defendant was under no obligation to replace the goods which had been wrongfully sold by the plaintiff with a view to reselling them if and when the market rose. He was not bound to enter into a speculative transaction which might have resulted in his being able to recoup himself and might have resulted in a further loss. It is clear that if he had bought fresh cotton and this transaction had resulted in a further loss he would not have been able to recover this further loss from the plaintiff as consequential damages. In our opinion, it follows that he was not bound to enter into a speculative transaction with the view of reducing the loss which, as events turned out, he was able to prove he had sustained by reason of the plaintiff having acted in breach of his duty as agent. If the defendant had been unable to prove that within a reasonable time after the sale by the plaintiff the price of cotton had risen above the rate at which the plaintiff sold, it may well be that the defendant would have been entitled to nothing more than nominal damages. But that is not the case here. We think the defendant is entitled to such damages as would place him in the position which he would have been in if the plaintiff had not, in breach, of his duty as agent, sold the defendant's goods. At the time of the consignment (July, 1897) the market price was Rs. 114 per candy, but it is in evidence that in April 1898 the defendant was prepared to sell 100 candies out of the consignment of 176 at Rs. 100 per candy if that price had been then obtainable. As a matter of fact the market price in April '98 does not seem to have been more than Rs. 75 per candy and it remained somewhere about that figure till July '99. According to the plaintiff's witnesses the price in November '99 was about Rs. 112. There is no evidence when the rise began, but we may take it that the

price reached Rs. 100 for the first time about October 1899. For the purpose of assessing damages we assume that the defendant would have been willing to sell in October 1898, at the price at which he would have sold, (if the price had been obtainable) in April '98. Taking the difference between the price at which the plaintiff sold in violation of his duty and the price at which (as we assume) the defendant would have been willing to sell, and would have sold, in October '99, and deducting a sum for depreciation on account of the cotton being old, and taking into account the moneys for which the defendant would have been chargeable by way of interest if the plaintiff had not sold and so, in part, discharged the defendant's debt, we assess the defendant's damages at Rs. 1,500.

3. As regards the alleged payment of Rs. 6,000 by the 1st defendant to the plaintiff, we agree with the finding of the District Judge. The 1st defendant's story as to the circumstances in which this payment is alleged to have been made is altogether improbable and the evidence in support of it appears to be quite untrustworthy. The conclusion we have come to is that the payment was never made and that the document which purports to be a receipt dated November 1, 1898, is a forgery.

4. We feel no doubt that the plaintiff is entitled to a personal decree as against the defendants 1, 2 & 3. As regards the defendants 2 and 3 there is evidence of acquiescence on their part in the course of dealings in which the contract was entered into which warrants their being treated as contracting parties. There is no such evidence as regards the 4th defendant who, at the time of the suit, was a minor. The decree, therefore, as against the 4th defendant must be limited to his share in the family assets.

5. The decree gives no interest to the plaintiff. He is entitled to interest at the rate of 9 per cent, per annum on the principal amount from the date of plaint until the date of decree, and at the rate of 6 percent, per annum from the date of the decree until payment.

7. The decree must be modified by allowing in account, the sum of Rs. 1,500 to the defendants by way of damages, by allowing the plaintiff interest as above

stated and by limiting the liability of the 4th defendant under the decree to his v share in the family assets.

8. As regards the costs, we direct that the defendants pay the proportionate costs of the plaintiff on the decree amount as modified by this court throughout. We allow no costs to the defendants. Our reason for depriving the defendants of costs is that we believe the case put forward by the 1st defendant with reference to the alleged payment of Rs. 6,000 is false.

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