CALCUTTA HIGH COURT

Alliance Assurance Co. Ltd

Vs

Union of India

(P Mukharji, J.)

07.01.1959

JUDGMENT

P.B. Mukharji, J.

1. This is a suit by Alliance Assurance Co., Ltd., against the Union of India as the main defendant and the Goodyear Tyre and Rubber Company of India Ltd., as a pro forma defendant only. The claim is for a sum of Rs. 3,680-5-0. There is an additional claim for Rs. 1,000/- as damages for vyrongful detention, but that has not been pressed before me by the learned counsel for the plaintiff". A short but important point of jurisdiction is the real bone of contention in the suit.

2. The plaintiff's claim arises in this way. The Goodyear Tyre and Rubber Co. despatched by railway certain goods from Bansabati to Delhi and also insured those goods with the plaintiff. The Railway delivered most of the goods. There was, however, short delivery of 12 tyres. The value of these 12 tyres is Rs. 3,680-5-0. The Goodyear Tyre claimed this money from the plaintiff under the policy of insurance covering these goods. The plaintiff paid that amount to the Goodyear Tyre. The Goodyear Tyre thereupon assigned to the plaintiff all their right, title and interest in the goods and the relative Railway Receipts. The plaintiff insurance company thus became subrogated to the rights of the consignor. The plaintiff Insurance Company now sues the Union of India making their insured, the Goodyear Tyres, as a pro forma defendant.

3. The following issues were raised by the learned counsel for the Union:

1. Were the goods alleged to be short delivered, insured with the plaintiff as alleged in paragraph 2 of the plaint?
2. What is the value of the said goods?
3. Has the defendant No. 2 validiy transferred or assigned to the plaintiff the right, title and interest in the said goods?

4. Has the Court jurisdiction to try this suit?

5. To what relief, if any, is the plaintiff entitled?

4. There is an admitted brief of documents marked Exhibit 'A' in this suit. The only oral evidence is that of Mr. Murthi who was called on behalf of the plaintiff. No oral evidence has been called on behalf of the Union of India. Mr. Murthi's evidence proves the consignment of the goods under the different Railway Receipts on the 10th June, 1953, the short delivery of the 12 tyres, the short certificate issued bv the Railway, and the value of the goods on the basis of the price lists which he has proved. He has also proved that the Goodyear Tyre made the claim on the Policy against the plaintiff Insurance Company and has received the full amount of money being the sum of Rs. 3,680-5-0. I may state here that Mr. Murthi is in the employment of the Goodyear Tyre and Rubber Co. ever since 1925. There was formal cross-examination of this witness by the Counsel for the Union, but Mr. Murthi's evidence remains unshaken, and in my opinion, must be accepted.

5. Issues Nos. 1 and 2: On the basis of the evidence of Mr. Murthi and the documents I am satisfied and I hold that the goods short delivered were covered by the Policy or Insurance and that the value of the said goods was Rs. 3,680-5-0. I answer the first two issues accordingly.

6. Issue No. 3; This issue is covered by a judgment in Suit No. 1020 of 1954 between the same parties--Alliance Insurance Co. Ltd. v. Union of India and Goodyear Tyre, deciding this identical issue and on indentical terms of insurance policy. I delivered that judgment on November 26, 1958 holding that the assignment and the transfer, in such case is good, valid and enforceable on a Policy of this nature. As I still remain of the same view, it is, therefore, unnecessary for me to discuss this issue any further. I, therefore, answer Issue! No. 3 in the affirmative.

7. Issue No. 4: This issue relates to the issue of jurisdiction and is the only issue which was seriously argued before me. It is contended on behalf of the Union of India that this Court has no jurisdiction to entertain this suit as against the Union of India. The plaintiff pleaded jurisdiction in the plaint on the ground of the issue of the Insurance Policy within jurisdiction, the assignment within jurisdiction of the consignor's rights, title and interest in the said goods to the plaintiff Insurance Company, service of the notice under Section 80 of the Civil Procedure Code within jurisdiction, and of the notice under Section 77 of the Railways Act within jurisdiction.

8. Mr. Sen, learned Counsel appearing for the plaintaiff, has not urged the ground of Section 80 of the Civil Procedure Code and Section 77 of the Railways Act as conferring jurisdiction to this Court to entertain the suit. He has confined his arguments to the fact of the assignment of the right, title and interest of the consignor to the Insurance Company having taken place at No. 2, Hare Street, Calcutta within the jurisdiction of this Court. The assignment is contained in a document duly stamped and dated the 15th September, 1953. The assignment is an admitted document and is also described as a letter of subrogation. Mr. Murthi proved this document. He proved that it was executed at No. 2, Hare Street, Calcutta, within the jurisdiction of this Court.

9. The material portion of this assignment and subrogation reads as follows:

> "We hereby assign transfer and abandon to you all our rights against the Railway Company cr other persons whatsoever x x x x x x"
>
> "and grant full power to take and use all lawful ways and means in your own name and otherwise at your risk and expense to recover the said damage x x x x x x."
>
> "We hereby subrogate to you the same rights as we have in consequence of or arising from the said loss or damage x x x x x x "

"We hereby undertake and agree to make and execute at your expense all such further deeds, assignments and documents and to render you such assistance as you may reasonably require for the purpose of carrying out this agreement. x x x x x x "

10. This assignment and letter of subrogation sets out the goods with marks, numbers of Railway Receipts and date with the value of the goods shown against different items amounting to a total sum of Rs. 3,680/5/-. Mr. Sen argues that the assignment is a part of the cause of action and as the assignment took place within the jurisdiction of this Court, this Court is competent to entertain and try this suit.

11. He relies on the well-known trilogy of cases decided by Panckridge J. in Kalooram Agarwalla v. Jonishta Lal Chukrabarty , Daulatram Rawatmull v. Maharajlal and Harnathrai Binjraj v. Sew Prosad Sing in support of the proposition that assignment is a part of cause of action and that the place where the assignment takes place gives the Court of that place jurisdiction to entertrain the suit on the basis of that assignment. Mr. Sen further relies on the decision of the Court of Appeal in Bhabani Prasanna Lahiri v. Rai Radhica Bhusan Roy reported in the same volume 40, Cal WN 1349. The Court of Appeal in that case comes to the conclusion that in a suit by the assignee of a promissory note, the making of an endorsement which effects the assignment, is not only a part of the cause of action but is the most essential part thereof. On the basis of this authority and specially the last decision of the Court of Appeal I must find in favour of the jurisdiction of this Court to entertain this suit.

12. But Mr. Mukherjee, learned Counsel for the Union of India, has tried to distinguish these cases from tbe present one on the ground that all these decisions reported in 40 Cal WN are based on the doctrine of negotiability of a promissory note. He relied on the observation of Costello J. approving the remarks of Cunliffe J. as reported in 40 Cal WN 1349 that not to recognise assignment as a part of the cause of action in the case of promissory note would be to strike at the whole root of the law of negotiability as laid down not only in the Negotiable Instruments Act but in the time-honoured principles of the law merchant, Mr. Mukherjee contends that as no question of Negotiable Instruments Act or of negotiability or law merchant arises in this case, the principle of those cases should not be applied or extended to the present case of assignment of rights on an Insurance Policy.

13. Mr. Mukherjee's argument requires careful consideration. No doubt all these cases adumbrating this principle relate to promissory notes. That fact distinguishes signally the present case. But the question still remains, where an assignment is a part of the cause of action, is the jurisdiction of the Court within which the assignment takes place to entertain and try the cause of action limited only to cases of assignment of negotiable instruments under the Negotiable Instruments Act? I have come to the conclusion that it is not so limited. It will be a limitation, unwarranted both by law and practice, to confine the doctrine of assignment providing a part of the cause of action and thereby affording jurisdiction to the Court of the place where assignment took place, only to cases of assignment of negotiable instruments.

14. My reasons are first that all the authorities are against this contention. In the case of Harnath-rai Binjraj v. Churamoni Shah Ameer Ali T. applied this doctrine to a case of assignment of a debt and not a negotiable instrument. In that case the plaintiff was the assignee of a debt and except for the assignment of the debt which was made in Calcutta no part of the cause of action

arose within the jurisdiction of this Court. The learned Judge held that in a suit by the assignee the assignment itself was a part of the cause of action and was thereby sufficient to invest the court of the place of assignment with the jurisdiction to entertain and try that cause of action. At page 1141 Ameer Ali J. referred to the well-settled practice on this point and made the following observations:--

> "It might have been more satisfactory if the rule were otherwise, i.e., that an assignee in taking an assignment of a debt should take such assignment with only such right of suing as the assignor had and could sue where the assignor could sue and nowhere else. I do see difficulties in the present system under which an assignor can create jurisdiction in any place where the Civil Procedure Code applies but I do not think it would be right for me to attempt to change it."

15. This was a case of assignment of a debt. No question of negotiability or of Negotiable Instruments Act arose there. The well-known English decision in Read v. Brown, (1889) 22 QBD 128 is also agamst the contention of Mr. Mukherjee. In that case the plaintiff brought an action in Mayor's Court as assignee of a debt alleged to be due in respect of the prices of goods sold and delivered to the defendant by the assignor. The sale and delivery had taken place outside the city of London but the debt had been assigned within the city of London. A strong English Court of Appeal presided over by Lord Esher, Master of the Rolls with Fry L. J. and Lopes L. J. decided that the assignment of the debt was part of the cause of action and the Mayor's Court of London had jurisdiction to entertain the action. That also was a case of assignment of a debt and no question of negotiability arose there. It is therefore clear from these authorities that the doctrine where assignment forms part of the cause of action and thereby the place of assignment gives jurisdiction to the Court of the place where the assignment takes place, is not limited only to cases under law merchant or to negotiable instruments negotiable by statute or common law.

16. Secondly the assumption of the learned counsel for tbe Union that no question of negotiability arises in this case and by which assumption he attempts to extricate himself from the authority of the decided cases is not fundamentally sound on the facts of this case. It is quite true that the carriage was from Bangsabati to Delhi. Neither Bangsabati nor Delhi nor any part of this route is within the jurisdiction of this Court. The Railway Receipts by themselves therefore would not give jurisdiction. But the point is that the Railway Receipts are themselves documents of title and can be negotiated and transferred. By the assignment or letter of subrogation in this case these Railway Receipts or the claims thereunder were transferred or negotiated in favour of the plaintiff insurance company. The letter of subrogation or assignment which I have quoted above shows that the Insurance Company is subrogated to all the rights of the consignor. In other words, the Railway Receipts therefore stand transferred in favour of the Insurance Company. In that view of the matter even the doctrine of negotiability can be invoked in this case to grant jurisdiction to this Court. The transfer of these Railway Receipts and the rights thereunder were made by the subrogation and assignment which took place within the jurisdiction of this Court.

17. For these reasons I answer this issue in the affirmative and hold that this Court has jurisdiction to try this suit.

18. As Mr. Sen, Counsel for the plaintiff, has not urged the grounds of service of notices under Section 80 of the Civil Procedure Code and under Section 77 of the Railways Act as creating

jurisdiction in this Court, I do not, therefore, propose to discuss those questions or the cases relating thereto which have been cited before me by the learned Counsel for the Union of India. I hold and find that this Court has jurisdiction on the ground that the assignment in this case took place within the jurisdiction of this Court and such assignment in favor of the plaintiff is a material part of the plaintiff's cause of action in this suit.

19. Issue No. 5: Relief follows from my findings on the issues above.

20. There will, therefore, be judgment for the plaintiff against the defendant, Union of India, for the sum of Rs. 3,680-31 nP. with interest on judgment at six per cent. and costs. The defendant, Union of India, is granted three months' time from date to pay this money.