Present: Fisher C.J. and Akbar J. 1930

HETTIARATCHI *v.* TERUNNANSE.

359—D. C. Kurunegala, 12,907.

Sale of goods—Contract for transfer of car—Payment of value within one month—Breach of agreement—Cause of action—Ordinance No. 11 of 1896, s. 18, rule 4.

An agreement for the sale of a car provided for the payment of its value within one month, when the seller undertook to transfer his interest in the car. On failure thereof, the purchaser agreed to return the car, paying a penalty.

Held, that the property in the car did not pass to the purchaser, unless the price was paid within the month and the transfer taken.

Where the seller sued for the recovery of the value of the car on the assumption that there had been a completed contract of sale,—

Held, that the plaintiff's cause of action was a breach of contract.

APPEAL from a judgment of the District Judge of Kurunegala.

De Zoysa, K.C. (with *Ameresekera*). for defendant, appellant.

H. V. Perera (with *Abeysekera*), for plaintiff, respondent.

March 4, 1930. FISHER C.J.—

In this case the learned District Judge gave judgment for the plaintiff for Rs. 2,000, being the price of a motor car alleged to have been sold to the defendant, and the question is whether there was a

[1] *(1913) 2 1. R. 265 ; Halsbury's Supp. para. 439, note (a).*

1930

FISHER C. J.

Hettiaratchi v. Terunnanse

sale, having regard to the terms of the agreement dated August 15, 1927. That agreement is in the following terms:--

" On August 15, 1927, at Kurunegala.

" I the undersigned B. Dewamitta Terunnanse Incumbent of Botota Vihare do hereby remove the Chevrolet car bearing No. D1110 belonging to Mr. D. J. Hettiaratchi, Headmaster of the Buddhist Mixed School in Kurunegala, agreeing to pay therefor the sum of rupees two thousand (Rs. 2,000) as its full value within one month, and if it is found impossible to pay the said sum of money within one month the said car will be returned together with a sum of rupees five hundred (Rs. 500) as a penalty. That during the said term if any damage was caused to the said car the full value thereof be paid to the said Mr. D. J. Hettiaratchi. It is hereby agreed that immediately after the full value has been paid within one month, the said D. J. Hettiaratchi shall transfer all his interest in the said car to me . . . . . "

The agreement therefore (*a*) entitled the defendant to remove the car; (*b*) gave him the right to purchase the car for the sum of Rs. 2,000 within one month; (*c*) imposed an obligation on him to return the car if he did not pay the Rs. 2,000 within one month together with a sum of Rs. 500 " as a penalty." Whether this is to be regarded as a penalty, in the sense which makes such sums irrecoverable, or the payment of a sum in consideration of having been allowed to use the car for one month may be open to question, but having regard to the course we propose to adopt in this case it is unnecessary at this stage to express an opinion on the point; (*d*) made the defendant liable for any damages which may have been caused to the car during the period of one month; (*e*) provided that if the defendant pays the full purchase money within one month the plaintiff " would transfer all his interest in the said car " to the defendant. It seems to me clear, in view of the last mentioned provision, that the property in the car was not to pass unless the defendant duly exercised his option to purchase within one month. It was urged by Counsel for the respondent that rule 4 (*b*) of section 18 of the Sale of Goods Ordinance, 1896, covered the case. The operation of section 18 depends on the initial words " Unless a different intention appears "; when this is not the case the " 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 " thereafter set out are to be applied. Under the agreement in question the time at which the property was to pass is clearly laid down and the contingency on which it was to pass never arose. A " different intention " is therefore apparent and rule 4 is not applicable. That being so there was no sale of the car and the plaintiff was not entitled to recover Rs. 2,000 as purchase money.

But there is another aspect of the case, namely, the breach by the defendant which clearly took place of his obligation to return the car if he did not pay the Rs. 2,000 within one month. On that breach the plaintiff has a cause of action. I do not think we have sufficient material before us to satisfactorily estimate what the damage payable to the plaintiff should be. This must be the subject-matter of further inquiry by the learned District Judge. We therefore set aside the decree and remit the action for trial on the question of damages based on the failure of the defendant to return the car in accordance with the agreement.

I think that each party should bear his own costs of the hearing in the Court below and of this appeal. The costs of the further hearing will be in the discretion of the learned Judge who tries the issue as to damages.

AKBAR J.—

The short point in this appeal which was argued before us is whether there was a contract of sale on a transaction set forth in the following document:—

"D3 Translation. On August 15, 1927, at Kurunegala, I the undersigned M. Dewamitta Terunnanse, incumbent of Botota Vihara, do hereby remove the Chevrolet car bearing No. D1110 belonging to Mr. D. J. Hettiaratchi, Headmaster of the Buddhist Mixed School, in Kurunegala, agreeing to pay therefor the sum of rupees two thousand (Rs. 2,000) as its full value within one month, and if it is found impossible to pay the said sum of money within one month, the said car will be returned together with a sum of rupees five hundred (Rs. 500) as a penalty. That during the said term if any damage was caused to the said car the full value thereof be paid to the said Mr. D. J. Hettiaratchi. It is hereby agreed that immediately after the full value had been paid within one month, the said D. J. Hettiaratchi shall transfer all his interest in the said car to me. And we have set our usual signature to two of the same tenor as this agreement and retained the same with both of us."—(*Sgd.*) B. Dewamitta and D. J. Hettiaratchi.

Witnesses:—(1) (*Sgd.*) H. M. Appuhamy, (2) (*Sgd.*) Ratnayake.

The plaintiff, the owner of this car, sued in this action claiming the sum of Rs. 2,000 and also the sum of Rs. 500 being the fine or penalty mentioned in the document. The District Judge has given judgment for the plaintiff for the sum of Rs. 2,000 because he was of opinion that there was a sale of the car to the defendant and that the plaintiff was entitled to recover its value. The facts were admitted, namely, that there was a delivery of a car to the defendant and that the defendant did not elect to pay its value within the month and that he has not returned the car up to date. It was contended for

1930

AKBAR J.

Hettiaratchi v. Terunnanse

the respondent that this sale was governed by section 18 rule 4 (*b*) of the Sale of Goods Ordinance, No. 11 of 1896, and that as the defendant did not give notice of rejection within the month or return the car, it must be held that there was a sale and that the property in the car had passed to the defendant. As pointed out by the Court of Appeal in the case of *Weiner v. Gill*,[1] the rule is not applicable if there is a different intention manifested in the terms of the contract. In my opinion such an intention exists in D3. This is a sale of a motor car and such sales are regulated by Ordinance No. 20 of 1927. The car at the time of the sale was admittedly registered in the name of the plaintiff and there can be no sale or passing of the property in the car to the defendant unless the necessary alteration of the registration is made under section 22 of the Motor Car Ordinance. Under section 22 (*b*) the plaintiff, if there was a sale, had to deliver his motor car licence to the Registrar and deliver his certificate of registration and inform the Registrar of the change of ownership. The Motor Car Ordinance, No. 20 of 1927, came into operation on January 1, 1928, but even under the law before January, 1928, namely, under the bye-laws made under section 22 of Ordinance No. 4 of 1916, a similar provision existed.

Now this document D3 provides for this formality in that it is stated that only on the payment of the value of the car within the month was the plaintiff bound to transfer his interest in the car to the defendant. It seems to me that the whole intention indicated in the document was that the title was not to pass from the plaintiff to the defendant, unless the payment of the price of the car was made within the month and the plaintiff had signed the document. On this construction the plaintiff should have sued the defendant for damages for a breach of the contract disclosed in D3. The plaintiff was I think wrong in contending that there was a sale in this case. The defendant, however, could not have been prejudiced because the full facts of the plaintiff's cause of action were set out in the plaint. The case should therefore in my opinion go back for the assessment of the damages consequent on the breach of the contract, for according to the finding of the District Judge there cannot be any doubt at all that the defendant has broken the terms of the contract and that he has not returned the car. I would, therefore, set aside the judgment and send the case back for the assessment of the damages due to the plaintiff owing to the breach of the contract by the defendant. I agree with the order proposed by My Lord the Chief Justice as regards the costs incurred up to date, and that the further costs should be in the discretion of the trial Judge.

Set aside.

[1] *(1906) 2 K. B. D. 574.*