
(1989) 03 MAD CK 0089
In the Madras High Court
Case No : A.A.O. No. 93 of 1984

A.C. Thirugnanamurthy

APPELLANT

Vs

V. Jamuna Bai and another

RESPONDENT

Date of Decision : 07-03-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 151, 9

Citation : AIR 1990 Mad 242

Hon'ble Judges : S.T. Ramalingam, J

Bench : Single Bench

Advocate : M.K. Kannan, for the Appellant; S. Srinivasan, for the Respondent

Judgement

S.T. Ramalingam, J.—This Civil Miscellaneous Appeal arises against the fair and decretal order dated 25-1-1984 passed in I. A. No. 20281 of 1983 in I. A. No. 19796 of 1983 in O.S. No.8191 of 1982 by the Eleventh Additional Judge of the City Civil Court, Madras, under the following circumstances.

2. The appellant Thirugnanamurthi is a third party claimant before the trial court. The 1st respondent Jamunabai filed the suit for recovery of certain amounts against the 2nd respondent F. V. Narayanan alias P. V. Narayana Nair. Jamuna Bai also filed Application No. 20810 of 1982 for attachment before judgment of the car TMZ 714 on the ground that it belonged to the defendant. On 14-12-5982, defendant gave an undertaking that he will not alienate the car. Later on the 1st respondent-plaintiff, on information that the 2nd respondent-defendant is going to alienate the car filed I. A. No, 10445 of 1983 on 21-6-1983 and a conditional order on 4-8-83 was passed directing the 2nd respondent-defendant to furnish security for a sum of Rs. 12,000/- and produce the car on or before 30-8-1983 failing which the conditional order will be made absolute. Since the 2nd respondent has not fulfilled the condition, the conditional order of attachment was made absolute on 31-8-1983. An attempt was made to attach the car in pursuance of the order dated 31-8-83. The car was found in front of the premises of the one Babu and the car could not be moved since the door was

found locked. The 1st respondent-plaintiff filed I. A. Nos. 17325 and 17326 of 1983 to take possession of the car with police-aid. The applications Nos. 17325 and 17326 of 1983 were ordered. However, the Bailiff found that the car was not available in front of the premises of the said Babu. The 1st respondent came to know that the broker Babu, in collusion with the 2nd respondent, transferred the same in his own name. On that ground, the 1st respondent submitted her objection to the Transferring Authority not to effect any transfer in respect of the car. However, the Authorities transferred the car in the name of Babu, and later on the appellant-claimant has purchased the car from Babu on 28-9-1983. Meanwhile, the 1st respondent filed I. A, No. 19796 of 1983 on 27-10-83 under Order XXXVIII Rule 5 read with Section 151 of the CPC for attachment of the car and attachment was ordered on 7-11-83 for attaching the car by 14-11-83. Under those circumstances, the appellant filed the claim application No. 20281 of 1983 on 12-11-1983 to raise the attachment.

3. According to the appellant-claimant, ho purchased the car from one Babu, and produced a receipt dated 26-9-1983 (marked as Ex. A. 1). which shows that the claimant has paid an advance of Rs. 1,000/- on 26-9-1983. It also shows that the claimant agreed to pay the balance of Rs. 34,000/- on or before 28-9-1983 for purchasing the car. Fx. A. 2 is the Registration certificate of the car. It contains endorsement to the effect that the car has been transferred in the name of the appellant on 11-10-1983. It also contains endorsement of transfer is favour of Babu under date 25-6-1983.

4. The trial court found that the 1st respondent purchased the car from one Arjunan on 24-11-1980 under a hire-purchase agreement on the very same day as entered into between the 1st respondent and one Prakash Chand. a Financier, and that transfer has been effected in the name of Babu on 31-5-1983 and the hire-purchase agreement was cancelled. The said Habu has sold the car to the claimant on 28-9-1983 and the transfer has been effected in the Registration Certificate on 11-10-1983.

5. The trial Court taking ad vantage of the undertaking given on 14-12-1982 as well as the subsequent attachment made in I. A. No. 10445 of 1983 on 4-8-1983 found that the transfer is contrary to the undertaking and, as such, found that the transfer in the name of Babu and later on by Babu to the claimant is not a valid transfer and on that ground dismissed the claim petition. Hence the appeal.

6. The question that arises for consideration in this Civil Miscellaneous Appeal is whether the claimant has got valid title to the car in pursuance of the transfer effected in his name in the Registration certificate Ex. A. 2.

7. Learned counsel for the appellant submits that a perusal of the entries made in Ex. A. 2 shows that the 1st respondent had purchased it from one Arjunan on 22-11-1980, financed by a Financier by name Prakash Chand. According to him, the Financier is in the position of a dealer and the 2nd respondent was in the position of a customer and he will become the owner only on payment of all the

instalments under the hire purchase agreement. In this case, since the 2nd respondent has not cleared the hire purchase instalments due but Babu has cleared it, and that on 31-5-1983, the hire purchase agreement was cancelled and the vehicle has been transferred in the name of Babu on 31-5-1983, as per the intimation given by the Financier to the Motor Vehicles Authorities. It is marked as Fx. B. 1. Ex. B. 1 shows that the hire-purchase agreement has been cancelled and Narayanan has intimated the authorities that the ownership of the vehicle T. M. Z. 714 should be transferred in the name of Babu. Ex. A. 1 is an advance receipt dated 26-9-1983 filed by the claimant-appellant. It shows that he has paid a sum of Rs. 1,000/- to Babu for purchase of the car in question on 26-9-1983. The price of the car had been settled at Rs. 35,000/- and he undertook to pay the balance on 28-9-1983. Then the registrations has been changed in the name of the claimant on 11-10-1983 with effect from 28-9-1983.

8. A perusal of all these documents goes to show that on 31-5-1983 the car was transferred in the name of Babu and the debt due to the Financier was cleared of on the very same day and the said Babu has transferred it once again in the name of the claimant on 11-10-1983 for which he has received an advance on 26-9-1983 as per Ex. A. I. That being the case, on the date of attachment ordered by the trial court on 14-11-1983, the Judgment-debtor was not the owner. It is true that the Judgment-debtor sold was car to Babu contrary to the undertaking given to the court on 14-12-1982 for which the remedy is to proceed against the judgment-debtor and not against the purchaser of the moveable property. The claimant while purchasing it was guided by the entries in the Registration certificate.. A perusal of the entries in the registration certificate Ex. A. 2 shows that earlier to the conditional order dated 4-8-1983, the judgment-debtor has transferred the car in the name of Babu on 31-5-1983. As such the conditional order of attachment passed in I. A. No. 10445 of 1983 became otiose. As a result, the subsequent attachment made in I. A. No. 19776 of 1983 on 27-10-1983 also is of no consequence.

9. The trial court is of the view that there is nothing on record to show that the judgment-debtor has discharged the hire-purchase agreement. The very fact the entry with reference to the hire-purchase agreement has been struck off in the Registration Certificate marked as F\ A. 2 would show that the hire purchase agreement in the name of the Financier has been cancelled. Further, the Financier also by letter dated 13-5-1983 addressed to the Regional Transport Authority has stated that they have received full payment with reference to the hire purchase agreement and they have no objection for cancellation of the hire-purchase endorsement made in their favour. Hence the finding of the trial court that there is nothing on record to show that the hire-purchase agreement has been discharged is without substance. The fact that the judgment-debtor has transferred the car to a third party contrary to the undertaking will not affect the right of the third party who has purchased it without the knowledge of the undertaking given by the Judgment-debtor. In this case, the Judgment-debtor has transferred it in the name of Babu in May 1983 and five months later, the

claimant has purchased it from the said Babu in the month of October 1983. A purchaser of a motor vehicle has to satisfy himself about the title of the vehicle only by going through the Registration Certificate. In this case, the Registration Certificate clearly shows that when the claimant advanced a sum of Rs. 1,000/- to the suit Babu, on 26-9-1983 as per Ex. A. 1, the Registration certificate was standing in the name of Babu with effect from 31-5-1983. The plea of collusion between the Judgment-debtor and Babu and the present claimant has not been satisfactorily proved in view of the endorsement found in Ex. A. 2 Registration Certificate. The very fact the endorsement has been obtained from the Licensing Authority at Madras Central instead of Madras South where the plaintiff had given objection for transferring the vehicle in the name of any person is of no consequence. The finding of the trial Court that the transfer of the vehicle by the judgment-debtor in the name of Babu and then in the name of the appellant is fraudulent and made with a purpose of defeating the right of the plaintiff to proceed against the vehicle ultimately when a decree is passed against him is based on conjectures.

10. The learned counsel for the plaintiff drew my attention to the decision reported in *Official Liquidator v. Commissioner of Police* ILR (1969) Mad 559. and contended that this is a case of the judgment-debtor being the owner of the vehicles and the name of the financier has been entered in the Registration Certificate to show that the judgment-debtor has pledged the vehicle with the financier, and that that will not alter the status of the judgment-debtor as owner of the vehicle. I entirely agree with the contention of the learned counsel for the plaintiff. But in this case, when the transfer has been effected on 31-5-1983 in the name of Babu, there was no attachment. There was only an undertaking on behalf of the judgment-debtor that he will not alienate the vehicle. But contrary to the undertaking he has alienated the vehicle. The course open to the plaintiff in those circumstances would be to take action against the judgment-debtor for disobedience or his undertaking given to the court. On that ground, a legal transfer effected in the Registration Certificate will not vitiate the title of the purchaser.

11. In the result, the Civil Miscellaneous Appeal is allowed. The order passed by the Court below is set aside and the claim petition shall stand allowed. No costs.

12. Petition allowed.