

(1985) 11 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 351, 352 and 357 of 1984 and 188 and 365 of 1985

Allah Noor and Another

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 19-11-1985

Acts Referred:

Partnership Act, 1932 — Section 4

Citation : (1986) 1 WLN 176

Hon'ble Judges : Suresh Chandra Agrawal, J; Mahendra Bhushan Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mahendra Bhushan Sharma, J.—The four above numbered special appeals though have been filed against separate orders of the learned Single Judge passed in four S.B. Civil Writ petitions, but because they relate to the transfer of stage carriage Permit and/or replacement of a vehicle covered by the same and S.B. Civil Writ petition No. 365/1985 referred for decision by the learned Single Judge also relates to the same controversy all cases are being disposed of by a common judgment.

2. Alladin and Allahnoor are real brothers. An application u/s 46 of the Motor Vehicles Act, 1939 (for short "the Act") in the prescribed form was filed on September 23, 1961 in the joint names of Alladin and Allahnoor on Kishangarh-Nasirabad route in Jaipur region. The application was signed only by Allahnoor, one of the two brothers. After following the procedure laid down for the grant of non-temporary stage carriage permit, the RTA Jaipur (for short, RTA) granted a permit No. 2445 for Kishangarh-Nasirabad route to Allahnoor Alladin in the year 1963 and the permit was availed on vehicle No. RJR 670 of 1954 model. The route Kishangarh-Nasirabad was later on extended to Kishangarh-Vijaynagar. The permit was renewed as and when the renewal became due and the last renewal of the permit was vide order dated 18th June, 1981 of the RTA validating the

permit upto June 26, 1984. Bus No. RJP 670 was later on replaced by another bus No. RJZ 6214 of 1963 model. Allahoor executed an irrevocable general power of attorney on February 13, 1979 in favour of Nandkishore Goyal son of Shri Kanhaiyalal Goyal and under Clause 5 of the said general power of attorney, Allahnoor also authorised the attorney handkishore to sell, mortgage, allienate, transfer or gift the bus No. RJZ 6214 and the permit covered thereon to any person at any price whom Nandkishore may deem fit and to receive price thereof and to execute the necessary documents for transfer of the ownership of the bus and the permit covered thereto. Under Clause 4 of the power of attorney, Nankisbore was also authorised to apply for the transfer of the bus and to seek replacement of the bus No. RJZ 6214 of 1963 model with any other bus from time to time.

3. Nandkishore as attorney of Allahnoor and Kanhaiya Lal submitted an application on February 4, 1982 for transfer of the permit in the name of Kanhaiyalal, under Rule 103 of the Rajasthan Motor Vehicles Rules, 1951 (for short, "the Rules"). The application was accepted by the Secretary, RTA on February 5, 1982. A revision petition was filed by Allahnoor Alladin against the aforesaid order of the Secretary, RTA and the State Transport Appellate Tribunal (here in after called the "STAT") accepted the revision under its order dated August 3, 1982 and the case was remanded to the Secretary, RTA with the direction that the application for transfer of the permit be heard again by going in detail to find out as to who has been acting for the permit-holders all along over the years and thereafter to pass fresh order in the case. A writ petition against that order of the STAT filed by Kanhaiyalal was dismissed in limine. On remand, the case was re-considered by the Secretary, RTA who again vide his order dated January 27, 1983 accepted the application for transfer of the permit. Again the matter was taken in revision to the STAT, who accepted the same under its order dated March 23, 1983 on the ground that under rule 78 of the Rules, the power to transfer the permit could not be delegated to the Secretary, RTA and as such his order was without jurisdiction. The case was remanded back to the RTA second time, with the* direction that the RTA itself hear both this parties and decide the matter in furtherance of the order of the STAT. On remand, the matter was considered by the RTA and before the RTA Allahnoor-Alladih appeared and gave out that they did not want the transfer of the permit in favour of Kanhaiyalal. The RTA under its order dated December, 1983 did not accord its permission to transfer the permit. Nandkishore and Kanhaiyalal filed an appeal No. 347. 1983 before the STAT against the aforesaid order of the RTA and the learned; STAT held that Allahnoor-Alladin were the joint permit-holders and plea of Kanhaiya Lal that Allahnoor-Alladin was only the trade name and that Allahnoor alone was the owner of the permit was not accepted. The STAT further held that the application for transfer of the permit so far as the right and interest of one of the joint permit holders is concerned could be filed by one of the joint permit holders and because Nand Kishore was general power of attorney holder of Allahnoor, one of the permit holders, by virtue of the powers given to him in

the power of attorney, Nand Kishore could have transferred the permit only to the extent of right and interest of Allahnoor. The STAT, therefore, set aside the order dated December 5, 1983 of the RTA and partly accepted the appeal and the permission was granted to Kanhaiya Lal Nand Kishore for transfer of the permit No. 2445 to the extent of the share and interest of Allahnoor only. It further directed that the name of Kanhaiya Lal should be placed in the permit in place Allahnoor and the interest of Allahnoor shall stand transferred to Kanhaiya Lal.

4. After dismissal of the application for permission to transfer under its order dated December 5, 1983 by the RTA, Allahnoor-Alladin submitted an application on December 7, 1983 under Sub-section (2) of Section 59 of the Act, for replacement of bus No. RJZ 6214 of 1963 model which was got transferred by Kanhaiya Lal in his name on the application of Nand Kishore, his son and general power of attorney holder of Allahnoor. The application for replacement was allowed on April 28, 1984, A revision petition No. 24 of 1984 was filed by Kanhaiya Lal Nand Kishore against the aforesaid order of replacement of the bus passed by the RTA and the STAT under its order dated July 17, 1984, stayed the implementation of the order dated April 28, 1984 till further orders. It may be stated that ultimately the revision petition No. 24/1984 in which the above referred stay order was passed on July 17, 1984 was dismissed by the STAT under its order dated February 21, 1985, and the order of the RTA allowing the application of Allahnoor Alladin for replacement of the bus was upheld.

5. Kanhaiya Lal filed S.B. Civil Writ Petition No. 1316/1984 against the order of the STAT dated June 20, 1984 in so far as it held that Allahnoor-Alladin are joint permit holders of the route and there is no trade name like Allahnoor-Alladin. Allahnoor and Alladin filed S B. Civil Writ Petition No. 685/1984 against the same order of the STAT in so far as it had allowed the joint application for transfer of the permit from the name of Allahnoor to Kanhaiya Lal. The learned Single Judge under his order dated October 31, 1984 and December 13, 1984 dismissed the S.B. Civil Writ Petition Nos. 1316/1984, and 685/1984 respectively, thereby the order of the STAT was upheld. Kanhaiya Lal filed D.B. Civil Special Appeal No. 357/1984 against the order dated 31, 1984 and Allahnoor and Alladin filed separate D.B. Civil Special Appeal No. 352/1984 against the order of the learned Single Judge dated December 13, 1984.

6. Allahnoor and Alladin filed S.B. Civil Writ Petition No. 820/1984 against the order dated July 17, 1984 of the STAT under which the implementation of the order dated April 28, 1984 of the Secretary, RTA was stayed till further orders. The learned Single Judge under his judgment dated December 13, 1984, was of the opinion that the writ petition from the interlocutory order passed by the STAT is not sustainable and hence dismissed the writ petition in limine. Against the aforesaid order of the learned Single Judge D.B. Special Appeal No. 351/1984 has been filed by Allahnoor Alladin. It has already been stated earlier that the revision petition No. 24/1984 against the order of the RTA allowing the

application for replacement of the bus u/s 59(?) of the Act, filed by Allahnoor and Alladin was dismissed by the STAT under its order dated February 21, 1985. A writ petition No. 365/1985 was filed by Kanhaiya Lal in this Court. In that writ petition stay application No. 291/1985 was filed. In the same stay application besides seeking the stay of the operation of the order of the Secretary, RTA dated April 28, 1964, as well as the order of STAT dated February 21, 1985 dismissing the writ petition, a prayer was also made that Allahnoor Alladin may not be allowed to operate their vehicle No. RSZ/6214 (replaced vehicle) on the route in question. The learned Single Judge under his order dated March 26, 1985 dismissed the stay application. An application was filed before the learned Single Judge complaining therein about certain erasures in the order dated March 26, 1985. The learned Single Judge dismissed that application on April 21, 1985. The application was filed on April 15, 1984 by Kanhaiylal for modification of the order dated March 26, 1985. The application came up for consideration before the learned Single Judge and the learned Single Judge under his order dated May 1, 1985 ordered as follows:

An application for renewal can only be filed by both the parties jointly and if no application has been filed jointly then the application should not be considered as an application moved by any of the parties. In case both the parties continue their dispute, the provisions of Section 62 should not be applied and the permit should not be granted to any of the parties and in the interest of litigating public, the temporary permit should be granted to third person.

Against the aforesaid order of the learned Single Judge, Allahnoor has filed D.B. Civil Special Appeal No. 188/1985. As already stated earlier, S.B. Civil Writ Petition No. 365/1985 has been filed in which the aforesaid order dated May 1, 1985 was made has also been ordered to be heard by the learned Single Judge along with the D.B. Civil Special Appeals referred to earlier.

7. It is contended by Mr. Munshi learned counsel for Kanhaiyalal that the permit should be deemed to have been granted to only Allahnoor and Allahnoor-Alladin was only his trade name. According to him, the application in the prescribed form PSt 8A u/s 46 of the Act and rule 83 of the Rules, was only signed by Allahnoor and not by Allahnoor-Alladin, therefore it was not a valid application for the grant of permit so far as Alladin is concerned. In support of his contention Mr. Munshi placed reliance on Suresh v. State Transport Appellate Tribunal 1980 (2) Karnataka Law Journal page 98 and Basantilal v. State Transport Appellate Tribunal, Jaipur D.B. Civil Special Appeal No. 1419/1985 decided by a Division Bench of this Court (Jodhpur) on January 24, 1984. In case of Suresh v. STAT(supra) Karnataka High Court was dealing with a case where an application for the grant of a stage carriage permit on a route was in the name of H.V. Rajgopal and Suresh, but the application was only signed by H.V. Rajgopal. The application for the grant of permit was rejected by the RTA and after rejection of the application for the grant of a permit and before filing of the appeal H.V. Rajgopal expired and his legal representatives were not interested in the permit.

The appeal was only filed by Suresh, who had not signed the application for the grant of the permit and the legal representatives of aforesaid Rajgopal did not join him in preferring the appeal. The Appellate Authority in the facts of that case, held that Suresh must be deemed to have signed the application. However, on merits the appeal was dismissed. Suresh took up the matter in writ to High Court. The contention of the petitioner before the High Court was not that there was partnership between him and late Rajgopal for running the stage carriage service in question. It was held that the application must have been signed by both the applicants and if he did not sign the same it cannot be said that the application has been made by Suresh even though his name is found in the column meant for mentioning the name of the applicant. The above case was relied upon by a Division Bench of this Court in *Basantilal v. The State Transport Appellate Tribunal* (supra) and it was held that the particulars to be supplied in the form and the signatures of the applicant stand on different footing and the signature or thumb impression of the applicant is mandatory or essential, as without the same the document containing the particulars could not become an application at all. It was also held that if the application is not signed, the document cannot be termed at all as an application for the grant of a permit in the absence of signatures of the applicant and no permit could be granted on the basis of such an unsigned document. Mr. O.P. Sharma, learned counsel for Allahnoor-Alladin contends that both the above authorities are not applicable to the facts of the instant case in as much as in the instant case the only question before the RTA and the appellate authority was as to whether the permission should be granted for the transfer of the permit which stood in the name of Allahnoor-Alladin in the name of Kanhaiyalal. The legality or propriety of the grant a in favour of joint name of Allahnoor-Alladin was not and could not be in question. It was further contended by him that on the basis of the material on record, the RTA as well as the STAT have held that both Allahnoor and Alladin were the joint permit holders and Allahnoor alone was not the permit holder and Allahnoor Alladin was not a trade name. The learned Single Judge agreed with the findings and on special appeal this finding cannot be and should not be disturbed.

8. In our opinion in cases in hand it is needless for us to go into the question as to whether as a result of not signing he application for grant of stage carriage permit by Alladin, it was a valid application or not, because the permit was granted in the year 1963 in the name of Allahnoor-Alladin; there were several renewals in their names and there is sufficient material on record that Allahnoor Alladin were joint holders of the permit and Allahnooi-Alladin was not a trade name. Whether Allahnoor Alladin was a partnership concern and whether the application was filed on behalf of the partnership firm again is not a question which should be dealt with presently because the only lis in the proceedings u/s 59(1) of the Act read with Rule 103 of the Rules, while considering the application for transfer of the permit, is as to whether the transfer is proper or not. Only the propriety and legality of the transfer can be looked into. That apart,

the RTA and the STAT as well as the learned Single Judge have held that Allahnoor-Alladin were the permit holders and Allahnoor was not the sole owner of the permit and Allahnoor Alladin was not a trade name. This finding of fact is based on material on record, including an annexure to the application for the grant of permit, wherein Allahnoor clearly mentioned that the applicants Allahnoor and Alladin are real brothers and driver and conductor. Thus, we are of the opinion that Allahnoor and Alladin were the permit holders and the findings of the RTA, STAT as well as that of the learned Single Judge do not call for any interference.

9. Having arrived at the above finding, the question arises as to whether a share or interest in the permit can be transferred by one of the joint permit-holders? In the special appeal No. 352/1984 a case has been set up by Allahnoor-Alladin that both are real brothers and partners and that they submitted an application for the grant of a permit in the name of "Allah Noor Alladin". But no such case appears to have been set up in the writ petitions filed by Allahnoor and Alladin. The RTA in its order dated December 3, 1983, under which the application for transfer of the permit was dismissed, has held that in the application dated September 23, 1961 for grant of stage carriage permit, the name of the permit holders has been mentioned as Allahnoor-Alladin and Allahnoor signed the application. In the application it is mentioned that Allahnoor Alladin are real brothers and are driver and conductor and that they are partners. But a look at the questionnaire annexed to the application for grant of Stage carriage permit (Annexure 1) in S.B. Civil Writ Petition No. 1316/1984, will show that all that has been mentioned therein is that applicants are real brothers and are driver and conductor. There is no mention that they are partners. Be that as it may, on the material on record and in the absence of any material that there was an agreement to share the profits of the business of running a stage carriage on Nasirabad-Vijaynagar route, it is not possible to hold that Allahnoor-Alladin was a partnership concern as u/s 4 of the Indian Partnership Act, 1932 "partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The relationship of partnership arises from contract and not from status and merely because Allahnoor and Alladin are real brothers, it cannot be said, in the absence of any material, they had agreed to share profits of the business of running a stage carriage service and as already stated earlier, it cannot be held that they formed a partnership. Thus, for the present all that can be said is that a permit to operate a transport vehicle (stage carriage) on the route in question was granted in the joint names of Allahnoor and Alladin, two brothers and it would be reasonable to infer that both were having equal interest or share in the permit.

10. There is no dispute that the application u/s 59(1) of the Act read with Rule 103 of the Rules was signed by Nandkishore son of Kanhaiyalal, power of attorney holder of Allahnoor and by Kanaiyalal. In the general power of attorney which was executed by Allahnoor in favour of Nandkishore on February 13, 1979, the execution of which is not disputed, it is mentioned that the same is

irrevocable in respect of the bus as well as its covered permit. The attorney is agent of the principal and a principal can revoke his authority and thereby terminate the agency except u/s 202 of the Contract Act in case where agent has an interest in the property which forms the subject-matter of the agency. In such a case in the absence of express contract, the agency cannot be terminated to the prejudice of such interest. Mere use of word irrevocable in the general power of attorney will not make it irrevocable unless the agent has himself an interest in the property which forms the subject-matter of the agency. It does not appear from the general power of attorney dated February 13, 1979 that Nandkishore had already an interest in the business or the permit and as per the case of Kanhaiyalal it is he who had purchased the bus as well as the permit covered by it. But we need not go into the question of irrevocability or otherwise of the general power of attorney executed by Allahnoor in favour of Nandkishore because before the said authority came to be revoked, the authority had already been exercised in terms of clauses (4) and (5) thereof and the permit had been transferred by Nandkishore acting for Allahnoor in favour of Kanhaiyalal.

11. We revert to the main question referred to in the earlier part of this judgment as to whether an interest or share in the permit could be transferred by one of the joint holders of the permit or not ? The RTA, Jaipur Region, Jaipur, dismissed the application for transfer of the permit, which application was jointly signed by Nandkishore general power of attorney holder of Allahnoor and Kanhaiyalal. The application was not allowed on the ground that it was not signed by Allahnoor Alladin and both of them appeared before the RTA and gave out that they did not want to transfer the permit. The STAT in appeal by Kanhaiyalal only granted the application to the extent of interest and share of Allahnoor in the permit and ordered that the name of Kanhaiyalal in place of Allahnoor be inserted in the permit. The learned Single Judge has held, that the STAT in ordering as above has not omitted any error of jurisdiction nor there is any error apparent on the face of record. The contention of Mr. Munshi, learned counsel for Kanhaiyalal is that the permit was only in the name of Allahnoor and as such the entire permit should have been transferred, but we have already in an earlier part of this judgment, repelled this contention of Mr. Munshi, learned counsel for Kanhaiyalal. Mr. Sharma, learned counsel for the appellant Alladin, contends that the permit is one document and unless the application for transfer of the permit would have been signed by Allahnoor and Alladin or by their power of attorney holder and the transferee, the RTA has no jurisdiction to transfer the same. Mr. Munshi, learned counsel for Kanhaiyalal contends that the permit is a property and even if the permit is in joint names of the two persons, both of them or any of them can transfer his interest or share in the permit. On an application by him and transferee so far as the interest of the transferor of the permit is concerned, the RTA is bound to consider the application for transfer of the permit and pass order according to law. To appreciate rival contention it is necessary for us to refer to Section 59(1) of the Act and Rule 103 of the Rules. They read as under:

59. Save as provided in Section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit;

R. 103. Permit-Transfer of--(a) when the holder of a permit desires to transfer the permit to some other person under Sub-section (1) of Section 59 of the Act, he shall together with the person to whom he desired to make the transfer make joint application in writing to the Regional Transport Authority by which the permit was issued, setting forth the reasons for the proposed transfer;

(b) On receipt of an application under sub-rule (a) the Regional Transport Authority may require the holder and the other party to state in writing whether any premium, payment or other consideration arising out of the transfer, is to pass or has passed between them and the nature and amount of any such premium, payment or other consideration;

(c) Without prejudice to any other penalty to which the parties may be liable any transfer of a permit ordered upon an application which the Regional Transport Authority is subsequently satisfied was filed in respect of the matter specified in sub-rule (b) or in respect of any other material particular, shall be valid;

(d) The Regional Transport Authority may summon both the parties to the application to appear before it and may if it deems fit, deal with the application as if it were application for a permit;

(e)(i) If the Regional Transport Authority is satisfied that the transfer of a permit may properly be made, it shall call upon the holder of a of a permit in writing to surrender Parts A and B of the permit within seven days of the receipt of the order and shall likewise call upon the person to whom the permit is to be transferred to deposit the sum (See : Eight Schedule) as transfer fee;

(ii) Upon receipt of Parts A & B of the permit and of the prescribed fee, the Regional Transport Authority shall cancel the particulars of the holder thereon and endorse particulars of the transferee and shall return the permit to the transferee;

(iii) The Regional Transport Authority making a transfer of a permit as aforesaid may, unless any other Regional Transport Authority by which the permit has been countersigned has, by general or special order, otherwise required, endorse Parts A and B of the permit with the words" transfer of permit...." inserting the name of the authority by which the permit had been countersigned with effect after the date of transfer.

Permit has been defined in Clause (20) of Section 2 of the Act, and means the document issued by the Commission or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage or stage carriage, or authorising the owner as a private carrier or public carrier to use

such vehicle. Thus, it is a document by which the authority shall be conferred to use the transport vehicle as a stage carriage or a contract carriage permit. The various forms of the permit are prescribed under Rule 48 of the Rules and in respect of particular stage carriage permit under rule 84(a)(i), a stage carriage permit has to be in form P St B. It has to be in two parts Part A and Part B. The law is settled that a permit is transferable and heritable with the permission of transport authority which granted the same. u/s 61 of the Act in case of death of the holder of a permit, the person succeeding to the possession of the vehicle covered by the permit may for a period of three months use the permit as if it had been granted to himself, and on the application made to the transport authority within three months of the death of the holder of the permit, the transport authority may transfer the permit to the person succeeding possession of the vehicle covered by the permit. Thus, u/s 61 of the Act in case of the death of the holder of the permit the person succeeding to the possession of the vehicle covered by the permit is entitled for the transfer of the permit in his name. u/s 59(1) of the Act it is the permit which is transferable and unless the same is transferred it confers no right on the person having possession of the vehicle covered by the permit to use that vehicle in the manner authorised by the permit. While considering the application for transfer of the permit, the only consideration with the RTA is as to whether the transfer of the permit may properly be made. If, it is so satisfied, then it has to call upon the holder of the permit to surrender Parts A and B of the permit within 7 days of the receipt of the order and shall likewise call upon the person to whom the permit is to be transferred to deposit a sum as prescribed in the 9th Schedule to the rules as transfer fee. Upon receipt of the Part A and B of the permit and the prescribed fee, the RTA shall cancel the particulars of the holder thereon and endorse particulars of the transferee and shall return the permit to the transferee. The courts have held that the holder of the permit has a right of property embodied in the permit. In *Taj Mahal Transports (P) Ltd., Melapalayam, Tirunelveli Vs. Secretary, Regional Transport Authority, Tirunelveli and Another*, it has been held that the right of the property embodied in the permit is transferable and heritable and this has been recognised and that such a devolution of interest must carry with it all incidental rights pertaining thereto, such as the right to continue an application for variation by the original holder. In *Meenakshi v. Presiding Officer, Mysore State Transport Appellate Tribunal and Ors.* AIR 1963 Mys 278, it was held that though the transfer of the permit may be made with the permission of the prescribed authority the right is never the less transferable and therefore not personal. In *Poonam Chand Ghasi Ram Rathod v. The Regional Transport Authority, Indore* AIR 1962 MP 208, it was held that the enquiry which the transport authority has to hold in connection with the transfer of a permit is only as to the genuineness of the transaction and its propriety and legality.

12. On the basis of the above authorities it can therefore be said that a permit is transferable and heritable with the permission of the transport authority which granted the permit and if an application for transfer is filed by the transferor and

the transferee the only inquiry at that stage which is permissible is as to whether the transaction is genuine, proper or legal. The inquiry cannot be extended to the extent of the legality of the grant or renewal of the permit itself.

13. Section 59(1) of the Act and Rule 103 of the Rules which are the relevant provisions in relation to the transfer of the permit have already been extracted in the earlier part of this judgment. A reference has already been made earlier to Section 61 of the Act, which deals with transfer of the permit on the death of the holder. On the death of the holder of the, the permit may be transferred to the person succeeding to the possession of the vehicle covered by the permit. Such persons succeeding to the possession of the vehicle may or may not constitute the partnership, but never the less they will be the joint holders of the permit or the co-owners of the permit and as already stated above the permit is the property and any one of the joint holders of the permit can transfer his share in the permit. But the question still is as to whether in such a case the joint application under Rule 103 of the Rules for transfer of the permit should be signed by all the joint permit holders or may be signed only by one of the permit holders, who has transferred his interest or share in the permit and seeks permission of the transport authorities to transfer the same. According to Mr. Sharma, learned counsel for Allahanoor and Alladin, the words "holder of a permit" in Rule 103 of the Rules also includes joint holders of the permit in case the permit is owned by more than one person and the application must be signed by the joint holders, in this case, Allahanoor and Alladin or Nandkishore, general power of attorney holder of Allahanoor and by Alladin and also by the transferee Kanhaiyalal. Because the application was not so signed jointly, the same was not proper application and the STAT could not have been satisfied that the transfer of the permit was properly made and therefore even to the extent of the share of Allahanoor the transfer application could not be allowed. Mr. Munshi, learned counsel for Kanhaiyalal in support of the view taken by the STAT, has referred to Khalil-Ul-Rahman Khan Vs. State Transport Appellate Tribunal and Others, , wherein the learned single Judge of that court was dealing with the case where "A" the holder of the permit transferred for consideration one-fourth share in the permit as well as in the vehicle to "B" without permission of the RTA and the RTA on coming to know of the transfer cancelled the permit on the ground that the transfer was made without permission. It was held (1) that Section 59(1) of the Act lays down the general prohibition of the transfer of the permit and transfer can be made with the permission of the transport authority and it cannot be read to contain any condition of the permit, (ii) the transfer of the permit could not be held to be invalid or ineffective simply because no prior permission was obtained or because the provisions of rule 67 were not followed and (iii) that the name of the transferee can be entered in the permit to the extent of his one-fourth share. In that case rule 67 of these Rules was pari-materia with Rule 100 of the Rules. No joint application as enumerated under rule 67 was made and it was held that rule was not applicable as it only applies in case permission is sought for transfer before the transfer actually takes place. The transfer actually having taken place

before the application for insertion of the name of the transferee in the permit was moved, rule 67 was not applicable. In our opinion that case can be said to have laid down that a share in the permit can be transferred by the holder of the permit and the name of the transferee can be inserted by the authority which granted the permit on the application of the transferee.

14. When u/s 61 of the Act on the death of the holder of the permit the permit can be transferred in favour of the legal representatives of the deceased who succeed to the possession of the vehicle, there appears to be no reason as to why in case one of the joint holders of the permit transfers his share to a third person, the name of the transferee cannot be entered in the permit in his place. Suppose "A" and "B" are two joint holders of the permit. B dies leaving behind "C and "D" as his legal representatives, who succeed to the possession of the vehicle so far as the share of "B" is concerned. Not only the permit will be valid for three months in the joint names but if an application is filed within 3 months of the death of "B" by "C and "D" the persons succeeding to the possession of the share of "B" in the vehicle, u/s 61 of the Act, their names may have to be inserted in the permit in place of deceased "B". We are of the opinion that even u/s 59(1) of the Act read with Rule 103 of the Rules, if one of the joint holders of the permit transfers his interest and share in the permit, the name of the transferee can be ordered to be inserted in place of the transferor so far as the interest and share of the transferor is concerned. In case of partnership to run a transport vehicle on a certain route, no person can be introduced as a partner without the consent of the other partner unless there is contract to the contrary. In such a case the name of the transferee of the share of the partner cannot be inserted in place of the partner who transfers his share. Different considerations apply in case of co-owners and a co-owner is at liberty to transfer his interest to a stranger even against the wishes of the other co-owner. Thus, we are of the opinion that there is no ground for interference in the order of the learned Single Judge upholding the finding of the STAT.

15. Now we take up the D.B. Civil Special Appeal No. 351/1984 and S.B. Civil Writ Petition No. 365/84. The learned Single Judge under his judgment dated December, 13, 1984, dismissed the S.B. Civil Writ Petition No. 820/84 which had been filed by Allahanoor Alladin against the order of the STAT dated July, 17, 1984 staying the implementation of the operation of the order of the Secretary, RTA dated April 28, 1984 (ordering replacement of the bus u/s 59(2) of the Act on the application of Allahanoor and Alladin. The learned Single Judge refused to interfere in the order on the ground that it was an interlocutory order. It may be stated that the revision petition No. 24/1984 in which the aforesaid interlocutory order was made by the STAT on July 17, 1984, was dismissed by the STAT under order dated January 21, 1985. Life of any interlocutory order is co-terminus with the case, appeal or revision, as the case be, unless its life is extended beyond that by an appropriate order. Therefore, interlocutory order dated July 17, 1984 came to an end with the dismissal of the revision on January 21, 1985. Even apart from this, the learned Single Judge was right in refusing to interfere in the

writ jurisdiction against interlocutory order. Thus, there is no substance in special appeal No. 351/1984.

16. Coming to S.B. Civil Writ Petition No. 365/85 we may state that when the order dated April 28, 1984 was made by the RTA u/s 59 (2) of the Act for replacement of the vehicle No. RJZ 6214 of 1963 model by RJZ 6018 of 1971 model, the permit stood in the name of Allahnoor Alladin and they had applied for replacement of the vehicle. The learned RTA there-fore had jurisdiction to allow the replacement and there cannot be said to be any jurisdictional error or any error apparent on the face of record. Similarly, when the STAT dismissed the revision petition by referring to Section 134(2) of the Act, which provides that no order made by the competent authority shall be reversed or altered on appeal or revision on account of any error omission or irregularity in the proceedings, unless it appears to the prescribed appellate authority or revisional authority, as the case may be that such error, omission irregularity has in fact, occasioned failure of justice it also did not commit any jurisdictional error and it cannot be said that there is any error apparent on the face of record. That apart, we have taken a view in earlier part of this judgment that the name of the transferee of the share or interest in the permit, in case the permit is jointly held by two or more persons, can be inserted by the authority which granted the permit on the joint application of the transferor and transferee to the extent of share and interest of the transferor. On partity of reasoning we are of the opinion that in case one of the joint permit-holders applies for replacement of the vehicle covered by the permit; the application can be entertained by the RTA and if it orders replacement of the vehicle covered by the permit it will not commit any illegality. It is a different matter if the facts and circumstances of the case in such a situation, the authority for the reasons to be recorded may refuse replacement of the vehicle. Thus, S.B. Civil Writ Petition No. 365/1985 has also no force.

17. Coming to D.B. Civil Special Appeal No. 188/1985 all that need be stated that this special appeal has been filed against the interlocutory order dated May 1, 1985 of the learned Single Judge. This order is not a judgment and as such this special appeal will not lie. Even, otherwise, with the view which we have taken in other cases referred to earlier, there is no substance in this special appeal.

18. Consequently, the four special appeals numbered above and the writ petition have no force and they are hereby dismissed with no order as to costs.