

(2012) 08 KAR CK 0283

In the Karnataka High Court

Case No : Regular First Appeal No. 1362 of 2003

M/s Trimurthy Auto Finance

APPELLANT

Vs

Smt. Ramadevi and Sri B.M. Rajanna

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4

Citation : (2012) 08 KAR CK 0283

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : N.P. Kalleshgowda, for the Appellant; K H Ramu, Advocate for R1 and 2 - Absent, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi

1. The matter pertains to 2003. Learned Counsel for the appellant present. However, none appears for the respondents. This appeal is by the defendant against the judgment and decree in O.S. No. 5600/1989 dated 61.08.2003 on the file of XV Additional City Civil Judge, Bangalore City.

2. Parties would be referred to as per their ranking in the trial court,

3. Suit is one for mandatory injunction directing the defendant to return the suit schedule Auto Rickshaw bearing No. MEB 3511 by receiving balance amount of Rs.3,280/- and for a direction to pay the damages @ Rs.80/- per day from 19.03.1989 till the delivery of the vehicle plus notice charges with interest @ 18% per annum.

4. Plaintiffs' case is that, plaintiff No. 2 had approached the defendant to borrow a sum of Rs.5,000/- to take the auto rickshaw in question. Defendant paid of Rs.5,000/- and out of Rs.5,000/-, plaintiffs had paid Rs.3,820/- in the following order:

Rs.360/- on 25.07.1987;

Rs.360/- on 09.09.1987;

Rs.1,100/- in November 1987;

Rs.2,000/- on 28.04.1988,

Out of Rs.3,820/-, the defendant had adjusted Rs.1,720/- towards the principal amount and the remaining towards the interest, which was calculated @ 24% per month. Despite the plaintiffs had paid substantial amount and agreed to pay the balance amount, when the plaintiffs went to make the remaining payment of Rs.3,280/-, defendant did not receive the same and in turn, forcibly seized the vehicle on 19.3.1989. In this regard, plaintiffs approached the defendant for return of the vehicle, however, the defendant demanded Rs.12,000/- and calculated further interest of Rs.6,535/-, in all he demanded Rs.18,535/-, though the plaintiffs were not due to the defendant. Thereafter, he filed a suit in O.S. No. 2266/1989 for bare injunction and obtained ex parte injunction against the plaintiffs. Plaintiffs filed an application under Order XXXIX Rule 4 of CPC for vacating the said ex parte injunction. The said Court vacated the temporary injunction. Since the vehicle was not returned, he filed I.A. for a direction to return the vehicle. The said Court directed the plaintiffs to take the appropriate steps, as such, the plaintiffs were constrained to file separate suit for a direction and also for damages.

5. The defendant contested the matter by filing written statement. In his written statement, defendant has alleged that, the plaintiff No. 2 had borrowed an amount to the extent of Rs.12,000/-. He denied the receipt of Rs.3,280/-. Further denied the receipt of the amount as alleged in the plaint and stated that, plaintiff has not paid the amount and the amount due was Rs.18,000/-. Though the suit filed by the defendant was rejected, but it was rejected on technical ground and submitted that, plaintiff is not entitled for return of the vehicle and also for the damages.

6. The Trial Court on the basis of these pleadings framed the following issues:

(i) Whether the plaintiffs prove that they have borrowed only Rs.5,000/- from the defendant ? or

(ii) Whether the defendant prove that the plaintiffs have borrowed Rs.12,000/- ? or

(iii) Whether the plaintiffs prove that they are due only a sum of Rs.3,280/-? Or

(iv) Whether the defendant proves that the plaintiffs are due in a sum of Rs.18,000/-?

(v) Whether the plaintiffs prove that the defendant has issued a slip stating that on 28.04.1988 only a sum of Rs.320/- was due towards interest and Rs.100/- towards conveyance charges?

(vi) Whether the plaintiffs are entitled to get the vehicle on payment of Rs.3,280/-?

(vii) Whether the plaintiffs are entitled to the damages claimed?

(viii) To what relief parties are entitled?

and held that the plaintiffs have proved their case and decreed the same accordingly.

7. Learned counsel for the appellant submitted that, it was a hire purchase agreement. Under the hire purchase agreement, the defendant had right to take the possession of the vehicle, however, defendant had returned the vehicle in view of the vacating of temporary injunction order in his suit O.S. No. 2266/1989. He further submitted that, plaintiffs were due to the defendant, they cannot claim the damages, as the possession of the vehicle was legally taken and also submitted that, the trial court omitted to consider the evidence of DW-1 wherein he has specifically stated that there was hire purchase agreement.

8. In the light of the submission made by the learned Counsel for the appellant, the point that arises for consideration is:

Whether the judgment and decree of the trial Court calls for interference?

9. Defendant has stated that, he had advanced loan amount of Rs.12,000/-. To support his case that it was hire purchase agreement, no hire purchase agreement has been produced. To support that the plaintiffs had borrowed a sum of Rs.12,000/-, the documents produced by him do not prove that he had lent Rs.12,000/-, in turn, PW-1's evidence categorically states that he has only borrowed a sum of Rs.5,000/- and he has also given the particulars in the plaint averment as well as in the evidence.

10. Insofar as receipt of Rs.5,000/- is concerned, the plaintiff - PW-1 himself has admitted the same and he has also admitted that he is liable to pay the interest. To deny the same, defendant has not produced any document, which proves either lending of loan of Rs.12,000/- or to prove that the defendant had authority to seize the vehicle, in turn, the suit filed by the defendant has been rejected and even the injunction obtained restraining the plaintiffs from taking possession of the auto rickshaw was also vacated.

11. The Trial Court considering the evidence on record found that, the defendant could not prove that, plaintiffs are due of Rs.18,000/- and as such, it held that the plaintiffs have proved that they had borrowed Rs.5,000/- and have paid Rs.3,280/- and out of which, Rs.1,720/- has been adjusted towards the principal amount and plaintiffs are liable to pay Rs.3,280/- balance amount. Accordingly, it had decreed the suit of the plaintiffs for damages @ Rs.80/- per day for the period for which the auto rickshaw was in possession of the defendant and out of which, Rs.3,280/- was to be deducted towards the amount due from the plaintiffs. Considering these evidence and the material on record. I find that

there is no error in the judgment and decree of the trial Court, hence, does not call for interference.

Accordingly, the appeal fails and same is dismissed.

However, no order as to costs.