
(1992) 02 KL CK 0029
In the High Court Of Kerala
Case No : E.S.A. No. 1 of 1991A

Narayanan Nair

APPELLANT

Vs

Mariyakutty and Another

RESPONDENT

Date of Decision : 10-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 28
Motor Vehicles Act, 1939 — Section 31A(4)
Sales of Goods Act, 1930 — Section 4

Citation : AIR 1992 Ker 371

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : E.S. Subramani and S. Easwara Iyer, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Shamsuddin, J.—The decree holder in O.S. No. 146 of 1985 on the file of the Principal Sub Court, Palakkad is the appellant.

2. The appellant filed a suit for recovery of money from the 2nd respondent, herein. The suit was decreed. Execution Petition 65 of 1.985 was filed by the decree holder appellant seeking execution by attachment of a stage carriage bearing Registration No. KLG 9858. Initially an interim attachment was ordered. The first respondent filed E.A. 295 of 1987 under Order 21 Rule 48 slating that he is the owner of the vehicle sought to be attached. That contention was upheld by the Execution Court. An Appeal preferred by the appellant before the District Court was dismissed Hence this Execution Second Appeal.

3. It is not disputed that originally the vehicle belonged to the 2nd respondent. The claimant's case is that she purchased the vehicle on 15-2-1985 from the 2nd respondent and therefore, the 2nd respondent had no manner of right over the vehicle on the date of attachment on 6-4-1987. In support of her contention the first respondent produced Exts. A1 to A34, Ext. A4 is an agreement dt. 15-2-1984 entered into between the 2nd respondent and the first respondent in

regard to the sale of the vehicle. Ext. A2, of the same date, is a receipt issued by the second respondent for receipt of the sale consideration. Ext. A3 also dated 15-2-1985 is the sale letter relating to the vehicle executed by the second respondent in favour of the first respondent.

4. At the time of the sale of this vehicle to the first respondent, the vehicle was subject to hire purchase agreement with a Firm at Madras. Exts. A8 to A18 and A25 are receipts evidencing payment of hire purchase instalments either by the first respondent or by her husband. Exts. A5, and A7 show that the proceedings are pending before the Regional Transport Authority for transfer of registration of the vehicle to the first respondent. Exts. A20 to A24 evidence settlement of Labour disputes. Exts. A19 and A34 evidence that the first respondent had effected repair to the vehicle after the purchase of the same from the 2nd respondent. Earlier, execution proceedings were taken against the 2nd respondent in E.P. No. 96 of 1988 in O.S. No. 392 of 1984 for recovery of the decree amount from the 2nd respondent. In the course of execution the vehicle was attached. The first respondent raised a claim in E. A. 155 of 1986 before the Execution Court stating that the vehicle belonged to her and that it was not liable for the debts of the 2nd respondent. Ext. A1 shows that after the enquiry the court upheld the contention of the first respondent and attachment was raised. The above order proceeds on the basis that prior to the attachment there was a sale of the vehicle in favour of the first respondent.

5. Learned counsel for the appellant strenuously contended that no change is effected in the certificate of registration entering the name of the first respondent as owners of vehicle and accordingly it cannot be said that the sale is complete. The question whether such a change is essential to hold that there is transfer of ownership of vehicle was considered by this Court in *Aliyar Kunju v. Subair Khan* 1984 KLT 268. After analysing the provisions of the Motor Vehicles Act, His Lordship Bhat J. as he then was, held that it is not the registration certificate of a motor vehicle which confers ownership on the owner. The learned Judge further observed that the registration follows ownership and not vice versa. A Division Bench of this court again considered the question in *United India Insurance Co. Ltd. Vs. Smt. O. Jameela Beevi and Others*, and affirmed the view taken in *Aliyar Kunju's* case. It is the same view that was taken in *Muthuswamy Counter v. Tulasi Ammal* 1970 ACJ 18 by the Madras High Court. In the *Oriental Fire & General Ins. Co. Ltd. v. Vimal Rai* AIR 1973 Delhi 175 a Division Bench of the Delhi High Court considered a similar question. It was held that:

"the certificate of registration is an important piece of evidence to ostensibly show the owner of vehicle..... but the endorsement of transfer on the certificate is not a condition precedent and its absence does not make an otherwise valid sale as illegal or ineffective."

This view has been followed by Rajasthan High Court in *Automobile Transport Pvt. Ltd. v. Dewalal* 1977 ACJ 150 and Punjab and Haryana High Court in *Phul*

Bus Service v. Financial Commissioner, Taxation, Punjab 1986 ACJ 57 and the Orissa High Court in P.K. Panda Vs. Smt. Premalata Choudhury and Others, A Full Bench of the Andhra Pradesh High Court considered, the matter in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, and held that the transfer of vehicle is governed by the provisions of Sale of Goods Act and in the absence of any agreement to the contrary payment of price, and delivery of vehicle make the same complete, and the title passes to the purchaser. It also held that the obligation to register the vehicle is for the purposes of controlling and regulating the movement of vehicles by the authorities under the Act and they do not stand in the way of passing title to the purchaser. The above discussion would show that there is a sale of vehicle in favour of the claimant before attachment and that therefore the vehicle is not liable to be attached and sold for the debt of 2nd respondent.

6. Learned counsel finally argued inasmuch as the vehicle is covered by a hire purchase agreement, there cannot be a sale in the instant case. He invited my attention to Sub-section (4) of Section 31A of the Motor Vehicles Act, 1939, which reads as follows:

"No entry regarding the transfer of ownership of any motor vehicle which is held under a hire-purchase agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into a hire-purchase agreement."

This relates to the entry regarding the transfer of ownership of motor vehicle in the certificate of purchase. Of course, in a case where the vehicle is covered by a hire-purchase agreement, no entry regarding transfer of ownership will be made without the written consent of the person whose name has been mentioned in the certificate of registration. But that does not in any way mean that there is any bar to the transfer of ownership as such. The restriction contained in Sub-section (4) is in regard to the entry regarding transfer of ownership in the certificate of registration without the consent of the person whose name has been specified in the certificate of registration.

7. There is no merit in the appeal. Accordingly the appeal is dismissed.

I direct the parties to bear their respective costs.