

(1979) 04 KAR CK 0010
In the Karnataka High Court
Case No : Misc. First Appeal No. 1298 of 1978

Nemanna Yellappa Khanaji

APPELLANT

Vs

Syndicate Bank, Ankola and Others

RESPONDENT

Date of Decision : 02-04-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Motor Vehicles Act, 1988 — Section 31

Citation : (1979) ACJ 386 : AIR 1979 Kar 182 : (1979) ILR (Kar) 1817 : (1979) 1 KarLJ 333

Hon'ble Judges : G.N. Sabhahit, J

Bench : Single Bench

Judgement

1. This appeal is by the claimant and is directed against the order dated 31-8-1978, passed by the Civil Judge, U. K., Karwar, in Miscellaneous Application No. 14 of 1978 on his file, dismissing the application filed by the appellant to release the truck bearing registration No. MEL 4330 from attachment.

2. The Syndicate Bank, Ankola, obtained a decree as per Exhibit D-2 in O. S. No. 6 of 1977 on the file of the Court of the Civil Judge, Uttara Kannada, Karwar, against the three defendants named therein and under the decree, it was contemplated that as far as possible the plaintiff should make attempts to recover the loan by proceeding against the truck of defendant 1B, viz., MEL 4330 and the defendant 2 should help the plaintiff in such recovery. If, however, that was not possible or the amount remained unsatisfied, the plaintiff was free to proceed against the suit truck of defendant 2 as also the other properties of the defendants. Under the decree, the truck belonging to defendant 2, viz., MEL 4176 was attached. Thereafter, respondent 3 in this appeal, viz., defendant 2 in the suit, got issued an attachment warrant for the present truck in question and got it attached on 14-3-1978, representing that the truck belonged to the present respondent 2B, who was defendant 1B in the suit. It is the case of the appellant, who was the applicant before the learned Civil Judge under O. 21, R. 58 of the Code of Civil Procedure, that he had purchased the truck from the

original defendant 1B as per the terms contained in Exhibit P-1. Exhibit P-1 is an agreement of sale dated 11-3-1976 entered into by defendant 1B in favour of the present appellant-applicant, under which he agreed to purchase the truck for Rupees 72,501. He paid Rs. 17,001 immediately and agreed to pay Rs. 4,500 to respondent 2B before 25-3-1976 and further agreed to pay Rs. 51,000 to the State Bank of India, Yellapur Branch and thereafter, he agreed to get the truck registered in the R. C. In his name. For that purpose, as can be seen from Exhibit P-1, respondent 2B got the application signed by his vendor. Pursuant to the agreement to sell the truck was delivered to him and he was using the truck in his mown right and besides paying Rs. 17,001 to the vendor, he paid Rs. 4,500 to respondent 2B on 25-3-1976 as per Exhibit P-2. Thereafter, he went on crediting to the Bank the instalments at the rate of Rs. 2,000 per month as agreed under Exhibits P-19 to P-39. Thus, according to him, he had become the owner of the truck, and not the original defendant 1B. On these grounds he approached the Civil Court for releasing the truck from attachment.

3. The application was no doubt opposed by the concerned parties though not by the original defendant 1B, who admitted that he had sold the truck to the present appellant-applicant.

4. The learned Civil Judge, appreciating the evidence on record, held by his order dated 31-8-1978 that the applicant failed to establish that the truck was purchased by him and in that view, he dismissed the application.

5. Aggrieved by the same, the applicant-claimant has come up in appeal before this court.

6. The learned Advocate appearing for the appellant vehemently contended that the learned Civil Judge has grievously erred in thinking that the ownership in a truck is transferred only by getting the name of the purchaser entered in the R. C. Book through the R. T. O. Under S. 31 of the Motor Vehicles Act. He further submitted that in spite of overwhelming evidence that the truck was in possession of the present appellant pursuant to the agreement of sale Exhibit P-1 and in spite of the fact that the appellant had paid off the price as contemplated in Exhibit P-1, the learned Civil Judge erred in coming to the conclusion that the present appellant did not establish his ownership in the truck. Hence, he submitted that the appeal was entitled to succeed.

7. As against that, the learned counsel appearing for the contending respondents, the bank and original respondent 3, contended that the best evidence of sale should have been the change of the name in the R. C. By filing the form contemplated in Rule 58 of the Karnataka Motor Vehicles Rules and since that was not proceeded and got marked by the present appellant, he submitted that the learned Civil Judge was justified in coming to the conclusion that the ownership of the truck was not proved by the appellant. The learned counsel further submitted that since the trial Court had the additional advantage of seeing the demeanour of the witnesses, this Court sitting in appeal, should not

lightly brush aside the finding of the trial Court.

8. I was taken through the relevant evidence-both oral and documentary-as also the order passed by the learned Civil Judge. The points that arise for my consideration in this appeal are:

(1) Whether the learned Civil Judge is justified in holding that the only evidence of transfer of ownership of motor vehicle is change of name in the R. C.?

(2) Whether the learned Civil Judge was justified in holding that Exhibit P-1 is not properly proved ?

(3) Whether the learned Civil Judge was justified in holding that possession of the truck by claimant was not established ?

9. It may at once be observed that the sale of motor vehicles is not under the Motor Vehicles Act, but, it is under the Sale of Goods Act. The fact of non-registration of the vehicle in the name of the purchaser does not vitiate the sale. In the case of V. Muthuswami Gounder Vs. Thulasi Ammal, the High Court of Madras has held that Section 31 of the Motor Vehicles Act no doubt states that contractual transfer of ownership of a vehicle has to precede the application for transfer of ownership. But, as between the transferor and transferee, the sale gets completed before the transfer of the registration certificate. The failure to report the transfer may involve some penalties under the law. But, that certainly does not interdict the passing of property in the vehicle to the transferee. All that is required under the Act is that the transfer has to be notified; otherwise, certain penal consequences follow, but, does not make the transfer invalid. The moment the sale of the vehicle is effected intending to pass the property therein forthwith vis-a-vis the vehicle, the registered owner ceases to have any proprietary interest. It may be that, till there is an endorsement on the registration certificate, ostensibly the transferor is the owner. But the beneficial interest, including the right to possession, vests in the transferee. The Registration book of a vehicle is not a document of title but is evidence of title and its absence at the time of sale, should put a purchaser on inquiry. Similar are the observations made in the case of Insurance Company Limited Vs. Vimal Rai and Others, . That being so, the learned Civil Judge is entirely in error in thinking that the only way to transfer the ownership of a motor vehicle is by getting the name of the purchaser registered in the R. C. And in the books of the R. T. O. The learned Civil Judge appears to have been obsessed with this idea because he has repeated that observation several times in the course of his judgment and that notion wrongly laboured by him has vitiated his reasoning.

10. In para 10 of his judgment the learned Civil Judge has observed thus:

"It must be noted that as per R. C. Book which is a document of title, it still stands in the name of Respondent-2-B. In order to rebut the presumption arising out of this R. C. Entry, the per has led oral evidence of five P. Ws. And documents. The crucial documents is Exhibit P-1 which purports to be an

agreement of sale entered into between the petitioner and Respondent-2B....."

Again in para 11 towards the end, he has observed:

"Thus, notwithstanding the inability of P.W. 4 to complete his evidence, P.W. 5 has made it quite clear that he could not have entered into Exhibit P-1 transaction, unless the R. C. Book of the suit transaction was transferred in P.W. 4's name."

Again in para 12 of the order towards the end, the learned Civil Judge has observed:

"However, P.W. 3., as all experienced persons in owning a truck, also know like P.W. 5 that until the suit truck is transferred in the R. C. Book, its ownership remains only with the Respondent-2B."

Again in para 13, this is what he has observed:

"Secondly, P.W. 1 would have normally insisted that the said amount should be paid not in cash, but by a D. D. over and above these things, none of them would have advised P.W. 4 to enter into Exhibit P-1 transaction without the suit truck being transferred in the R. C. Book, in P.W. 4's name."

Thus, the notion that the document which evidences the transfer of ownership is the entry in the R. C. Book has pervaded throughout the order of the learned Civil Judge and I have shown above that this is a wrong notion in law.

11. Exhibit P-1 is the agreement entered into by Respondent-2B with the present appellant on 11-3-1976 much earlier to the institution of the suit. That is duly proved and marked in the proceeding. That clearly stated that the present claimant shall give the application for change of name in the R. C. Book only after the Bank loan is fully cleared. Exhibit P-1 makes it very clear that the truck is intended to be sold and actually handed over to the present claimant and that the sale shall be treated as complete after the amounts are paid. It is for that reason that the claimant has produced and proved Exhibit P-1 and the fact that he has satisfied the terms of Exhibit P-1 by paying all the amounts. Exhibits P-19 to P-39 clearly show that the claimant has credited monthly instalments of Rs. 2,000/- to the bank to clear off the debt due under the hire purchase agreement by his vendor with the bank. It is of interest to note that the bank has addressed letters to the present claimant to clear off all the instalments as can be seen from Exhibits P-17 and P-18. That only shows that the bank was fully aware that the vehicle was sold in favour of the present claimant and that it recovered the dues from him. That being so, there is ample evidence on record to show the truck was placed in possession of the present claimant by its original owner respondent No. 2-B pursuant to the agreement of sale Exhibit P-1 and that the sale has become complete when the last instalment due to the bank was paid under Exhibit P-39. So, on the day when it was purported to be attached, the sale was completed. The learned Civil Judge under the wrong notion that he entertained that the transfer of ownership could not be done without the change

of name in the R. C. Has discarded the entire evidence. He has gone even to doubt Exhibit P-1 as genuine in spite of the fact that Respondent-2-B was examined as D.W. 1 and that he has clearly admitted that he has sold the truck under Exhibit P-1 to the present claimant and that he has received the money stipulated therein. In the circumstances, I am unable to bring myself to agree with the finding of the learned Civil Judge that the claimant has not proved that he has become the owner of the truck.

12. The learned counsel appearing for the respondents also contended that the best evidence for change of the ownership should have been the transfer form contemplated under Rule 58 of the Karnataka Motor Vehicles Rules. But as pointed above, that form has to be sent only after the consideration is fully paid to the bank as stipulated in the agreement of sale, Exhibit P-1. Hence, non-production of it would not vitiate the sale which has already been effected in favour of the present claimant. The oral evidence adduced in the case clearly shows, so also Exhibits P-19 to P-39, that the truck was all along in the possession of the claimant and that Respondent-3 tricked him to bring that truck to Belgaum and from there, he managed to bring the truck to the jurisdiction of the Court at Karwar and got it attached misrepresenting to the Court that it still belonged to Respondent-2B. At any rate, when all the evidence was brought on record and the claimant has clearly established that he purchased the truck and paid the consideration the learned Civil Judge ought to have allowed the claim petition under Order 21, Rule 58, Civil P. C. For the reasons discussed above, the order of the learned Civil Judge, rejecting that application, is clearly erroneous and has to be set aside.

13. In the result, the appeal is allowed. The impugned order of the learned Civil Judge is set aside and the application filed by the claimant under Order 21, Rule 58, Civil P. C. Is allowed. The truck shall be delivered to the present claimant, by the learned Civil Judge. No costs.

14. Appeal allowed.