
(1965) 12 MAD CK 0046
In the Madras High Court
Case No : S.A. No. 1707 of 1964

Standard Credit Corporation

APPELLANT

Vs

S. Subramaniam and others

RESPONDENT

Date of Decision : 08-12-1965

Acts Referred:

Contract Act, 1872 — Section 133

Citation : (1965) 12 MAD CK 0046

Hon'ble Judges : Anantanarayanan, J

Bench : Single Bench

Advocate : R. Rangachari, for the Appellant; V. Ratnam, amicus curiae, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, J.—This second appeal involves an interesting question upon the liability of purchaser of a motor vehicle from the hirer of that vehicle under a hire purchase agreement, to pay the original owner the cost of a comprehensive insurance. The facts are not in dispute, and the third defendant, who is the main respondent, has not even appeared to contest the second appeal. He is how represented before (sic) by Sri Ratnam appearing as amicus curiae. We may take it that the motor vehicle in (sic) namely, the lorry MDJ 2102, was (sic) belonging to the Standard Credit Corporation (plaintiff-appellant), for the purposes of the suit transaction. The first defendant in the suit borrowed Rs. 6000, from the plaintiff on 25th February 1960, by entering into a hire purchase agreement with regard to this vehicle. The first defendant undertook to pay the amount in monthly instalments of Rs. 600, commencing from March 1960. Indisputably, the third defendant, whose liability is the crux of the second appeal, was one of the guarantors in respect of the hire purchase agreement.

2. The suit by the plaintiff related to one unpaid instalment of the hire purchase agreement, and the recovery of a sum of Rs. 771-75 nP, claimed to have been paid by plaintiff (appellant) towards the comprehensive insurance of this vehicle.

Admittedly, the vehicle was sold by the first defendant to third and fourth defendants on 20th February 1960, that is, even before the date of the hire purchase agreement on 25th February 1960. In other words, since the third defendant was a guarantor in respect of the hire purchase agreement, he himself must have purchased the vehicle from the hirer (first defendant), with full knowledge that his vendor was himself, liable to pay Rs. 6000 in certain instalments on the security of the vehicle. But, as has been laid down in several authorities and the standard Text Books, which need not be cited here, the hirer under a hire purchase agreement can also lawfully assign his interest. Only, if he does so, his vendee obtains that interest subject to the terms and stipulations of the agreement. It stands to reason that the vendee cannot have a larger interest or title than his vendor himself.

3. For this reason, the Courts below rightly decreed the suit of plaintiff against all defendants in respect of the last instalment due on the hire purchase agreement. The learned trial Judge (Second Assistant Judge) has expressly found that defendants 2 and 3 will also be liable for the instalment due on the hire purchase agreement namely Rs. 893-03 and further that the vehicle M.D.J. 2102 will be security for this claim. The only ground that has survived the decrees of the Courts below to be canvassed in second appeal is the supposed liability of the other defendants for the amount of Rs. 771-75 nP paid by the plaintiff towards the comprehensive insurance on the vehicle; and the liability of the vehicle as security or charge in respect of this amount, is also in controversy.

4. I am unable to see any jural basis upon which this claim could be decreed, and the Courts below appear to me to be perfectly correct, both on the facts and in law, upon their conclusions in respect of this matter. Learned Counsel for plaintiff (Sri Rangachari) is constrained to concede that, as far as the capacity of the other defendants as guarantors is concerned, that capacity cannot be invoked for taking them with liability in respect of this comprehensive insurance amount. I have carefully scrutinised the terms of the hire purchase agreement (Ex. A-1) and there is simply nothing in it which would fix a party like the 3rd defendant with such a liability, even if he purchased the vehicle with knowledge of the rights of the plaintiff. As far as privity of contract is concerned, there is, again, no basis whatever, either in fact or in law, in respect of such a claim. Sri Ratnam, as *amicus curiae*, points out that any variance of the contract, made without the consent and knowledge of the surety or guarantor, will discharge the surety or guarantor in respect of such variation; vide S. 133 of the Contract Act.

5. Sri Rangachari for the plaintiff (appellant) seeks to base the claim, neither upon the hire purchase agreement nor on any privity of contract, but upon some equitable principle of benefit derived. According to learned Council, since the third defendant (purchaser) had the benefit of the cover of the insurance, the cost of which had been met by plaintiff, the third defendant is also liable. It is impossible to accept this, on the facts. There are no facts whatsoever to prove that the transaction under which plaintiff met the cost of the comprehensive

insurance was anything but a private transaction between plaintiff and first defendant. The other defendants, presumably, had no knowledge whatever of this transaction. Nor is it easy to see how the vehicle could be a charge in respect of any such claim. We are limited to the terms of the hire purchase agreement (Ex. A-1) and that furnishes no room whatever for such a liability. Neither in law, nor on any equitable principle that I am aware of, could the plaintiff obtain a decree for the cost of the insurance against the other defendants excluding the first defendant, or a charge over the vehicle in this respect. The second appeal accordingly fails, and is (sic). Under the circumstances, there will (sic) under as to costs. No leave.