

(1991) 06 MP CK 0014
In the Madhya Pradesh High Court
Case No : S.A. No. 293 of 1978

State of M.P. and Another

APPELLANT

Vs

Raisahib Durga Shankar Trivedi

RESPONDENT

Date of Decision : 26-06-1991

Acts Referred:

Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1969 — Section 21
Motor Vehicles (Taxation of Passengers) Act, 1959 — Section 10, 10(2), 3, 6, 7

Citation : (1992) J LJ 210

Hon'ble Judges : S.D. Jha, J

Bench : Single Bench

Advocate : S.K. Pawanekar, for the Appellant; K.L. Sethi, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Jha, J.—This second appeal by Defendants who have lost in the two Courts below was by order dated 27.9.1978 admitted for final hearing on the following substantial questions of law:

1. Whether on the facts and circumstances of the case the lower appellate court erred in law in holding that the suit was not barred by limitation in view of Section 21 of the M.P. Motor Vehicles (Taxation of Passengers) Act, 1969?
2. Whether the lower appellate Court erred in law in holding that the order of the Tahsildar operated as res judicata?
2. The Plaintiff/Respondent (hereinafter called, the Plaintiff) filed suit for declaration and injunction against the Defendant. The case of the Plaintiffs/Respondent is that he was owner of passenger bus vehicle No. MPE 6401 and running on Indore-Narsinghgarh route on the strength of permit No. 11/39 issued by the Defendant No. 2. The bus ran on the route between May 1962 to March 1963 regularly and on 1.4.1963 it was transferred to one Gulam Haidar S/o Gammu Pahalwan R/o 53, Malharganj, Indore. The Plaintiff had paid all taxes under Motor Vehicle (Taxation of Passengers) Act, 1959 till 31st March, 1963 and

nothing was due against him. The purchaser of the bus Gulam Haidar had agreed that he will run the bus on the same route for which the permit was granted and would pay all taxes. This purchaser on 30.7.1964 applied to Defendant No. 2 R.T.O. Bhopal that he is willing to pay arrears of passengers tax Rs. 948.66 and to deposit Rs. 2,000/- immediately. He also stated that liability of the balance amount, if any, would be a charge on the vehicle and the vehicle may be transferred in his name in the motor vehicle papers. The Plaintiff had also intimated the R.T.O. that Gulam Haidar's name should not be transferred as owner of the vehicle unless balance amount of tax is realised. By order dated 31.7.1964 the Defendant No. 2 in spite of the tax remaining in balance ordered transfer of the vehicle in Gulam Haidar's name and also observed that balance tax should be charged on the vehicle and could be realised by its attachment and sale. The Plaintiff further pleaded that liability of tax if any after 1.4.1963 was not on the Plaintiff but on Gulam Haidar who ran the bus after 1.4.1963 and on the vehicle itself. The Revenue Authorities had commenced arrears of land revenue recovery proceeding No. 253/64-65 in which by order dated 12.3.1965 it was held that the Plaintiff was not liable for payment of dues and liability was that of Gulam Haidar. Again in 1967-68 similar recovery proceedings were commenced against the Plaintiff which vide order dated 22.8.69 was dropped with similar remarks. The Plaintiff pleaded that the two orders passed by the Tahsildar and Naib Tahsildar referred to above in recovery proceeding had become final and were binding on the Defendants. In spite of this, the Defendant No. 2 by letter No. 3738/passengers tax/69 dated 31.1.69 intimated the Plaintiff that Rs. 1,500/- passengers tax and Rs. 1,077/- were due from him. The Plaintiff resisted demand and then filed suit for declaration that no amount was personally due against him as tax in respect of bus No. 6401 MPE and the Defendant be restrained from recovering any amount as tax from the Plaintiff.

3. The Defendants in common written statement resisted the claim of the Plaintiff and it was submitted that bus was driven till 29.2.1964 and Plaintiff had given intimation that he had transferred the bus on 1.4.63 to Gulam Haidar. The transfer was in violation of law as the permit could not be transferred. While the payment of passenger tax till March, 1963 was admitted it was submitted that penalty on the same was not paid. Besides the Plaintiff was liable for passengers tax for the months of Nov., Dec. 1963 and Feb. 1964, the agreement or contract if any between the Plaintiff and Gulam Haidar is not binding on the Defendant, even though after Plaintiff transferred the bus on 1.4.1963 to Gulam Haidar the liability of tax would be on the Plaintiff. The orders of the Naib Tehsildar and Tehsildar are opposed the law and were not binding on the Defendants. The Plaintiff was liable to payment of passengers tax Rs. 1,500/- and penalty of Rs. 1,077/- as per the details given in paras 10 and 11 of the written statement. On these grounds the Defendant prayed for dismissal of the suit.

4. The trial Court found in favour of the Plaintiff. The judgment and decree passed by the trial Court was upheld in appeal by the first appellate Court. Hence, the present appeal.

5. At the hearing of the appeal Shri S.K. Pawanekar for the Appellants and Shri K.L. Sethi for the Respondent were heard and record perused. They did not address any argument with respect to substantial question of law formulated above. Both the learned Counsel referred to Division Bench Decision in *Madhya Pradesh Transport Company v. The Tax Officer-cum-the Regional Transport Officer, Raipur* 1967 JLI 790 : 1966 MPLJ 650.

The decision reproduces Section 10 and makes certain observations. Section 10 and the relevant portion of the observation are reproduced below:

10. (1) In the cases referred to in Sections 7, 8, and 9 the tax officer shall serve on the operator a notice of demand for the sums payable to the State Government and the sums specified in such notice may be recovered from the operator as arrears of land revenue.

(2) The tax shall be a first charge on the stage carriage in respect of which it is due as also on its accessories and such stage carriage and the accessories thereof may be attached and sold for the recovery of the tax under the appropriate law relating to the recovery of arrears of land revenue."

A tax amount which an operator is required to deposit in the Treasury alongwith his return is clearly tie amount of tax levied u/s 3. It follows, therefore, that though for the recovery of the amount of tax, which an operator should have paid u/s 6 of the Act, the first sub-section of Section 10 is not attracted yet that tax amount by virtue of the provisions of Sub-section (2) can be recovered by the sale of the stage carriage or carriages in respect of which it was due and the accessories thereof and the attachment and sale of the carriages and the accessories can be under the appropriate law relating to the recovery of arrears of land revenue. Thus there is no bar to the recovery of the tax amount as arrears of land revenue from the Petitioners at least by the attachment and sale of the stage carriage or carriages and the accessories thereof in respect of which it was due. The amount cannot, however, be recovered from the Petitioners as arrears of land revenue by attachment and sale of their other property.

6. In view of the foregoing observations of this Court (emphasis supplied) the Defendants could have recovered arrears of taxes, if any, from the vehicle and accessories thereof they could not have recovered the same from the Plaintiff. It is also worth to mention that transferee of the vehicle Gulam Haidar was himself willing to pay amount of tax, if any.

7. In the circumstances no error can be found with the judgment and decree of the lower Courts decreeing the Plaintiff's claim for declaration that he was personally not liable to pay tax and restraining Defendants from recovering the same personally from the Plaintiff and his other property.

8. The appeal is dismissed with no order as to costs. Decree be drawn up accordingly.