

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT.

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

AS.No. 52 of 2003 (A)

OS 32/1990 of SUB COURT, PATHANAMTHITTA

APPELLANT/PLAINTIFF IN THE O.S.:

BHASKARAN BINURAJ, PULICKATHARA HOUSE,
PANNIALI MURI, OMALLOOR VILLAGE.

BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS/DEFENDANTS IN THE O.S.:

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1. KUNJU PANICKER SOMAN,
CHERUKAVIL HOUSE, THATTARAMPALAM, MAVELIKKARA.
 2. M.C. SHOWKATH, M.C.M. MANZIL,
VETTIPPURAM MURI, PLATHANAMTHITTA VILLAGE.
 3. VASU MOHANAN, KUTTIYIL HOUSE,
KAKKATTU MURI, PERUNAD VILLAGE.
 4. P. SIVASANKARA PILLAI,
PUTHUMANA VADAKKEKKARA HOUSE, MALAYALAPPUZHA THAZHAM
KOZHANCHERY TALUK.
 5. SURENDRANATHA PANICKER,
KARIMUTTATHU HOUSE, MADAPPALLY, CHANGANASSERY.

ADVS.SRI.VINOD R. & SRI.SYAM T.THOMAS (R1)

ADV.SRI.V.PHILIP MATHEWS (R4)

ADV.SRI.LAL GEORGE (R5)

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 6-07-2015, THE COURT
ON 17-07-2015 DELIVERED THE FOLLOWING:

TGS

P.B.SURESH KUMAR, J.

A.S. No.52 of 2003

Dated 17th July, 2015.

J U D G M E N T

The plaintiff in the suit is the appellant. The suit was one for declaration of the ownership of the bus bearing Registration No.KRT 7934 and for recovery of possession of the same with its records or in the alternative for realisation of Rs.78,000/- with interest and costs from the defendants.

2. The bus bearing registration No.KRT 7934, hereinafter referred to as 'the bus' for short, belonged to the fifth defendant. The case of the plaintiff is that the fifth defendant sold the bus to the second defendant; that the second defendant in turn sold the bus to the first defendant and the plaintiff purchased the bus from the first defendant on 7.3.1989 for a sum of Rs.58,000/-. According to the plaintiff, while he was operating the bus as a stage carriage after carrying out the necessary repairs spending a sum of Rs.20,000/-, the bus was taken into custody by the police pursuant to an order passed by a criminal court on a complaint

filed by the third defendant. It is alleged by the plaintiff in the plaint that though he moved the criminal court for release of the bus, the bus was ordered to be released to the third defendant. The suit was filed, in the circumstances, seeking the aforesaid relief.

3. The first defendant contested the suit by filing a written statement. In the written statement filed by the first defendant, he admitted the transaction with the plaintiff. The stand of the first defendant was also that the bus was purchased by him from the second defendant.

4. The second defendant remained ex parte. Defendants 3 and 4 contested the suit contending, inter alia, that neither the plaintiff nor the first defendant has acquired any right over the bus. According to them, the bus was sold by the second defendant to the fourth defendant and thereafter, the third defendant had purchased the same from the fourth defendant and as such, the third defendant was the owner of the bus.

5. The fifth defendant filed a written statement

admitting that he was the owner of the bus. However, he contended that he sold the bus to one Radhakrishnan. He also contended that all the documents required for transferring the registration of the bus were handed over by him to the said Radhakrishnan.

6. When the case was taken up for trial, there was no representation for defendant Nos.3, 4 and 5. The first defendant alone contested the matter thereafter. The court below, on a consideration of the materials on record, took the view that it was obligatory for the plaintiff to establish the title of the first defendant over the bus and that since the plaintiff has not established the title of the first defendant over the bus, no relief can be granted to him. The suit was accordingly dismissed. The plaintiff is aggrieved by the said decision of the court below.

7. Heard the learned counsel for the appellant.

8. As noticed above, the case of the plaintiff is that the fifth defendant sold the bus to the second defendant and he in turn sold the bus to the first defendant and thereafter, the

plaintiff purchased the bus from the first defendant. It is also his case that the first defendant had handed over to him all the documents required for transferring the registration of the bus and thus, he became the absolute owner of the bus. The first defendant endorses the case set up by the plaintiff as regards the title of the bus. The fact that the fifth defendant was the original owner of the bus is not in dispute. The stand taken by the fifth defendant in the written statement filed by him is that he sold the bus to one Radhakrishnan. He also took the stand that he has also handed over all the documents required for transferring the registration of the bus to Radhakrishnan. If what is stated by the fifth defendant in the written statement is correct, there is no explanation from the second defendant as to how the second defendant got title to the bus. The second defendant has not filed any written statement. The written statement filed by defendants 3 and 4 indicates that the second defendant sold the bus to the fourth defendant on 4.11.1986. The case of the plaintiff and the first defendant is that the second defendant sold the bus to the first defendant on

22.6.1987. If what is stated by defendants 3 and 4 is correct, the case of the plaintiff and the first defendant as regards the title to the bus obtained by the second defendant cannot be accepted as true. As noticed above, the first defendant admits the sale of the vehicle to the plaintiff as also receipt of the sale consideration as claimed by the plaintiff. As such, it is for the first defendant to establish that he conveyed valid title over the bus to the plaintiff. It is beyond dispute that the bus was taken custody from the plaintiff by the police and on production of the bus before the court, the same was released to the third defendant by the court holding that the third defendant has established title to the bus *prima facie*. The first defendant has not adduced any evidence to show that the second defendant had title to the bus. In the circumstance, it has to be held that the first defendant had sold the bus to the plaintiff with defective title. Since the bus was sold by the first defendant to the plaintiff with defective title, the plaintiff is certainly entitled to compensation for the damage sustained by him on account of the purchase of the said bus. As I have indicated

that there is no dispute to the fact that the plaintiff has paid a sum of Rs.58,000/- to the first defendant towards sale consideration, I am of the view that the plaintiff is entitled to recover the said amount from the first defendant by way of damages. True, the plaintiff has also a case that he had spent a sum of Rs.20,000/- towards the repair of the vehicle. But, there is absolutely no evidence to show that the plaintiff has incurred a sum of Rs.20,000/- towards repair charges.

In the result, the appeal is allowed in part. The impugned judgment is set aside and the plaintiff is granted a decree for recovery of Rs.58,000/- from the first defendant, with interest at the rate of 12% per annum from the date of the suit till the date of the decree and thereafter, at the rate of 6% per annum. The plaintiff is also entitled to proportionate costs.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)